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Wednesday
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The President

Proclamation 7126 of September 18, 1998

National Farm Safety And Health Week, 1998

By the President of the United States of America

A Proclamation

America's agricultural industry plays an important role in our Nation's economy. It provides us with an ample supply of high-quality food and fiber and a rewarding form of employment for millions of Americans. However, farming and ranching remain among our Nation's most dangerous occupations, demanding an understanding of complex agricultural equipment, strict attention to detail, and careful performance of farm and ranch work.

Among the most hazardous duties on farms and ranches is the operation of farm tractors and machinery. This work is even more dangerous with extra riders, and all farm equipment operators should avoid carrying people on their machinery who are not necessary to their work. Using tractors and machinery can be especially dangerous during planting and harvesting seasons, when farmers and ranchers must use public highways to gain access to production fields or to bring the harvested crop to market. During these times, all vehicle and equipment operators must exercise special caution on our roadways.

After school, during the summer, and other times of the year when children have more unsupervised time, can be very hazardous to our next generation of farmers and ranchers. Since many agricultural operations are family-oriented, this work can bring younger family members into contact with the mechanical, chemical, and environmental hazards their more knowledgeable parents and older siblings face daily with appropriate caution. Adults should strive to set good examples for younger, inexperienced workers and always carefully monitor children's activities.

Because of the environment they work in, agricultural workers also face serious health concerns. Noisy equipment and inadequate hearing protection frequently cause permanent hearing loss among farm and ranch employees, and skin cancer rates among agricultural workers are exceedingly high, due to long exposure to the sun and chemicals. In every farm environment, workers need to use protective gear to avoid health and safety hazards. This is not only for their personal benefit—it also sends the right message to the young people who are the future agricultural workers of our Nation.

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 September 20 through September 26, 1998, as National Farm Safety and Health Week. I call upon government agencies, businesses, and professional associations that serve our agricultural sector to strengthen their efforts to promote safety and health programs among our Nation's farm and ranch workers. I ask agricultural workers to take advantage of the many diverse education and training programs and technical advancements that can help them avoid injury and illness. I also call upon our Nation to recognize Wednesday, September 23, 1998, as a day to focus on the risks facing young people on farms and ranches. Finally, I call upon the citizens of our Nation to reflect on the bounty we enjoy thanks to the labor and dedication of agricultural workers across our land.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of September, 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-third.

William J. Clinton

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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[Docket No. FV–98–327]

Processed Fruits and Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing inspection and certification for processed fruits, vegetables, and processed products made from them by increasing by approximately three to seven percent fees charged for the inspection services. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Act of 1937 is also affected. This rule also incorporates miscellaneous changes to revise a citation number and revise a statement in a footnote in regards to sample size.

EFFECTIVE DATE: October 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver, Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 0709 South Building, Washington, DC 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the required analysis is set forth below. The purpose of the Regulatory Flexibility Act (RFA) is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover lot, and year round and less than year round inspection program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projection for work in regards to these inspection programs during FY 1998 is $11.7 million with costs projected at $13.1 million and an end-of-year reserve balance of $3.9 million. The PPB trust fund reserve balance for these programs will be approximately $0.5 million under the four-month level of approximately $4.4 million, which is called for by Agency policy. Further, PPB's cost of operating the user fee financed programs are expected to increase to approximately $13.5 million during FY 1999 and to approximately $13.9 million in FY 2000. These cost increases will result from inflationary increases with regard to current PPB operations and services.

The Processed Products Branch (PPB) estimates that without a fee increase the trust fund reserve as called for by Agency policy (four-months) will significantly decrease, that will result in an operating reserve balance of approximately $3.0 million in FY 1999 and $2.6 million in FY 2000. This relates to only 2.9 months and 2.3 months of operating reserve for the respective years.

Employee salaries and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 7.11 percent depending on locality, effective January 1997, significantly increased program costs. Another locality salary increase ranging from 2.30 to 7.27 percent depending on locality, effective January 1998, also increased program costs. These increases have increased PPB's cost of operating these programs by $400,000 per year.

This final rule will increase user fee revenue generated under the lot inspection program, and the year round and less than year round inspection programs by approximately $500,000 (3 to 7 percent) annually to enable the PPB to cover its costs and re-establish program reserves (current operating reserves are being maintained at a level below that provided for by Agency policy). This action is authorized under the AMA of 1946 [see 7 U.S.C. 1622(h)] which states that the Secretary of Agriculture may assess and collect ''such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *''. The final rule will also incorporate miscellaneous changes to revise a citation number and to revise a statement in a footnote in regards to sample size.

There are more than 1239 users of PPB's lot, and less than year round and year round inspection services (including applicants who must meet import requirements,[1] inspections which amount to under 2 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. PPB has not identified any other federal rules which may duplicate, overlap or conflict with this final rule.

Inasmuch as the inspection services are voluntary (except when required for imported commodities), and since the fees charged to users of these services vary with usage, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is small

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–604), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect. Currently, there are 4 processed commodities subject to 8e import regulations: canned ripe olives, dates, prunes, and processed raisins. A current listing of the regulated commodities can be found under 7 CFR Parts 944 and 999.

(three to seven percent) and should not significantly affect these entities. Finally, except for those applicants who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and therefore, any decision to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Final Action

The AMA authorizes official inspection, grading and certification for processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule will amend the schedule for fees for inspection services rendered to the processed fruit and vegetable industry to reflect the costs necessary to operate the program and incorporates miscellaneous changes to revise a citation number and to revise a statement in a footnote in regards to sample size.

AMS regularly reviews its user fee programs to determine if the fees are adequate. While PPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover lot, and less than year round and year round inspection program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). The current revenue projection for work in regards to these inspection programs during FY 1998 is $11.7 million with cost projected at $13.1 million and an end-of-year reserve of $3.9 million. This will result in a decrease of PPB's trust fund balance of approximately $0.5 million under the four-month level ($4.4 million) called for by Agency policy. Further, PPB's cost of operating these inspection programs is expected to increase to approximately $13.5 million during FY 1999 and to approximately $13.9 million in FY 2000, resulting in a decrease of the trust fund balance to approximately $3.0 in FY 1999, and to approximately $2.6 million in FY 2000. These cost increases result from inflationary increases with regard to current PPB operations and services.

Employee salaries and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 7.11 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase ranging from 2.30 to 7.27 percent depending on locality, effective January 1998, also increased program costs. These increases will increase PPB's costs of operating these inspection programs by approximately $400,000 per year. Therefore, the salary increases necessitate additional funding under the program. This fee increase of approximately 3 to 7 percent should result in an estimated additional revenue of $500,000 per year, and should enable PPB to cover the costs of doing business and re-establish program reserves (current operating reserves are at a level below that provided for by Agency policy). In order to reach and maintain a four-month reserve, a further increase in fees may be likely in future years.

Based on the aforementioned analysis of increasing program costs, AMS is increasing the fees relating to lot inspection service and the fees for less than year round and year round inspection services. For inspection services charged under § 52.42, overtime and holiday work would continue to be charged as provided in that section. For inspection services charged on a contract basis under § 52.51 overtime work would also continue to be charged as provided in that section.

Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees in § 52.42 is $43.00/hour.

Charges for travel and other expenses as found in § 52.50 will be $43.00/hour.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.51(c) will be:

(1) For inspector assigned on a year-round basis—$35.00/hour.

(2) For inspector assigned on less than a year-round basis—$45.00/hour.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.52(d) will be each inspector—$45.00/hour.

Also, AMS revised §§ 52.21 and 52.38 (Table II, footnote number 2) to make editorial changes.

In § 52.21, § 52.50 is referenced as providing information regarding the purchase of additional copies of certificates. This will be revised to read § 52.49.

In § 52.38, Table II, footnote number 2, the statement that describes the sample size for Group 3 containers that weigh over 10 pounds is omitted. Table II, footnote number 2 is revised to include the sample size for Group 3 containers that are over 10 pounds.

A notice of proposed rulemaking was published in the **Federal Register** (63 FR 35544) on June 30, 1998, with a thirty day comment period. The comment period closed on July 30, 1998. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. No comments were received regarding this proposed rule.

After consideration of all relevant matter presented, this action makes final the changes as proposed on June 30, 1998. The changes are made effective on October 4, 1998.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 52 is amended to read as follows:

PART 52—[AMENDED]

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

Authority: 7 U.S.C. 1621—1627.

§ 52.21 [Amended]

2. In § 52.21, the word ''§ 52.50'' is revised to read ''§ 52.49''.

§ 52.42 [Amended]

3. In § 52.42, the figure ''$41.00'' is revised to read ''$43.00''.

§ 52.50 [Amended]

4. In § 52.50, the figure ''$41.00'' is revised to read ''$43.00''.

§ 52.51 [Amended]

5. In § 52.51, paragraph (c)(1), the figure ''$34.00'' is revised to read ''$35.00'', in paragraph (c)(2), the figure ''$42.00'' is revised to read ''$45.00'', and in paragraph (d)(1), the figure ''$42.00'' is revised to read ''$45.00''.

6. In § 52.38, footnote number 2 immediately following Table II is revised to read as follows:

§ 52.38 Sampling plans and procedures for determining lot compliance.

* * * * *

[2] When a standard sample size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1 and 2—1 container and its entire contents. Group 3 containers up to 10 pounds—1 container and its entire contents. Group 3 containers over 10 pounds—approximately three pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds''.

Dated: September 17, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–25368 Filed 9–22–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 96–016–32]

RIN 0579–AA83

Karnal Bunt; Movement From Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations to allow, under certain conditions, commercial lots of seed to move from restricted areas for seed. We are also amending the testing requirements for regulated articles other than seed, removing certain articles from the list of articles regulated because of Karnal bunt, clarifying the terms ''used mechanized harvesting equipment'' and ''used seed conditioning equipment'', and clarifying requirements for soil movement with vegetables. These changes relieve restrictions on the movement of articles from areas regulated because of Karnal bunt. We are also requiring the moist heat treatment of millfeed produced from grain that tests positive for Karnal bunt, adding a moisture condition to the methyl bromide treatment of soil, and removing the methyl bromide treatment alternative for decorative articles. We are also amending the description of surveillance areas to more clearly distinguish between surveillance areas and restricted areas. In addition, we are amending the regulations governing the importation of wheat into the United States to make the definition of the term ''Karnal bunt'' consistent with the definition of that term in the Karnal bunt regulations.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt in the United States are set forth in 7 CFR 301.89–1 through 301.89–14.

On January 28, 1998, we published in the **Federal Register** (63 FR 4198–4204, Docket No. 96–016–22) a proposal to amend the regulations by allowing, under certain conditions, commercial lots of seed to move from restricted areas for seed; amending the testing requirements for regulated articles other than seed; removing certain articles from the list of articles regulated because of Karnal bunt; clarifying the terms ''used mechanized harvesting equipment'' and ''used seed conditioning equipment''; clarifying requirements for soil movement with vegetables; requiring the moist heat treatment of millfeed produced from grain that tests positive for Karnal bunt; adding a moisture condition to the methyl bromide treatment of soil; removing the methyl bromide treatment alternative for decorative articles; and amending the description of surveillance areas. We also proposed to amend the regulations governing the importation of wheat into the United States to make the definition of the term ''Karnal bunt'' consistent with the definition of that term in the Karnal bunt regulations.

We solicited comments concerning our proposal for 60 days ending March 30, 1998. We received nine comments by that date. They were from representatives of industry in, and State governments of, States with areas regulated because of Karnal bunt. Two commenters supported the proposed rule as written. The remaining commenters expressed concerns about certain portions of the proposed rule. Their concerns are discussed below by issue.

Movement of Commercial Lots of Seed

Comment: One of the proposed conditions for the movement of commercial lots of seed from a regulated area is that the most recent previous Karnal bunt host crop grown in the field or fields where the seed intended for movement was grown must have tested negative for Karnal bunt (spores and bunted kernels). We suggest, as an alternative, that commercial lots of seed also be eligible for movement if the field or fields where the seed was grown were not used for any Karnal bunt host crops during the past 5 years.

Response: We agree that a field that has not been planted with Karnal bunt host crops for the past 5 years should be eligible to produce seed for movement in commercial lots from a regulated area. Five years of non-host status would verify a production area's freedom from Karnal bunt. Therefore, in response to this comment, this final rule provides that the seed may come either from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt (spores and bunted kernels) or where Karnal bunt host crops have not been grown during the past 5 years.

Comment: The treatment proposed for commercial lots of seed moving from a regulated area is the same treatment currently required at § 301.89–13(e) for seed used as germplasm or for research. This protocol is too strict. The proposed chlorine wash will be extremely difficult, if not impossible, to use on large quantities of commercial seed, and the double fungicide treatment will significantly affect the germination of the seed. We feel that the other proposed conditions for the movement of commercial lots of seed from a regulated area are sufficient to assure that any seed moving from a regulated area will be at lower risk of containing Karnal bunt (spores and bunted kernels) than any wheat seed in the world not so tested.

Response: We proposed that, to be eligible for movement as seed under certificate, commercial lots of seed grown in a restricted area for seed must:

- originate from a field or fields that are not part of a restricted area for regulated articles other than seed or a surveillance area;
- originate from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt;
- test negative for Karnal bunt; and
- be treated in accordance with § 301.89–13(e).

Under § 301.89–13(e), seed to be moved from a regulated area for use as germplasm or for research purposes

must be treated with a chlorine wash, that is, a 1.5 percent aqueous solution of sodium hypochlorite (=30 percent household bleach) containing 2 mL of Tween 20™ per liter agitated for 10 minutes at room temperature followed by a 15-minute rinse with clean, running water and then by drying, and then with a double fungicide treatment of either: (1) 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. active ingredient (ai.) per gallon (gal.)) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed; or (2) 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed. We believe that the treatment of commercial lots of seed moving from a regulated area is a necessary component of a system designed to prevent the spread of Karnal bunt to noninfected areas of the United States.

However, in response to this comment, and after extensive review of current research, we are making a change to the treatment required for commercial lots of seed moving from a regulated area. This final rule requires a combination of the chlorine wash and a single fungicide treatment, instead of the proposed double fungicide treatment. The single fungicide treatment may be with either Carboxin thiram or pentachloronitrobenzene, as follows: (1) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed; (2) with 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or (3) with 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed. We are offering these single fungicide treatment options based on research [1] performed at the International Center for Maize and Wheat Improvement (CIMMYT) in Mexico, in cooperation with Gustafson, Inc. The research protocol involved adding *Tilletia indica* teliospores uniformly to a wheat seed source, applying the fungicides at the specified concentrations, and plating teliospores recovered from the wheat samples onto growth media to assess teliospore viability at 15, 60, 120, and 180 days after treatment. The results indicated that treatment with either of the fungicides Carboxin thiram or pentachloronitrobenzene was comparable in effectiveness to the double treatment using both.

We are retaining the requirement for the chlorine wash. Although the application of the chlorine wash may be challenging, available data demonstrates that it is an effective method for helping to inactivate Karnal bunt. Until we have data demonstrating otherwise, we believe the combination of the chlorine wash and fungicide treatment is necessary to ensure that seed planted outside regulated areas for commercial production of wheat does not contain any viable Karnal bunt material.

The single fungicide treatment options will offer more flexibility to wheat growers and other affected entities in regulated areas, and will also help minimize the use of pesticides and reduce the costs associated with treating seed originating in a regulated area that will move from a regulated area in commercial lots. This action will continue to prevent the spread of Karnal bunt through planted seed while addressing a concern that some growers have regarding a possible reduction in germination of seed treated with a double fungicide treatment.

Definition of Surveillance Area

Comment: The proposed definition of surveillance area is too vague, providing the Animal and Plant Health Inspection Service (APHIS) latitude to continue expansion of the regulated area. We recommend that surveillance areas be limited to those production fields that are adjacent to fields designated as restricted areas for regulated articles other then seed. We also recommend that areas currently designated as surveillance areas because they are associated with a lot of seed found to contain a bunted kernel, or because they were found during a survey to contain spores consistent with Karnal bunt and were determined to be associated with grain at a handling facility containing a bunted wheat kernel, should be redesignated as restricted areas for seed.

Response: As proposed, we are amending the description of surveillance area at § 301.89–3(e)(4) to clarify that a surveillance area is an area where Karnal bunt is not known to occur but where, for various reasons, intensive surveys are necessary. This action will help differentiate between the status of a restricted area for regulated articles other than seed and the status of a surveillance area. We did not, however, propose any changes to the criteria for designating an area as a surveillance area, and we are not prepared to make such changes now. At this time, we continue to believe that fields associated with a bunted kernel present a greater risk than other fields. We, therefore, identify them and impose certain restrictions on the movement of regulated articles from them.

Removal of Certain Articles from the List of Regulated Articles

Comment: We agree that used bags, sacks, and containers; used farm tools; used mechanized cultivating equipment; and used soil moving equipment should be removed from the list of regulated articles, but we believe that harvesting and seed conditioning equipment should also be removed from that list.

Response: Because of the way that mechanized harvesting equipment and seed conditioning equipment are constructed, it is extremely difficult to remove all of the plant parts, including wheat seeds or other parts of wheat plants, from the cracks and crevices of this type of equipment after it has been used. Therefore, when this equipment is used in a regulated area in the production of Karnal bunt host crops, it presents a risk of spreading Karnal bunt if moved from a regulated area without being cleaned and disinfected as required by the regulations. Therefore, we are making no changes to the proposed rule in response to this comment.

Deregulation

Comment: The proposed rule does not provide information on when and how APHIS plans to accomplish the complete deregulation of Karnal bunt. APHIS needs to provide affected entities with its plan for deregulation, including information on how many harvests must be tested before an area can be deregulated.

Response: The complete deregulation of the areas regulated because of Karnal bunt is outside of the scope of our proposed rule. As Karnal bunt is eliminated, and as we gather research and data to support deregulation, we will continue to take appropriate action through future rulemaking.

Comment: In Docket No. 97–060–1, APHIS proposed to declare the Mexicali Valley of Mexico free from Karnal bunt and to allow wheat seed to move into the United States from that area. APHIS cannot justify declaring the Mexicali Valley free from Karnal bunt as long as the Agency continues to regulate adjacent areas of Arizona and California for the same disease. Given that Karnal bunt can spread by natural, as well as artificial, means, one cannot expect that the Mexicali Valley could escape inoculation by the disease during the period that contiguous areas became infected.

[1] Information on this research is available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Response: January 27, 1998, we published in the **Federal Register** (63 FR 3844–3848, Docket No. 97–060–1) a proposal to amend the wheat diseases regulations in 7 CFR part 319.59 by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. We will consider this comment as a comment on Docket No. 97–060–1 and will address the issue raised by the commenter as part of that rulemaking.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The Karnal bunt regulations were established under the Plant Quarantine Act (7 U.S.C. 151–165 and 167) and the Federal Plant Pest Act (7 U.S.C. 150aa–150jj), which authorize the Secretary of Agriculture to take measures necessary to prevent the spread of plant pests, including diseases, that are new to, or not widely prevalent in, the United States.

We are amending the Karnal bunt regulations to allow, under certain conditions, commercial lots of seed to move out of a restricted area for seed and to amend the testing requirements for regulated articles other than seed. We are also removing certain articles from the list of articles regulated because of Karnal bunt, clarifying the terms ''used mechanized harvesting equipment'' and ''used seed conditioning equipment,'' and clarifying requirements for soil movement with vegetables. These changes relieve restrictions on the movement of articles from areas regulated because of Karnal bunt. We are also requiring the moist heat treatment of millfeed produced from grain that tests positive for Karnal bunt, adding a moisture condition to the methyl bromide treatment of soil, and removing the methyl bromide treatment alternative for decorative articles.

Virtually all of the industries affected are likely to be composed of producers and firms that can be categorized as small according to the Small Business Administration (SBA) size classification. Economic impacts resulting from this rule will therefore largely affect small entities. The analysis of economic impacts would thus fulfill the requirement of a cost-benefit analysis under Executive Order 12866, as well as the analysis of impacts of small entities required by the Regulatory Flexibility Act. Unless otherwise noted, the SBA's characterization of a small business for the categories of interest in this analysis is a firm that employs at most 500 employees, or has annual sales of $5 million or less.

The change to allow, under certain conditions, commercial lots of seed to move out of a restricted area for seed will benefit regulated growers of wheat seed and other affected entities. For the first time since regulated areas were established, commercial lots of wheat seed will be eligible to move out of a regulated area, if, among other things, the seed is grown in a restricted area for seed that is not also part of a restricted area for regulated articles other than seed or a surveillance area. Those regulated areas that are restricted areas for seed, but that are not also part of a restricted area for regulated articles other than seed or a surveillance area, amount to an estimated 727,335 acres of regulated land in four States (Arizona, California, New Mexico, and Texas). These 727,335 acres represent 75 percent of the combined regulated areas in those four States. The change will, therefore, open up a substantial volume of regulated acreage to export sales of wheat seed. The estimated current regulated acreage, by State and regulatory designation, is as follows:

	Arizona	California	New Mexico	Texas [1]	Total
Restricted area for seed	797,000	100,000	58,650	[2] 20,469	976,119
Restricted area for regulated articles other than seed	6,162	3,113	3,990	1,519	14,784
Surveillance area	135,000	84,000	0	15,000	234,000
Portion of restricted area for seed that could grow wheat seed eligible for movement in commercial lots from the regulated area	655,838	12,887	54,660	3,950	727,335

[1] The acreage for Texas is comprised of two regulated areas, one in El Paso and the other in San Saba. The regulated area in San Saba was established in the latter part of 1997, as a result of Karnal Bunt National Survey findings.

[2] For El Paso, restricted area for seed includes only acreage for the plowdown fields.

The opportunity for export sales of seed should have a positive impact on seed planting in the regulated area. The magnitude of that impact is difficult to measure, however, because year-to-year changes in seed planting are a function of many factors, including factors not related to the regulatory environment (e.g., prices). The impact of this rule will likely be most noticeable 1 to 2 years after its effective date; by that time, growers will have had the chance to adjust planting schedules to take advantage of the amended restrictions and will have had the opportunity to satisfy other provisions of the rule (i.e., the requirement that commercial lots of seed intended for movement from a regulated area must come either from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt (spores and bunted kernels), or where Karnal bunt host crops have not been grown during the past 5 years).

Another of the rule's requirements, that seed be treated prior to movement, may limit the amount of seed that can be moved in the short term and may also discourage some growers from planting seed. Under the rule, in addition to fungicide treatments, commercial lots of seed must be treated with sodium hyperchlorite (chlorine). Because of the corrosive nature of chlorine, stainless steel vats or containers may need to be installed for treating the seed. Thus, in addition to expenditures for chemicals, some producers who choose to produce wheat seed for commercial use may incur costs for special equipment. However, the treatment for commercial seed is necessary to reduce the risk of the

spread of Karnal bunt to noninfected areas of the United States.

Notwithstanding these requirements, the positive potential of the changes on seed plantings could be considerable. As indicated above, an estimated 727,335 acres of regulated land will be eligible to grow wheat seed that may, under certain conditions, move in commercial lots out of the regulated area. It is estimated that only about 15 percent of those 727,335 acres are currently planted with wheat, leaving the remaining 85 percent (approximately 618,235 acres) potentially available for wheat seed planting in the future. Even if only 5 percent of the 618,235 acres were planted for seed as a result of this rule, an additional 30,912 acres in the regulated area would be planted for seed. By comparison, approximately 122,000 acres [2] of wheat were planted in the entire regulated area in the 1996–97 growing season.

We are also amending the testing requirements for grain used other than for seed. Under the rule, such grain must be tested and found free of bunted kernels, rather than spores and bunted kernels, prior to movement from the regulated area. Growers and handlers of grain will benefit from this change in the testing requirements.

As much as 90 percent of the acreage of surveillance areas that is planted with wheat is devoted to the production of grain. This rule, therefore, has the potential to affect most of the wheat grown in surveillance areas. Because grain intended for movement from the regulated area will be surveyed for bunted kernels only, and because those surveys will be conducted at the field rather than at the conveyance, we expect that the new testing procedures will save time for grain handlers. In addition, because laboratory analyses for spores will no longer be required, the U.S. Department of Agriculture will save money as a result of the new testing procedures. However, it is difficult to predict the savings in time or money, or if there will be an increase in the number of shipments that will move from regulated areas, before the new testing procedures are in place. Nevertheless, this change will likely have a positive impact on the movement of grain and other regulated articles other than seed from regulated areas.

For both of these changes (i.e., to allow, under certain conditions, the movement of commercial lots of seed from restricted areas for seed and to amend the testing requirements for regulated articles other than seed), the entities that will likely be most affected will be wheat producers. It is estimated that there are currently a total of 373 wheat growers in the regulated areas: 248 in Arizona, 21 in California, 23 in New Mexico, and 81 in Texas.[3] Of those, the number of wheat growers in surveillance areas is estimated to be 99, with 21 in Arizona, 18 in California, and 60 in Texas, and the number of wheat growers in restricted areas for seed (not including restricted areas for regulated articles other than seed or surveillance areas) is estimated to be 274, with 227 in Arizona, 3 in California, 23 in New Mexico and 21 in Texas. Most of these wheat growers are assumed to have gross annual receipts of less than $0.5 million, the SBA's threshold for classifying wheat producers as small entities. Accordingly, these changes will positively impact primarily small entities. Growers will benefit from fewer restrictions on the movement of regulated articles, which will enable growers to reach new markets for their products. In addition, wheat seed dealers, harvesters, transporters, and processors may also benefit from the changes to the regulations, but the magnitude of the impact on these entities cannot be determined.

Regarding the remainder of the actions in this document, three main parties will be affected by these amendments: vegetable growers, millers, and decorative wheat product makers.

This rule will amend the requirements for soil movement with vegetables to clarify that vegetables must be cleaned prior to movement from a regulated area if the vegetables were grown in a restricted area for regulated articles other than seed. Previously, the regulations required all vegetables grown in a regulated area to be cleaned prior to movement. Although this action will relieve restrictions, we do not expect this action to have a significant impact on affected entities in regulated areas because few fields will be affected by this rule change and because cleaning soil from vegetables during harvest is a standard business practice.

This rule will require millfeed to be treated if it is produced from grain that tests positive for Karnal bunt. There are fewer than 30 millers who will potentially be affected by this change. The exact number of millers who elect to mill wheat that has tested positive for Karnal bunt is unknown at this time. However, it is anticipated that very little wheat that tests positive for Karnal bunt will be present and thus available for milling. Also, it is likely that any wheat that tests positive for Karnal bunt will be channeled into animal feed uses. Because of the manner in which it is processed, wheat used for animal feed does not require treatment.

It is expected that most millers who must handle millfeed produced from wheat that tests positive for Karnal bunt have the facilities or access to facilities to treat it at this time. Cost estimates on a per establishment basis are not available because the Karnal bunt contamination rate and the amount of wheat that tests positive for Karnal bunt to be milled is not known.

In addition, this rule removes an ineffective treatment for decorative straw/stalks/seed heads and adds moisture conditions to the methyl bromide treatment procedures for soil. We expect little impact on affected entities in regulated areas as a result of these changes. Decorative straw/stalks/seed heads will continue to be eligible for movement from regulated areas under limited permit or if the articles have been processed or manufactured prior to movement and are intended for use indoors. Adding water to soil before methyl bromide treatment should have little practical impact on potentially affected entities, such as nurseries, because the need for such treatment is rare. However, if needed, the change to the methyl bromide treatment of soil would not significantly increase the costs associated with that treatment. These actions will help prevent the artificial spread of Karnal bunt in the United States.

We are also amending the description of surveillance areas to more clearly distinguish between surveillance areas and restricted areas. In addition, we are amending the regulations governing the importation of wheat into the United States to make the definition of the term ''Karnal bunt'' consistent with the definition of that term in the Karnal bunt regulations. We do not anticipate that these changes will have any economic impact.

The changes to the regulations will not result in any new information collection or recordkeeping requirements.

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

[2] This figure includes 20,000 acres planted in the San Saba area of Texas. At the time of those plantings, the San Saba area was not under regulation, but a regulated area was established in San Saba during the latter part of 1997, as a result of Karnal Bunt National Survey findings.

[3] These estimates are for the 1997–1998 crop season, and are based on data available as of December 31, 1997.

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

7 CFR Part 301

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

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 are 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 301.89–2 is amended as follows:

a. By removing paragraphs (i), (j), (k), and (n).

b. By redesignating paragraphs (l), (m), and (o) as paragraphs (i), (j), and (k), respectively.

c. By revising newly designated paragraphs (i) and (j) to read as set forth below:

§ 301.89–2 Regulated articles.

* * * * *

(i) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, and triticale;

(j) Seed conditioning equipment that has been used in the production of wheat, durum wheat, and triticale;

* * * * *

3. Section 310.89–3 is amended by revising paragraph (e)(3) to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(e) * * *

(3) *Surveillance areas.* A surveillance area is a distinct definable area where Karnal bunt is not known to exist but, because of its proximity to a field found during survey to contain a bunted kernel or because of its association with grain at a handling facility containing a bunted kernel, where intensive surveys are required.

* * * * *

4. In § 301.89–5, the period at the end of paragraph (a)(3) is removed and a semicolon added in its place, and a new paragraph (a)(4) is added to read as follows:

§ 301.89–5 Movement of regulated articles from regulated areas.

(a) * * *

(4) Without a certificate or limited permit, provided the regulated article is straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors.

* * * * *

5. Section 301.89–6 is amended by revising paragraph (b) and by adding a new paragraph (d) to read as follows:

§ 301.89–6 Issuance of a certificate or limited permit.

* * * * *

(b) To be eligible for movement under a certificate, grain from a field within a surveillance area must be tested prior to its movement from the field or before it is commingled with other grains and must be found free from bunted kernels. If bunted kernels are found, the grain will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section.

* * * * *

(d) To be eligible for movement as seed under certificate, commercial lots of seed grown in a restricted area for seed must:

(1) Originate from a field or fields that are not part of a restricted area for regulated articles other than seed or a surveillance area;

(2) Originate from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt, or from a field or fields where Karnal bunt host crops have not been planted for the previous 5 years;

(3) Test negative for Karnal bunt; and

(4) Be treated in accordance with § 301.89–13(f).

* * * * *

6. Section 301.89–12 is revised to read as follows:

§ 301.89–12 Cleaning and disinfection.

(a) Mechanized harvesting equipment and seed conditioning equipment that have been used in the production of Karnal bunt host crops must be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area.

(b) Prior to movement from a regulated area, vegetable crops grown in fields that are in restricted areas for regulated articles other than seed must be cleaned of all soil and plant debris or be moved under limited permit in accordance with § 301.89–6(c).

7. Section 301.89–13 is amended by revising paragraph (a) introductory text, and paragraphs (b), (c), and (f) to read as follows:

§ 301.89–13 Treatments.

(a) All conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned and disinfected under this subpart must be cleaned by removing all soil and plant debris and disinfected by one of the methods specified in paragraphs (a)(1) through (a)(4) of this section, unless a particular treatment is designated by an inspector. The treatment used must be that specified by an inspector if that treatment is deemed most effective in a given situation:

* * * * *

(b) Soil must be wet to a depth of 1 inch by water (irrigation or rain) just prior to treatment and must be treated by fumigation with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

(c) Millfeed must be treated with a moist heat treatment of 170 °F for at least 1 minute if the millfeed resulted from the milling of wheat, durum wheat, or triticale that tested positive for Karnal bunt.

* * * * *

(f) Commercial lots of seed originating from an eligible restricted area for seed, as described in § 301.89–6(d)(1), must be treated with a 1.5 percent aqueous solution of sodium hypochlorite (=30 percent household bleach) containing 2 mL of Tween 20™ per liter agitated for 10 minutes at room temperature followed by a 15-minute rinse with clean, running water and then by drying, and then with one of the following:

(1) 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed;

(2) 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or

(3) 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed.

PART 319—FOREIGN QUARANTINE NOTICES

8. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

9. In § 319.59–1, the definition of ''Karnal bunt'' is revised to read as follows:

§ 319.59–1 Definitions.

* * * * *

Karnal bunt. A plant disease caused by the fungus *Tilletia indica* (Mitra) Mundkur.

* * * * *

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

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–25407 Filed 9–22–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions to change the calendar date for the end of the insurance period.

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

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), there are no information collection requirements contained in this rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of insurance companies delivering and servicing these policies will not increase from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance Under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on Civil Justice Reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Monday, July 20, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 38761–38762 to revise 7 CFR 457.128, Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions, effective for the 1999 and succeeding crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 3 written comments were received from an insurance service organization and reinsured companies. All of the comments received agreed with the proposed changes made to the regulation.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule revises the calendar date for the end of the insurance period for certain states. This rule must be effective prior to the contract change dates for which these provisions are effective. The contract change date is September 30 preceding the cancellation date in counties with a January 15 cancellation date and December 31 preceding the cancellation date in all other counties. Therefore, public interest requires the Agency to act immediately to make these provisions available.

List of Subjects in 7 CFR Part 457

Crop insurance, Tomatoes.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.128 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.128 paragraph 10(b)(7) is revised to read as follows:

§ 457.128 Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Provisions.

* * * * *

10. Insurance Period

* * * * *

(b) * * *

(7) October 15 of the crop year in Delaware, Maryland, New Jersey, North Carolina, and Virginia; October 31 of the crop year in California; November 10 of the crop year in Florida, Georgia, and South Carolina; and September 20 of the crop year in all other states.

* * * * *

Signed in Washington, D.C., on September 18, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–25465 Filed 9–22–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–100–AD; Amendment 39–10778; AD 98–20–11]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires repetitive detailed visual inspections of the windshield wiper assembly for discrepant conditions, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the windshield wiper assembly, which could result in loss of visibility; or damage to the propeller(s), possible penetration of the fuselage skin, and consequent depressurization of the airplane.

DATES: Effective October 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on April 21, 1998 (63 FR 19686). That action proposed to require repetitive, detailed visual inspections of the windshield wiper assembly for discrepant conditions, and corrective actions, if necessary.

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

One commenter opposes the proposed rule. The commenter states that the Saab Maintenance Review Board (MRB) report covers the items addressed by the proposal during routine line checks. The commenter believes such compliance is more than sufficient to address the unsafe condition.

The FAA does not agree with the remarks of this commenter. The FAA finds that actions performed during routine line checks are not detailed enough to detect the type of defects (i.e., corrosion; excessive wear; missing, loose, or broken parts; improper alignment; and insecure attachment of the windshield wiper assembly) addressed in this AD. This is further evidenced by the fact that failures have occurred in service even though the routine line checks referenced by the commenter were included in the current MRB report. The FAA finds that no change to the final rule is necessary in this regard.

The manufacturer requests that the repetitive inspection interval be increased from 1,000 to 4,000 flight hours. The commenter states that the proposed interval is too conservative, even though the time necessary to perform the inspection is less than one work hour. The commenter bases its remarks on the fact that the SAAB 340 fleet has accumulated 6,110,000 flight hours as of the end of December 1997 with two known incidents. The commenter submits data that use vendor figures regarding proven capability of the wiper system, and estimated hours of usage of the wiper system. Based on that data, the commenter concludes that the interval recommended for the general visual inspection in the existing MRB task is a safe interval.

The FAA concurs. The FAA finds that the data submitted by the commenter demonstrate that a repetitive inspection interval of 4,000 flight hours is sufficient to address the unsafe condition addressed by this AD. The final rule has been revised accordingly.

The manufacturer also requests that the proposed rule be revised to specify that repairs should be accomplished in accordance with Saab Service Bulletin 340–30–081 (which is referenced in the proposal as the appropriate source of service information for accomplishment of the inspections) and with reference to the Component Maintenance Manual.

The FAA concurs with the commenter's request. The Saab service bulletin includes an attachment (Rosemount Aerospace, Inc., Service Bulletin 2314M–30–17, Revision 1, dated September 14, 1997); paragraph II.B. of this attachment describes procedures for repair or replacement of the windshield wiper arm assembly. The attachment also specifies certain sections of the Component Maintenance Manual as a source of additional service information. The FAA has determined that the procedures specified in the attachment should be referenced in this final rule for accomplishment of the repair, and has revised the AD accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the

adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 254 Saab Model SAAB SF340A and SAAB 340B series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,240, or $60 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–11 SAAB Aircraft AB (Formerly SAAB Fairchild): Amendment 39–10778. Docket 98–NM–100–AD.

Applicability: Model SAAB SF340A series airplanes, manufacturer's serial numbers 004 through 159 inclusive; and SAAB 340B series airplanes, manufacturer's serial numbers 160 through 399 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the windshield wiper assembly, which could result in loss of visibility; or damage to the propeller(s), possible penetration of the fuselage skin, and consequent depressurization of the airplane, accomplish the following:

(a) Prior to the accumulation of 4,000 total flight hours, or within 3 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the windshield wiper assembly for discrepancies (corrosion; excessive wear; missing, loose, or broken parts; improper alignment; and insecure attachment), in accordance with Saab Service Bulletin 340–30–081, dated November 14, 1997, including Attachment 1, Revision 1, dated September 14, 1997.

(1) If no discrepancy is detected during the inspection, repeat the inspection thereafter at intervals not to exceed 4,000 flight hours.

(2) If any discrepancy is detected during any inspection, prior to further flight, replace the windshield wiper assembly with a new or serviceable windshield wiper assembly, or repair in accordance with Saab Service Bulletin 340–30–081, dated November 14, 1997, including Attachment 1, Revision 1, dated September 14, 1997. Repeat the detailed visual inspection thereafter at intervals not to exceed 4,000 flight hours.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Saab Service Bulletin 340–30–081, dated November 14, 1997, including Attachment 1, Revision 1, dated September 14, 1997. The service bulletin contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4	Original	Nov. 14, 1997.
ATTACHMENT 1		
1–4	1	Sept. 14, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–115R1, dated November 17, 1997.

(e) This amendment becomes effective on October 28, 1998.

Issued in Renton, Washington, on September 14, 1998.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25027 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–89–AD; Amendment 39–10785; AD 98–20–19]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes, that requires inspections to detect corrosion on areas of the airplane structure where black film thermal insulation is used; repair, if necessary; and replacement of black insulation blankets with certain aluminized (silver) insulation. This amendment is prompted by reports of corrosion forming on areas of the airplane structure where the black film covers the thermal insulation blankets. The actions specified by this AD are intended to prevent degradation of the structural capability of the airplane fuselage and sudden loss of cabin pressure due to corrosion of the airplane fuselage structure.

DATES: Effective October 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 28, 1996 (61 FR 13785). That supplemental NPRM proposed to require inspections to detect corrosion on areas of the airplane structure where black film thermal insulation is used; repair, if necessary; and replacement of black insulation blankets with certain aluminized (silver) insulation.

Comments

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

One commenter supports the proposed AD.

As proposed, paragraph (a) of the supplemental NPRM would require a determination from airplane modification records as to whether any of the retrofit kits listed in the applicable service bulletin have been installed. If any have been installed, that paragraph also would require removal of the black film insulation blanket and inspection of the affected areas ''prior to further flight.'' One commenter believes that this compliance time of ''prior to further flight'' is too restrictive, since the airplane could be in operation at the time the modification records are consulted. The commenter requests that the supplemental NPRM be reworded to allow a records search to determine which aircraft have had the retrofit kits installed, and that the inspection for black insulation be completed within a compliance time of one year. The commenter adds that subsequent repairs could be accomplished prior to further flight. The commenter states that this would allow the required inspections to be carried out coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing costs associated with special airplane scheduling.

The FAA concurs that paragraph (a), as proposed, would be more restrictive than intended. The FAA has revised paragraph (a)(1)(ii) of this final rule to require removal of the insulation and inspection of the affected areas within one year after the effective date of the AD, rather than immediately after the records are searched. Depending on how early the records are searched, an operator will have as much as one year following the search in which to accomplish the required insulation removal and inspections. Any corrosion found will be required to be repaired prior to further flight in accordance with paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B), regardless of when the inspection is accomplished.

Another commenter notes that compliance with the proposed requirements of paragraph (b) would make paragraph (a) redundant, and asks that paragraph (a) be revised (1) to state that it does not apply to airplanes on which the service bulletins specified in paragraph (b) have been accomplished, and (2) to specify the serial numbers of affected airplanes as Series 100 serial numbers 003–179, and Series 300 serial numbers 100–138. The commenter states that all areas of the airplane are inspected, and all black insulation is removed during accomplishment of the applicable service bulletins referenced in paragraph (b) of the supplemental NPRM.

The FAA concurs partially with the commenter's remarks. The FAA has revised paragraph (a) of this final rule and has added a new paragraph (c) to specify that compliance with paragraph (a) is only necessary if compliance with paragraph (b) has not been accomplished. However, the FAA does not agree that specifying the serial numbers of affected airplanes in paragraph (a) of the AD, as suggested by the commenter, is necessary. Paragraph (a) of the supplemental NPRM specifies that the affected airplanes are those listed in Bombardier Service Bulletin S.B. 8–21–68, dated July 20, 1994. The FAA has verified with the manufacturer that the serial numbers listed in that service bulletin are the appropriate serial numbers of affected airplanes. (The service bulletin specifies the affected airplanes as those having serial numbers 003 through 381 inclusive.) Therefore, no change to paragraph (a) of the final rule is necessary in this regard.

As proposed, paragraph (a)(1)(ii)(B) would require repair of corrosion beyond the limits specified in the service bulletin in accordance with a method approved by the FAA. One

commenter requests that the supplemental NPRM allow repairs approved by the manufacturer, since this would allow the use of the manufacturer's repair drawings without any further approval. The FAA does not concur, since to do so would be delegating its rulemaking authority to the manufacturer.

Another commenter also requests that paragraph (b) be revised to permit compliance with any previous revision of the referenced service bulletins to eliminate unnecessary filing for approval of alternative methods of compliance by operators. The FAA does not concur, since previous revisions of the service bulletin are not immediately available for review by the FAA. The FAA does not consider that further delay of this action until such time as the service bulletin revisions could be received and reviewed is warranted in light of the amount of time that has already passed since the issuance of the original NPRM. No change has been made to the final rule in this regard.

The final rule has been revised to change the manufacturer's name from de Havilland, Inc., to Bombardier, Inc.

Conclusion

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

Cost Impact

The FAA estimates that 125 Model DHC–8–100 and –300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 650 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. (Work hours associated with the actions described in Service Bulletin S.B. 8–21–68 cannot be estimated at this time since exact numbers of the retrofit kits installed are unknown.) However, the FAA has been advised that the manufacturer will provide required parts and accomplish the required modification at no expense to operators. Therefore, there is no cost impact to U.S. operators that is associated with this rule with regard to labor charges or parts costs.

The FAA does recognize, however, that while operators may incur administrative costs associated with compliance to this rule, the one-year compliance time specified in paragraphs (a) and (b) of this proposed AD should allow ample time for the requirements to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–19 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–10785. Docket 94–NM–89–AD.

Applicability: Model DHC–8–100 and –300 series airplanes, equipped with black Orcon film insulation, certificated in any category; and listed in the following Bombardier Service Bulletins:

DHC–8 Models	Service Bulletin No.	Revision level	Date
102, 103, and 106	S.B. 8–25–89	E	July 6, 1994.
102, 103, and 106	S.B. 8–25–90	C	July 5, 1994.
102, 103, 106, 301, 311, and 314	S.B. 8–25–91	D	July 20, 1994.
301, 311, and 314	S.B. 8–25–92	E	July 20, 1994.
301, 311, and 314	S.B. 8–25–93	C	July 20, 1994.
102, 103, 106, 301, 311, and 314	S.B. 8–21–68		July 20, 1994.
102, 103, 301, 311, and 314	S.B. 8–21–66	C	Mar. 24, 1995.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the airplane fuselage and sudden loss of cabin pressure due to corrosion of the airplane fuselage structure, accomplish the following:

(a) For airplanes listed in Bombardier Service Bulletin S.B. 8–21–68, dated July 20, 1994: Except as provided by paragraph (c) of this AD, within one year after the effective

date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Determine from the airplane modification records whether any of the retrofit kits listed in the service bulletin have been installed in the airplane, in accordance with the service bulletin.

(i) If no kit has been installed, no further action is required by this paragraph.

(ii) If any kit has been installed, within one year after the effective date of this AD, remove any black film insulation blanket, and perform a visual inspection to detect corrosion of all airplane structure in contact with the black insulation, in accordance with the service bulletin.

(A) If any corrosion is found that is within the limits specified in the service bulletin, prior to further flight, repair in accordance with the service bulletin.

(B) If any corrosion is found that is beyond the limits specified in the service bulletin, prior to further flight, repair in accordance with a method approved by the New York Aircraft Certification Office (ACO), ANE–170, FAA Engine and Propeller Directorate.

(2) Install the AN4C aluminized (silver) film insulation in accordance with the service bulletin.

(b) Within one year after the effective date of this AD, accomplish the requirements of paragraph (b)(1), (b)(2), and (b)(3) of this AD, in accordance with the following Bombardier service bulletins, as applicable.

S.B. 8–25–89, Revision E, dated July 6, 1994;
S.B. 8–25–90, Revision C, dated July 5, 1994;
S.B. 8–25–91, Revision D, dated July 20, 1994;
S.B. 8–25–92, Revision E, dated July 20, 1994;
S.B. 8–25–93, Revision C, dated July 20, 1994; or
S.B. 8–21–66, Revision C, dated March 24, 1995.

(1) Remove any black Orcon film insulation from the flight compartment and forward fuselage of the airplane, the passenger compartment, the air conditioning ducts, and the delivery and recirculation ducts of the air conditioning system in the rear fuselage, in accordance with the applicable service bulletin.

(2) Perform a visual inspection to detect corrosion of all airplane structure in contact with the black insulation, in accordance with the applicable service bulletin.

(i) If any corrosion is found that is within the limits specified in the service bulletin, prior to further flight, repair in accordance with the applicable service bulletin.

(ii) If any corrosion is found that is beyond the limits specified in the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, New York ACO.

(3) Install the AN4C aluminized (silver) film insulation in accordance with the applicable service bulletin.

(c) Airplanes on which the actions required by paragraph (b) of this AD are performed prior to accomplishment of the actions required by paragraph (a) of this AD are not required to accomplish the actions required by paragraph (a).

(d) As of the effective date of this AD, no person shall install black Orcon film insulation, part number AN46B/AN36B, on any airplane.

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

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

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

(g) The actions shall be done in accordance with the following Bombardier service bulletins:

Service bulletin No.	Revision level	Date
S.B. 8–21–68	Original	July 20, 1994.
S.B. 8–25–89	E	July 6, 1994.
S.B. 8–25–90	C	July 5, 1994.
S.B. 8–25–91	D	July 20, 1994.
S.B. 8–25–92	E	July 20, 1994.
S.B. 8–25–93	C	July 20, 1994.
S.B. 8–21–66	C	Mar. 25, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directives CF–94–25R1 and CF–94–26R1, both dated June 30, 1995.

(h) This amendment becomes effective on October 28, 1998.

Issued in Renton, Washington, on September 14, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25120 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 98N–0361]

Administrative Practices and Procedures; Internal Agency Review of Decisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of June 16, 1998 (63 FR 32733), a direct final rule to implement the new Dispute Resolution provision of the Federal Food, Drug, and Cosmetic Act, as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). The comment period closed on August 31, 1998. FDA is withdrawing the direct final rule because the agency received significant adverse comment.

EFFECTIVE DATE: The direct final rule published at 63 FR 32733, June 16, 1998, is withdrawn on September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne M. O'Shea, Office of the Chief Mediator and Ombudsman (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3390.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on June 16, 1998, at 63 FR 32733 is withdrawn.

Dated: September 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25363 Filed 9–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8783]

RIN 1545–AW45

Continuity of Interest Requirement for Corporate Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amendment to final regulations.

SUMMARY: This document amends final regulations providing guidance regarding satisfaction of the continuity of interest requirement for corporate reorganizations. The amendment to the final regulations affects corporations and their shareholders. This amendment to the final regulations is necessary to provide clarification regarding an example illustrating the relationship created in connection with potential reorganization.

DATES: *Effective date:* This amendment is effective September 23, 1998.

Applicability date: This amendment applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

FOR FURTHER INFORMATION CONTACT: Phoebe Bennett, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1998, the IRS published final regulations (REG–252231–96) in the **Federal Register** (63 FR 4174) relating to the continuity of interest (COI) requirement.

Explanation of Provisions

The final COI regulation provides that acquisitions of target (T) stock for cash by a corporation related to the issuing corporation (P) generally do not preserve continuity of interest. See § 1.368–1(e)(2). Two corporations are related if they are members of the same affiliated group as defined in section 1504, or if a purchase of P stock by another corporation would be treated as a distribution in redemption of P stock under section 304(a)(2). See § 1.368–1(e)(3). A corporation will be treated as related to another corporation if such relationship exists immediately before or immediately after the acquisition of T stock, or if the relationship is created in connection with the potential reorganization. See § 1.368–1(e)(3)(ii). Thus, a purchase by a corporation that was not initially related to P, but purchased T stock and became related to P in the potential reorganization, would not preserve continuity to the extent of the purchase.

Section 1.368–1(e)(6), *Example 2* was intended to illustrate this principle. In the example, A owns all of the stock of T. X, a corporation which owns 60 percent of the P stock and none of the T stock, buys A's T stock for cash prior to the merger of T into P. X exchanges the T stock for P stock in the merger which, when combined with X's prior ownership of P stock, constitutes 80 percent of the stock of P. The example shows that X is related to P because X becomes affiliated with P in the merger.

Section 1.338–2(c)(3) provides that, by virtue of section 338, COI is satisfied for certain persons if, following a qualified stock purchase (QSP) of T by the purchasing corporation, the purchasing corporation or a member of the purchasing corporation s affiliated group acquired the T assets. Commentators have questioned whether § 1.338–2(c)(3) applies to the transaction described in *Example 2.* It is not intended that these final regulations provide guidance under section 338. To avoid any such implication, *Example 2* is amended so that X's acquisition of A's T stock is not a QSP.

In addition, the amendment to the final regulation illustrates the proper application of the related party rule that treats two corporations as related if a purchase of P stock by another corporation would be treated as a distribution in redemption of P stock under section 304(a)(2). See § 1.368–1(e)(3)(i). Commentators have questioned why, in *Example 2,* X is not already related to P under the section 304(a)(2) rule even before the merger, because X owned more than 50 percent of the P stock. Section 304(a)(2) requires that the issuing corporation control the acquiring corporation (within the meaning of section 304(c)). In *Example 2,* P is the issuing corporation and X is the acquiring corporation. X is not related to P under section 304(a)(2) because P does not control X; instead, X controls P. A sentence is added to *Example 2* to illustrate this point.

Applicability Date

The amendment to these final regulations applies to transactions occurring after January 28, 1998, except that it does not apply to any transaction occurring pursuant to a written agreement which is (subject to customary conditions) binding on January 28, 1998, and at all times thereafter.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of this amendment to the final regulations is Phoebe Bennett of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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. In § 1.368–1, paragraph (e)(6) *Example 2* is revised to read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(e) * * *

(6) * * *

Example 2. Relationship created in connection with potential reorganization. Corporation X owns 60 percent of the stock of P and 30 percent of the stock of T. A owns the remaining 70 percent of the stock of T. X buys A s T stock for cash in a transaction which is not a qualified stock purchase within the meaning of section 338. T then merges into P. In the merger, X exchanges all of its T stock for additional stock of P. As a result of the issuance of the additional stock to X in the merger, X s ownership interest in P increases from 60 to 80 percent of the stock of P. X is not a person related to P under paragraph (e)(3)(i)(B) of this section, because a purchase of stock of P by X would not be treated as a distribution in redemption of the stock of P under section 304(a)(2). However, X is a person related to P under paragraphs (e)(3)(i)(A) and (ii)(B) of this section, because X becomes affiliated with P in the merger. The continuity of interest requirement is not satisfied, because X acquired a proprietary interest in T for consideration other than P stock, and a substantial part of the value of

the proprietary interest in T is not preserved. See paragraph (e)(2) of this section.

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: September 14, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–25444 Filed 9–22–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

28 CFR Part 33

[OJP(BJA)–1192]

RIN 1121–AA48

Bulletproof Vest Partnership Grant Act of 1998

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), DOJ.

ACTION: Interim final rule.

SUMMARY: This part delineates the process by which the Bureau of Justice Assistance (BJA), Director, authorized by the Bulletproof Vest Partnership Grant Act of 1998 (Act), will provide armor vests to eligible States, units of local government, and Indian tribes for use by law enforcement officers. BJA will provide eligible applicants that participate in the program assistance in selecting and purchasing body armor vests. Specifically, BJA will provide information regarding the range of vests that have been tested by the National Institute of Justice (NIJ) and are found to meet or exceed the NIJ Standard 0101.03. Eligible applicants can then select vests from the list of NIJ-tested models found to meet or exceed the NIJ Standard 0101.03. BJA will pay up to 50% of the cost, either directly or indirectly through a third party, of the vests selected by eligible applicants. Eligible applicants will pay the remainder of the total cost. Total cost will include the cost of the armor vests, taxes, shipping, and handling. The manufacturer will send the vests directly to the eligible applicants that ordered them.

Information regarding all other application requirements of the program will be available in BJA's Bulletproof Vest Partnership Guidelines that will be completed when Congress has appropriated funds for this assistance program. Once compiled, the Guidelines will be available through the BJA Home Page at www.ojp.usdoj.gov/BJA and through the Department of Justice Response Center at 1–800–421–6770. Until the Guidelines are available, interested parties are asked to check the above sources for updates on the status of this program.

DATES: This interim final rule is effective on September 23, 1998; comments on this rule must be received on or before November 23, 1998.

ADDRESSES: Comments should be sent to: Bulletproof Vest Partnership Program, Bureau of Justice Assistance, 810 Seventh Street NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: See the BJA Home Page at www.ojp.usdoj.gov/BJA or call the Department of Justice Response Center at 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Introduction

This interim final rule establishes the program by which BJA will implement The Bulletproof Vest Partnership Grant Act of 1998 (Act), 42 U.S.C.. 3796ll; Pub. L. 105–181, June 16,1998.

The Bulletproof Vest Partnership Grant Act of 1998

The purpose of this Act is to save lives and prevent injury of law enforcement officers by helping State, local, and tribal law enforcement agencies provide officers with armor vests. The Act is based on Congress' observations that the number of law enforcement officers who are killed in the line of duty would significantly decrease if every law enforcement officer in the United States had the protection of an armor vest.

Law enforcement officers consist of officers, agents, or employees of State, units of local government, or Indian tribes, authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders. BJA considers law enforcement officers to include those officers, agents, or employees of State, units of local government, or Indian tribes, authorized by law or by a government agency to supervise pre-sentenced and non-sentenced detainees.

The Justice Department estimates approximately 150,000 law enforcement officers in the United States, or nearly 25 percent, are not issued body armor. Studies conducted between 1985 and 1994 point out that over 700 officers in the United States were feloniously killed in the line of duty while bullet-resistant materials helped save the lives of more than 2,000 officers. The Federal Bureau of Investigation (FBI) has estimated that the risk of fatality to officers not wearing armor vests is 14 times higher than for officers wearing them.

The Executive Committee for Indian Country Law Enforcement Improvements reports that violent crime in Indian country has risen sharply, despite a decrease in the national crime rate, constituting a public safety crisis in Indian country. Moreover, during 1995, there were approximately 13,000 assaults on state correctional officers, and about 1,100 assaults on Federal correctional officers, nationwide. Of those assaults, 14 resulted in fatalities. *See Census of State and Federal Correctional Facilities, 1995,* Stephan, James J., U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, August 1997, NCJ–164266.

This Act provides grants of armor vests to States, units of local government, and Indian tribes as a preventive measure to better ensure their safety as these officers implement violent crime prevention initiatives across the United States.

Armor Vests

Armor vests have been defined as body armor that meets or exceeds the requirements of National Institute of Justice (NIJ) Standard 0101.03: Ballistic Resistance of Police Body Armor. Law enforcement fatality statistics compiled by the FBI annually suggest that a large percentage of officer fatalities may have been prevented if the officers had been wearing body armor. Based on this observation, this Act reinforces the message to law enforcement administrators that they should make every effort to encourage their officers to wear appropriate body armor throughout each duty shift. Although designed primarily to protect against handgun assault, soft body armor has prevented serious and potentially fatal injuries from traffic accidents (both automobile and motorcycle), from physical assault with improvised clubs, and, to some extent, from knives. To facilitate the acquisition of appropriate body armor, the National Law Enforcement and Corrections Technology Center (Center) of the National Institute of Justice (NIJ) has identified models of body armor that have been tested and found to meet the NIJ Standard.

The NIJ Standard

The Standard classifies body armor into six different threat levels which, in order from lowest to highest level of protection, are Type I, Type II–A, Type

II, Type III–A, Type III, and Type IV. The Act requires compliance with at least a Type I vest which is the lowest or minimum level of protection that any officer should have. Type II–A armor provides protection from lower velocity .357 Magnum and 9mm ammunition and Type II armor provides protection from higher velocity .357 Magnum and 9mm ammunition. Type III–A armor provides the highest level of protection available in soft body armor and is suitable for routine wear in many situations; however, departments located in hot, humid climates may need to carefully evaluate the use of Type III–A armor.

Types III and IV armor clearly are intended for use only in tactical situations when the threat warrants such protection. The age of the vest, whether the vest is properly fitted, and whether the vest is actually worn are factors the Standard cannot test and are considered the responsibility of the applying jurisdiction.

Application of the Standard

Responsibility for selection of the appropriate armor vest for officers within a jurisdiction will be the responsibility of applicant jurisdictions. BJA will require that all purchased vests are among those tested and found to comply with the NIJ Standard.

Selection of Appropriate Armor

BJA will rely on NIJ expertise to provide applicants with information regarding how to select appropriate armor vests. Knowledge of contraband weapons in correctional facilities and of street weapons in local areas (confiscated weapons are a good indication) are essential considerations for selecting armor vests. It is also essential to consider service weapons used by officers as during the last decade one in six officers killed was shot with his or her own weapon. The fit of the vest for each officer also must be considered. Full coverage of the torso is critical to guard against bullets entering an officer's side through the opening between the front and rear vest panels.

Appropriation

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) was amended to add an authorization of $25,000,000 for each of the fiscal years 1999, 2000, and 2001 to carry out this Act. Funds will be available after the appropriation has been passed.

Executive Order 12866

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

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

Initial Regulatory Flexibility Analysis

OJP has examined the impact of this interim final rule in light of Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 603, *et seq.* Currently, OJP has identified over 1500 NIJ-tested vest models found to meet NIJ Standard 0101.03. These vest models are manufactured by approximately 60 manufacturers, including small and large businesses. OJP has identified over 39,000 units of government that would be eligible to apply for grants of vests under this program if they have employees meeting the definition of ''law enforcement officer'' within the meaning of the Act.

Chief Executive Officers (CEOs) of States, local units of government and Indian tribes will coordinate vest needs for law enforcement officers within a jurisdiction. CEOs will be given responsibility for opening purchase accounts through a clearinghouse operation managed by a designee of OJP. The clearinghouse will include a full-service support system for applicants and eligible vest manufacturers. After opening purchase accounts, applicants may access the shopping portion of the clearinghouse operation as often as necessary to negotiate and finalize vest orders with individual manufacturers. Through the full service system, eligible applicants may place one combined order annually, across multiple manufacturers. These orders may provide for up to one vest per officer per year. Once an individual vest order to a manufacturer has been received and verified as complete by the applicant, payment of the Federal match of up to 50 percent of the total cost of the vest will be tendered to the manufacturer. The manufacturer will collect the remainder of payment directly from the applicant.

Section 2(b) of the Act makes clear that a major programmatic purpose of the Act is ''to save lives of law enforcement officers by helping State, local, and tribal law enforcement agencies provide officers with armor vests.'' The Act states that ''according to studies, between 1985 and 1994, bullet-resistant materials helped save the lives of more than 2,000 law enforcement officers in the United States,'' and during that same period, ''709 law enforcement officers in the United States were feloniously killed in the line of duty.'' Sec. 2(a)(2), 2(a)(5). Moreover, Congress noted that ''nearly 25 percent'' of law enforcement officers across the United States ''are not issued body armor.'' Sec. 2(a)(4), and that ''the number of law enforcement officer * * * killed in the line of duty would significantly decrease if every law enforcement officer in the United States had the protection of an armor vest.'' Furthermore, ''the Federal Bureau of Investigation estimates that the risk of fatality to law enforcement officers while not wearing an armor vest is 14 times higher than for officers wearing an armor vest.'' Sec. 2(a)(3).

OJP has considered alternatives to the system devised in this interim final rule for the grant of body armor vests for law enforcement officers, none of which would effectively or efficiently accomplish its programmatic objectives. For reasons of programmatic viability, manufacturers of NIJ-tested body armor vests will sell and deliver all vests directly to applicants. This process will not involve the multitude of intermediary product providers such as retailers, individual and corporate distributors, and mail order businesses. Only by requiring direct purchase and delivery of vests from manufacturers can OJP accommodate the need for wide-ranging customization requests, ensure quality control, encourage economic incentives and cost savings, and facilitate swift completion of transactions.

Because these statistics are cause for considerable and immediate concern, OJP has crafted a system to carry out the terms of the Act in an expeditious manner, yet retain programmatic viability. Quality control, timeliness in completing transactions, and economies of scale are all significant features of the system, would support the programmatic purpose, and would most

effectively address the concerns raised by these statistics. The manufacturers are best able to effectively handle large volume orders, a characteristic typical of larger law enforcement agencies, as well as orders coming from multiple agencies simultaneously.

Moreover, in many instances, single product pieces will require customizing to suit an individual's needs. Customization of individual pieces would best be handled directly by manufacturers. In addition, to ensure quality control, all vests provided must be tested subject to the NIJ Standard; manufacturers can best accommodate the sale of products in large volume that are required to be NIJ-tested, and can do so in a timely manner without involving additional entities. Furthermore, with regard to economies of scale, the order of vests directly from manufacturers may afford applicants significant savings on a cost per unit basis.

OJP recognizes that, because of the potentially diverse opinion in the small business community regarding the affect of this interim final rule, not all interested persons may have been fully represented prior to its publication. OJP is therefore requesting that comments be submitted to help insure that the concerns of all interested parties are considered. Comments should identify the type of business, including the number of individuals involved and the annual volume of business conducted, and how the regulatory requirements in this interim final rule would impact that business. Comments and suggestions may also be provided, within the statutory requirements, regarding how the final rule might be better tailored to the business without compromising the basic mandate of the law to provide for the grant of body armor vests for law enforcement officers.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in this regulation will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Good Cause Exception

This regulation is being published as an interim final rule, without prior publication of notice and comment, and is made effective immediately, for good cause. Under 5 U.S.C. 553(a)(2), matters relating to grants are exempted from notice and comment requirements. Moreover, in this case, advance notice and comment would be impractical, unnecessary, and contrary to the public interest in the prompt implementation of the assistance program.

The Act requires that BJA must promulgate final implementing regulations within 90 days of the June 16, 1998 enactment of the Act. In order to comply with this requirement, these regulations must be made effective immediately so that eligible States can apply for grants of armor vests.

To publish a notice of proposed rulemaking and await receipt of comments would delay significantly the implementation of this assistance program. Such delay would be contrary to the public interest and would contradict the Congressional intent to provide immediate grants of armor vests, to eligible states, units of local government, and Indian tribes for use by law enforcement officers. However, BJA is extremely interested in receiving public comment on all aspects of this program, and will consider fully all such comments submitted on or before November 23, 1998, in preparing a final rule.

List of Subjects in 28 CFR Part 33

Administrative practice and procedure, Grants.

For the reasons set forth in the preamble, 28 CFR part 33 is amended as follows:

PART 33—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

1. The Heading for part 33 is revised as set forth above.

2. The authority citation for part 31 is revised to read as follows:

Authority: Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, and Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473) (the Justice Assistance Act of 1984); Pub. L. 105-181, 112 Stat. 512, 42 U.S.C. 3796ll.

3. The designations ''Subpart A through Subpart I'' are removed and the headings remain as undesignated center headings.

§§ 33.1 through 33.80 and undesignated center headings [Designated as Subpart A]

4. Sections 33.1 through 33.80, and the undesignated center headings, are designated as subpart A and a new subpart heading is added to read as follows:

Subpart A—Criminal Justice Block Grants

§ 33.1 [Amended]

5. Section 33.1 is amended by revising ''This part'' to read as follows: ''This subpart''

§ 33.3 [Amended]

6. Section 33.3 is amended by revising ''this part 33'' to read as follows: ''this subpart A''

7. Section 33.40 is amended by revising ''This subpart sets'' to read as follows: ''Sections 33.40 and 33.41 set.''

8. Part 33 is further amended by adding the following new subpart B to read as follows:

Subpart B—Bulletproof Vest Partnership Grant Program Applying for the Program

Sec.
33.100 Definitions.
33.101 Standards and requirements.
33.102 Preferences.
33.103 How to apply.

Subpart B—Bulletproof Vest Partnership Grant Program Applying for the Program

§ 33.100 Definitions.

The Bureau of Justice Assistance (BJA) will use the following definitions in providing guidance to your jurisdiction regarding the purchase of armor vests under the Bulletproof Vest Partnership Grant Act of 1998—

(a) The term *program* will refer to the activities administered by BJA to implement the Bulletproof Vest Partnership Grant Act of 1998;

(b) The terms *you* and *your* will refer to a jurisdiction applying to this program;

(c) The term *armor vest* under this program will mean a vest that has met the performance standards established by the National Law Enforcement and Corrections Technology Center of the National Institute of Justice (NIJ) as

published in NIJ Standard 0101.03, or any formal revision of this standard;

(d) The term *State* will be used to mean each of the 50 States, as well as the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands;

(e) The term *unit of local government* will mean a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level;

(f) The term *Indian tribe* has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which defines Indian tribe as meaning any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*);

(g) The term *law enforcement officer* will mean any officer, agent, or employee of a State, unit of local government, or Indian tribe authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders; and

(h) The term *mandatory wear policy* will mean a policy formally adopted by a jurisdiction that requires a law enforcement officer to wear an armor vest throughout each duty shift whenever feasible.

§ 33.101 Standards and requirements.

This program has been developed to assist your jurisdiction with selecting and obtaining high quality armor vests in the quickest and easiest manner available. The program will assist your jurisdiction in determining which type of armor vest will best suit your jurisdiction's needs, and will ensure that each armor vest obtained through this program meets the NIJ standard.

(a) Your jurisdiction will be provided with model numbers for armor vests that meet the NIJ Standard in order to ensure your jurisdiction receives the approved vests in the quickest manner;

(b) If you are a State or unit of local government, your jurisdiction will be required to partner with the Federal government in this program by paying at least 50 percent of the total cost for each armor vest purchased under this program. These matching funds may not be obtained from another Federal source;

(c) If you are an Indian tribe, your jurisdiction will be required to partner with the Federal government in this program by paying at least 50 percent of the total cost for each armor vest purchased under this program. Total cost will include the cost of the armor vests, taxes, shipping, and handling. You may use any funds appropriated by Congress toward the performing of law enforcement functions on your lands as matching funds for this program or any funds appropriated by Congress for the activities of any agency of your tribal government;

(d) BJA will conduct outreach to ensure that at least half of all funds available for armor vest purchases be given to units of local government with fewer than 100,000 residents;

(e) Each State government is responsible for coordinating the needs of law enforcement officers across agencies within its own jurisdiction and making one application per fiscal year;

(f) Each unit of local government and Indian tribe is responsible for coordinating the needs of law enforcement officers across agencies within its own jurisdiction and making one application per fiscal year;

(g) Your individual jurisdiction may not receive more than 5 percent of the total program funds in any fiscal year;

(h) The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, together with their units of local government, each may not receive less than one half percent and not more than 20 percent of the total program funds during a fiscal year;

(i) The United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, together with their units of local government, each may not receive less than one fourth percent and not more than 20 percent of the total program funds during a fiscal year; and

(j) If your jurisdiction also is applying for a Local Law Enforcement Block Grant (LLEBG), then you will be asked to certify:

(1) Whether LLEBG funds will be used to purchase vests; and, if not,

(2) Whether your jurisdiction considered using LLEBG funds to purchase vests, but has concluded it will not use its LLEBG funds in that manner.

§ 33.102 Preferences.

BJA may give preferential consideration, at its discretion, to an application from a jurisdiction that—

(a) Has the greatest need for armor vests based on the percentage of law enforcement officers who do not have access to an armor vest;

(b) Has, or will institute, a mandatory wear policy that requires on-duty law enforcement officers to wear armor vests whenever feasible; and

(c) Has a violent crime rate at or above the national average as determined by the Federal Bureau of Investigation; or

(d) Has not received a Local Law Enforcement Block Grant.

§ 33.103 How to apply.

BJA will issue Guidelines regarding the process to follow in applying to the program for grants of armor vests.

Dated: September 16, 1998.

Richard H. Ward, III,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 98–25336 Filed 9–22–98; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK10–1–7022a; FRL–6162–9]

Approval and Promulgation of Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving a revision to the mobile source portion of the 1990 Base Year carbon monoxide(CO) emission inventory of the Anchorage and Fairbanks, Alaska, State CO Implementation Plan. The previous inventory used the MOBILE 4.1 model; the revised inventory estimates use a newer version of the model, MOBILE 5.0a.

DATES: This direct final rule is effective on November 23, 1998 without further notice, unless EPA receives adverse comment by October 23, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Montel Livingston (OAQ–107), Environmental Protection Specialist, Office of Air Quality, EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal

business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby, Room 105, Juneau Alaska.

FOR FURTHER INFORMATION CONTACT: Joan Cabreza, Environmental Scientist, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–8505.

SUPPLEMENTARY INFORMATION:

I. Background

On March 1, 1991, the Alaska Department of Environmental Conservation (ADEC) recommended to EPA that the Anchorage and Fairbanks areas be designated nonattainment areas for CO as required by section 107(d)(1)(A) of the Clean Air Act Amendments (the Act) of 1990 (Pub. L. 101–549, 104 stat. 2399, codified at 42 U.S.C. 7401–7671q). Under the Act, states are responsible for conducting an inventory, tracking emissions contributing to nonattainment, and ensuring that control strategies are implemented that reduce emissions and move areas toward attainment. Section 1879(a)(1) of the Act requires CO nonattainment areas to submit a base year inventory that represents actual emissions in the CO season, and that includes stationary point, stationary area, on-road mobile and non-road mobile sources. This inventory is the primary inventory from which other periodic and modeling inventories are derived.

On February 11, 1997, EPA approved the 1990 base year CO emission inventory for the Anchorage and Fairbanks, Alaska, SIP submitted by ADEC on December 29, 1993. Emission estimates for on-road sources are obtained by use of a model called MOBILE, and this submission used MOBILE 4.1 to estimate the emissions submitted. An upgraded MOBILE model, MOBILE 5.0a, was subsequently released, which ADEC then used to revise its emissions estimates. On December 1, 1994, ADEC submitted a revision to the inventory, based on the results of the new model run. Compared to MOBILE 4.1, MOBILE 5.0a incorporates several new options, calculating methodologies, emission factor estimates, emission control regulations, and internal program designs.

There are no transportation conformity implications to this action.

II. Today's Action

The EPA is approving the December 1, 1994, revision to the mobile source portion of the state carbon monoxide emission inventory for the Anchorage and Fairbanks State Implementation Plans.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 23, 1998 without further notice unless the Agency receives adverse comments by October 23, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will 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. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 23, 1998 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled, ''Regulatory Planning and Review''.

The final rule is not subject to E.O. 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks'' because it is not an ''economically significant'' action under E.O. 12866.

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 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, I certify 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 Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *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, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to 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 does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

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 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 November 23, 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), 42 U.S.C. 7607(b)(2).

F. Alaska's Audit Law

Nothing in this action should be construed as making any determination or expressing any position regarding Alaska's audit privilege and penalty immunity law, Alaska Audit Act, AS 09.25.450 *et seq.* (enacted in 1997) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Alaska's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: September 4, 1998.

Randall F. Smith,

Acting Regional Administrator, Region 10.

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 C—Alaska

2. Section 52.76 is amended by designating the existing text as paragraph (a) and adding a paragraph (b) to read as follows: § 52.76 1990 Base Year Emission Inventory

* * * * *

(b) EPA approves a revision to the Alaska State Implementation Plan, submitted on December 5, 1994, of the on-road mobile source portion of the 1990 Base Year Emission Inventory for Carbon Monoxide in Anchorage and Fairbanks.

[FR Doc. 98–25318 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 206–0095a; FRL–6164–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the San Diego County Air Pollution Control District (SDCAPCD) for nine source categories that emit volatile organic compounds (VOC). The SDCAPCD has certified that major sources in these source categories are not present in the District and this information is being added to the federally approved State Implementation Plan (SIP). The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on November 23, 1998 without further notice, unless EPA receives adverse comments by October 23, 1998. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments may be mailed to Andrew Steckel, Rulemaking Office, Air Division, (AIR–4) at the address below. Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revisions being approved as additional information for the California SIP include nine negative declarations for VOC source categories from the SDCAPCD: (1) Synthetic organic chemical manufacturing (SOCMI)—distillation, (2) SOCMI—reactors, (3) wood furniture, (4) plastic parts coatings (business machines), (5) plastic parts coatings (other), (6) offset lithography, (7) industrial wastewater, (8) autobody refinishing, and (9) volatile organic liquid storage. These negative declarations were submitted by the California Air Resources Board (CARB) to EPA on February 25, 1998.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the SDCAPCD within the San Diego Area (SDA). 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.

(40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

In amended section 182(b)(2) of the CAA, Congress statutorily adopted the requirement that States must develop reasonably available control technology (RACT) rules for VOC sources ''covered by a Control Techniques Guideline (CTG) document issued by the Administrator between November 15, 1990 and the date of attainment.'' On April 28, 1992, in the **Federal Register**, EPA published a CTG document which indicated EPA's intention to issue CTGs for eleven source categories and EPA's requirement to prepare CTGs for two additional source categories within the same time frame. This CTG document established time tables for the submittal of a list of applicable sources and the submittal of RACT rules for those major sources for which EPA had not issued a CTG document by November 15, 1993. The CTG specified that states were required to submit RACT rules by November 15, 1994 for those categories for which EPA had not issued a CTG document by November 15, 1993.

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. The SDA is classified as serious;[1] therefore, SDA was subject to the post-enactment CTG requirement and the November 15, 1994 deadline. For source categories not represented within the portions of the SDA designated nonattainment for ozone, EPA requires the submission of a negative declaration certifying that major sources are not present.

The SDCAPCD negative declarations were adopted on October 22, 1997 and submitted by the State of California on February 25, 1998. The SDCAPCD negative declarations were found to be complete on April 7, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V[2] and are being finalized for approval into the SIP as additional information.

This document addresses EPA's direct final action for the SDCAPCD negative declarations for the following VOC categories: (1) Synthetic organic chemical manufacturing (SOCMI)—distillation, (2) SOCMI—reactors, (3) wood furniture, (4) plastic parts coatings (business machines), (5) plastic parts coatings (other), (6) offset lithography, (7) industrial wastewater, (8) autobody refinishing, and (9) volatile organic liquid storage. The submitted negative declarations represent nine of the thirteen source categories listed in EPA's CTG document.[3] Of the nine submitted negative declarations, SDCAPCD has approved SIP regulations for minor sources in five source categories: wood furniture, plastic parts coating (other), offset lithography, autobody refinishing, and volatile organic liquid storage.

The submitted negative declarations certify that there are no major VOC sources in these source categories located inside the SDCAPCD. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of SDCAPCD's effort to meet the requirements of section 182(b)(2) of the CAA.

III. EPA Evaluation and Action

In determining the approvability of a negative declaration, EPA must evaluate the declarations for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

An analysis of SDCAPCD's emission inventory revealed that there are no major sources of VOC emissions from: SOCMI—distillation, SOCMI—reactors, wood furniture, plastic parts coatings (business machines), plastic parts coatings (other), offset lithography, industrial wastewater, autobody refinishing, and volatile organic liquid storage. SDCAPCD's review of their permit files also indicated that major sources in these source categories do not exist in the SDCAPCD. In a document adopted on October 22, 1997, SDCAPCD certified that SDCAPCD does not have any major stationary sources in these source categories located within the federal ozone nonattainment planning area.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. SDCAPCD's negative declarations for the VOC sources listed above are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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 adverse comments be filed. This action will be effective November 23, 1998, without further notice unless the Agency receives adverse comments by October 23, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will 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 this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 23, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

[1] San Diego Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The San Diego Area was reclassified from severe to serious on January 19, 1995. See 60 FR 3771.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] SDCAPCD has submitted RACT rules for three other major source categories: Aerospace, SOCMI Batch Processing, and Shipbuilding. The fourth category, Clean Up Solvents, is represented in each separate Reasonably Available Control Technology rule in the SDCAPCD SIP.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

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 November 23, 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, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 8, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Subpart F of 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 F—California

2. Section 52.222 is being amended by adding paragraph (a)(5) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(5) San Diego County Air Pollution Control District. (i) Synthetic organic chemical manufacturing (distillation), synthetic organic chemical manufacturing (reactors), wood furniture, plastic parts coatings (business machines), plastic parts coatings (other), offset lithography, industrial wastewater, autobody refinishing, and volatile organic liquid storage were submitted on February 25, 1998 and adopted on October 22, 1997.

* * * * *

[FR Doc. 98–25328 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 206–0096a; FRL–6164–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the Placer County Air Pollution Control District (PCAPCD) for seven source categories that emit volatile organic compounds (VOC) and five source categories that emit oxides of nitrogen (NO_X). The PCAPCD has certified that these source categories are not present in the District and this information is being added to the federally approved State Implementation Plan (SIP). The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This rule is effective on November 23, 1998 without further notice, unless EPA receives adverse comments by October 23, 1998. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Rulemaking Office, Air Division, (AIR–4) at the address below. Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Placer County Air Pollution Control District, 11464 ''B'' Avenue, Auburn, CA 95603

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revisions being approved as additional information for the California SIP include seven negative declarations for VOC source categories from the PCAPCD: (1) aerospace coatings, (2) industrial waste water treatment, (3) plastic parts coatings (business machines), (4) plastic parts coatings (other), (5) shipbuilding and repair, (6) synthetic organic chemical manufacturing (SOCMI)—batch plants, and (7) SOCMI—reactors. The revision also includes five negative declarations for NO_X source categories from the PCAPCD: (1) Nitric and Adipic Acid Manufacturing Plants, (2) Utility Boilers, (3) Cement Manufacturing Plants, (4) Glass Manufacturing Plants, and (5) Iron and Steel Manufacturing Plants. These negative declarations were submitted by the California Air Resources Board (CARB) to EPA on February 25, 1998.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the PCAPCD within the Sacramento Metropolitan Area (SMA). 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

In amended section 182(b)(2) of the CAA, Congress statutorily adopted the requirement that States must develop reasonably available control technology (RACT) rules for VOC sources ''covered by a Control Techniques Guideline (CTG) document issued by the Administrator between November 15, 1990 and the date of attainment.'' On April 28, 1992, in the **Federal Register**, EPA published a CTG document which indicated EPA's intention to issue CTGs for eleven source categories and EPA's requirement to prepare CTGs for two additional source categories within the same time frame. This CTG document established time tables for the submittal of a list of applicable sources and the submittal of RACT rules for those major sources for which EPA had not issued a CTG document by November 15, 1993. The CTG specified that states were required to submit RACT rules by November 15, 1994 for those categories for which EPA had not issued a CTG document by November 15, 1993.

Section 182(f) contains the air quality planning requirements for the reduction of NO_X emissions through RACT. On November 25, 1992, EPA published a proposed rule entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes the requirements of section 182(f). The NO_X Supplement should be referred to for further information on the NO_X requirements and is incorporated into this document by reference. Section 182(f) of the Clean Air Act requires states to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Since the SMA is classified as a severe nonattainment area for ozone, it is also subject to the RACT requirements of section 182(b)(2), cited above.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X category since enactment of the CAA.

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. The SMA is classified as severe;[1] therefore, SMA was subject to the post-enactment CTG requirement and the November 15, 1994 deadline. For source categories not represented within the portions of the SMA designated nonattainment for ozone, EPA requires the submission of a negative declaration certifying that those sources are not present.

The seven VOC and five NO_X negative declarations were adopted on October 9, 1997 and submitted by the State of California on February 25, 1998. The submitted negative declarations were found to be complete on April 7, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[2] and are being finalized for approval into the SIP as additional information.

This document addresses EPA's direct final action for the PCAPCD negative declarations for the following VOC categories: (1) aerospace coatings, (2) industrial waste water treatment, (3) plastic parts coatings (business machines), (4) plastic parts coatings (other), (5) shipbuilding and repair, (6) SOCMI—batch plants, and (7) SOCMI—reactors. The submitted negative declarations represent seven of the thirteen source categories listed in EPA's CTG document.[3] The submitted negative declarations certify that there are no major facilities in these VOC or NO_X source categories located inside PCAPCD's portion of the SMA. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of PCAPCD's effort to meet the requirements of section 182(b)(2) of the CAA.

This document also addresses EPA's direct final action for the PCAPCD

[1] Sacramento Metropolitan Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metropolitan Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] PCAPCD has submitted RACT rules for five VOC source categories: Autobody Refinishing, Clean Up Solvents, Offset Lithography, Volatile Organic Liquid Storage Tanks, and Wood Furniture. PCAPCD is reviewing the Achieveable Control Technology (ACT) document on SOCMI Distillation to determine whether if they have a major source in that source category.

negative declarations for the following NO_X categories: (1) Nitric and Adipic Acid Manufacturing Plants, (2) Utility Boilers, (3) Cement Manufacturing Plants, (4) Glass Manufacturing Plants, and (5) Iron and Steel Manufacturing Plants. The submitted negative declarations represent five of the nine required NO_X source categories.[4] NO_X contributes to the production of ground level ozone and smog. These negative declarations were adopted as part of PCAPCD's effort to meet the requirements of section 182(b)(2) of the CAA.

III. EPA Evaluation and Action

In determining the approvability of a negative declaration, EPA must evaluate the declarations for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

An analysis of PCAPCD's emission inventory revealed that there are no major sources of VOC emissions from: aerospace coatings, industrial waste water treatment, plastic parts coatings (business machines), plastic parts coatings (other), shipbuilding and repair, SOCMI—batch plants, and SOCMI—reactors. An analysis of PCAPCD's emission inventory also revealed that there are no major sources of NO_X emissions from: Nitric and Adipic Acid Manufacturing Plants, Utility Boilers, Cement Manufacturing Plants, Glass Manufacturing Plants, and Iron and Steel Manufacturing Plants. PCAPCD's review of their permit files also indicated that major sources in these source categories do not exist in the PCAPCD. In a Resolution dated October 9, 1997, the PCAPCD Board affirmed that the PCAPCD does not have any major stationary sources in these source categories located within the federal ozone nonattainment planning area.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. PCAPCD's negative declarations for the VOC and NO_X sources listed above are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

[4] PCAPCD has submitted RACT rules for two source categories: Stationary Combustion Gas Turbines and Biomass Boilers. PCAPCD has also developed rules for Process Heaters and Industrial, Commercial, and Institutional Boilers. PCAPCD is reviewing the ACT for Stationary Internal Combustion Engines to determine whether a major source exists in that district.

EPA is publishing this document 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 adverse comments be filed. This action will be effective November 23, 1998, without further notice unless the Agency receives adverse comments by October 23, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will 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 this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 23, 1998, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

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 November 23, 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, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 8, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Subpart F of 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 F—California

2. Section 52.222 is being amended by adding paragraphs (a)(4) and (b)(2) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(4) Placer County Air Pollution Control District.

(i) Aerospace Coatings; Industrial Waste Water Treatment; Plastic Parts Coating: Business Machines; Plastic Parts Coating: Other; Shipbuilding and Repair; Synthetic Organic Chemical Manufacturing, Batch Plants; and Synthetic Organic Chemical Manufacturing, Reactors were submitted on February 25, 1998 and adopted on October 7, 1997.

* * * * *

(b) * * *

(3) Placer County Air Pollution Control District.

(i) Nitric and Adipic Acid Manufacturing Plants, Utility Boilers, Cement Manufacturing Plants, Glass Manufacturing Plants, and Iron and Steel Manufacturing Plants were submitted on February 25, 1998 and adopted on October 9, 1997.

[FR Doc. 98–25330 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–6165–8]

Clean Air Act Final Approval Of Amendments to Title V Operating Permits Program; Pima County Department of Environmental Quality, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating final approval of the following revisions to the operating permits program submitted by the Arizona Department of Environmental Quality (''DEQ'') on behalf of the Pima County Department of Environmental Quality (''Pima'' or ''County''): a revision to the fee provisions; and a revision that will defer the requirement for minor sources subject to standards under sections 111 or 112 of the Act to obtain title V permits, unless such sources are in a source category required by EPA to obtain title V permits. EPA is also promulgating final approval under section 112(l) of Pima's program for delegation of section 112 standards as they apply to sources not required to obtain a title V permit.

EPA took final action on Pima's title V operating permits program on October 30, 1996 (61 FR 55910). However, because Pima's title V program contains certain flaws, EPA did not fully approve it, but instead granted the program an ''interim approval.'' Under its interim approval, Pima is required to adopt and submit program changes to EPA that will correct its program flaws. The program revisions being approved in this document do not address the program issues identified by EPA. This final action approving revisions to Pima's title V program therefore does not constitute a full approval of Pima's title V program.

DATES: This rule is effective on October 23, 1998.

ADDRESSES: Copies of Pima's submittals and other supporting information used in developing this final approval are available for inspection (AZ–Pima–97–1–OPS and AZ–Pima–97–2–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9; 75 Hawthorne Street; San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Erica Ruhl (telephone 415–744–1171), Mail Code AIR–3, U.S. Environmental Protection Agency, 75 Hawthorne Street; San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (57 FR 32250, July 21, 1992). These rules are codified at 40 CFR part 70. Title V requires states to develop and submit to EPA, by November 15, 1993, programs for issuing these operating permits to all major stationary sources and to certain other sources. The EPA's program review occurs pursuant to section 502 of the Act, which outlines criteria for approval or disapproval.

On November 15, 1993, Pima's title V program was submitted. EPA proposed interim approval of the program on July 13, 1995 (60 FR 36083). The fee provisions of the program were found to be fully approvable. On November 14, 1995, in response to changes in state law, Pima amended its fee provisions under Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code. Those changes were submitted to EPA on January 14, 1997, after it promulgated final interim approval of Pima's title V program (61 FR 55910, October 30, 1996). EPA subsequently proposed to approve Pima's revised fee provisions (62 FR 16124, April 4, 1997).

On July 17, 1997, EPA received a submittal from ADEQ on behalf of Pima requesting that EPA approve a revision to the applicability provisions of Pima's title V program. Because EPA's evaluation of Pima's title V fee provisions takes into account the numbers and types of sources requiring permits, EPA decided it would be appropriate to reevaluate the approvability of the fee changes in the context of the change to program applicability. EPA therefore withdrew its proposed approval of Pima's revised fee program (63 FR 7109, February 12, 1998) and, in the same document, proposed approval of the changes to Pima's fee and applicability provisions.

II. Final Action and Implications

A. Analysis of State Submission

The analysis of the submittals given in the February 12, 1998 proposed action is supplemented by the discussion of public comment made on the notice of proposed rulemaking (see section II.B. of this document). That analysis remains unchanged and will not be repeated in this final document.

1. Applicability

The amendment to the applicability provisions of Pima's title V program was submitted by the Arizona DEQ on July 17, 1997. The submittal includes the deletion of the term ''Title V Source'' from Pima County Air Quality Control Code (PCC) 17.04.340.133, proof of adoption, evidence of necessary legal authority, evidence of public participation including comments submitted on the rulemaking, and a supplemental legal opinion from the County Attorney regarding the legal adequacy of Pima's title V program, including implementation of section 111 and 112 of the Clean Air Act. In a letter dated November 7, 1997, Pima clarified which sections of its title V program it wished to have rescinded and which sections approved.

With this change, only those sources required to obtain a Class I (title V) permit, (i.e., major sources, solid waste incinerators required to obtain a permit pursuant to section 129(e) of the CAA, and sources required by the Administrator to obtain a permit), are subject to the District's title V program. Non-major sources, including those regulated under sections 111 and 112 of the CAA, are deferred from the requirement to obtain a Class I/title V permit, to the extent allowed by the Administrator.

2. Program for Delegation of Section 112(l) Standards as Promulgated

In a letter dated December 2, 1997, Pima specifically requested approval under section 112(l) of a program for delegation of unchanged section 112 standards applicable to sources that are not subject to mandatory permitting requirements under title V. (See letter from David Esposito, Director, PDEQ to David Howekamp, Director, Air and Toxics (sic) Division, EPA Region IX.)

3. Fees

An amendment to the fee provisions of Pima's title V program was submitted by the Arizona DEQ on January 14, 1997. The submittal includes the revised fee regulations (Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code as amended on November 14, 1995), a technical support document, and a legal opinion by the County Attorney. Additional materials, including proof of adoption and a commitment to provide periodic updates to EPA regarding the status of the fee program, were submitted on February 26, 1997. In a letter dated July 25, 1997, Pima submitted a detailed discussion of the expected costs of and anticipated revenue from its title V program.

B. Public Comments and Responses

Only one comment letter was received. That letter, from Steven Burr of Lewis and Roca (representing the Arizona Mining Association or ''AMA'') incorporated by reference both the comments AMA made on the EPA's previous proposal to approve Pima's fee provisions (62 FR 16124, April 4, 1997) as well as AMA's ''supplemental comments'' dated January 2, 1998.

1. Adequacy of Fees under Section 502(b)(3) of the CAA

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. The commenter disagreed with EPA's proposed approval of the revision to the Pima County title V program because he contends the fee program fails to meet the minimum requirements of section 502(b)(3) of the Clean Air Act. The commenter states that the documentation submitted by Pima County fails to demonstrate that the County's fees will cover the full costs of the title V program and that the fees Pima County collects will not cover the costs of issuing permits to existing title V sources.

Pima uses a combination of emissions fees and fees for issuance and revision to cover program costs.

Fees for issuance and revision. Pima's fee provisions require that applicants for permits to construct and operate that are subject to title V must pay the total actual cost of reviewing and acting upon applications for permits and permit revisions. See sections 17.12.510.G. and 17.12.510.I. These fees are used to cover the cost of issuing permits to new sources and for processing revisions to permits. Pima estimated the permitting-related average hourly billing costs for permitting of title V facilities, including salary, fringe benefits, direct non-salary costs and indirect costs including cost estimates of various types of permit related activities. The estimated hourly cost is $53.60. However, because state law caps hourly fees at $53.00, Pima's hourly charges are capped at $53.00. See section 17.12.510.M. Although this cap is 60 cents per hour less than the District's estimated hourly costs for permit processing, EPA finds this provision to be fully approvable. In view of the fact that the estimation of program cost inherently involves projections and approximation, and of the fact that fee adequacy can be monitored on an ongoing basis as the program is implemented, EPA concludes that this provision is sufficient to adequately fund the program.

Emission Fees. Emission fees are used by Pima to cover the direct and indirect costs of the title V related activities not covered the fees charged for permit issuance to new sources and revisions to all sources. These activities are: (1) part 70 program development and implementation; (2) issuance of title V permits to existing sources; (3) part 70 source compliance, including inspection services; and (4) part 70 business assistance, which helps sources determine and meet their obligations under part 70. Pima estimates the annual cost of these activities in the first three years of program implementation to range between $83,562 and $87,674. Based upon the fall 1996 dollar per ton value ($35.78), invoicing records and emissions estimates, Pima projects it will collect $98,275 in emissions fees annually.

As set out in the February 12, 1998 notice of proposed approval, EPA finds that Pima County's fee provisions meet the requirements of 502(b)(3). Materials submitted by Pima County demonstrate that the cost of issuing initial permits to existing title V sources is covered by annual emission fees.

2. Validity of EPA's October 30, 1996 Interim Approval

On October 30, 1996, EPA promulgated interim approval of Pima's title V program. The commenter observes that Pima County adopted the amendment to its fee rule almost one year before EPA granted interim approval to the title V program. Pima County did not, however, submit the amended rule until after EPA had granted interim approval. The commenter argues that the fee rule that EPA purported to approve does not exist and did not exist when EPA issued its interim approval, therefore, Pima County's title V program does not include an approved or approvable fee rule. The commenter contends that a fee rule satisfying section 502(b)(3) is a requirement for interim approval and therefore, EPA should acknowledge that

its interim approval of Pima County's title V program is void.

The proposal on which EPA is taking final action is limited to the question of whether the revision to Pima's fee provisions is approvable under part 70. As described in the notice of proposed rulemaking and in the preceding response, EPA has evaluated the submitted revision to Pima's program and has found that it meets the requirements of part 70 and section 502(b) of the Act. An evaluation of the validity of EPA's grant of interim approval to Pima's title V program is beyond the scope of this action. The issue raised in this comment has also been raised as an issue in a petition to the Ninth Circuit challenging EPA's final interim approval of Pima's title V program. EPA believes that is the appropriate forum in which to resolve this issue.

3. Validity of Pima's Fee Provisions under State Law

The commenter contends that the revision to the Pima County title V program cannot be approved by EPA because it is unenforceable as a matter of state law. The commenter notes that the Arizona Revised Statutes (section 49–112(B)) require that fees charged by county agencies must be approximately equal to or less than permit fees charged by the Arizona Department of Environmental Quality (ADEQ). He contends that, although the language in the amendment Pima adopted is identical to the language in ADEQ's rule,[1] Pima County's interpretation of the rules, as described by both the County and EPA in its proposed approval, would result in substantially higher fees being paid in Pima County. The commenter states that ADEQ interprets its rule to apply only to new sources while Pima charges fees to both new and existing sources.

In order to determine if the commenters allegations were well founded, on May 21, 1997, EPA sent a letter to Pima County requesting information on differences between Pima County and ADEQ with respect to how their fee provisions are implemented. EPA asked that Pima address the question of whether fees are charged for the issuance of permits to existing sources. On July 25, 1997, Pima County responded to EPA's letter. The response included an affidavit prepared by the Pima County Attorney's office and signed by Pima staff stating that the District does not charge a permit processing fee to existing part 70 sources. As explained above, the cost of issuing initial permits to existing sources is covered by revenue from emissions fees. In the absence of any documentation of practices to the contrary, EPA has concluded that Pima's implementation of the fee rule is consistent with ADEQ's implementation.

4. Timing of EPA Action in Light of AMA Litigation in State Court

The commenter points out that the AMA is in the midst of litigating in state court the question of the validity of the Pima County fee rules that EPA now proposes to approve. He states his belief that it is not the EPA's policy to substitute its judgement for that of a state court on a matter of the legality of a state provision and that, at the very least, EPA should defer action on the approval of Pima County's fee rule until the court has decided the issue of its legality. The commenter goes on to say that if the court upholds AMA's position, the rule will be declared void ab initio and that EPA has no authority to approve a fee rule that is not enforceable as a matter of state law.

As long as the rule is effective as a matter of state law, EPA will treat it as such. If a state court strikes down the law, this might be a basis for EPA action, consistent with 70.10(c)(1)(i)(B). For the purpose of this federal approval action, and without expressing further opinion on the validity of the commenter's suit in state court, it does not appear to EPA that Pima's fee provisions run afoul of state law. As required by Arizona Revised Statutes section 49–112(B), Pima's fee provisions are consistent with those of ADEQ, and as evidenced by Pima's submittal, County representatives have attested that the County will implement its fee rule in a manner consistent with that of ADEQ. EPA does not have reason to believe that Pima County's fee rule is unenforceable as a matter of state law. As explained in the February 12, 1998 **Federal Register** document, EPA is satisfied that Pima's fee rules meet the requirements of title V of the CAA and 40 CFR part 70.

Section 70.4(i) of part 70 does require that permitting authorities keep EPA apprised of any proposed changes to their basic statutory or regulatory structure. EPA therefore expects that if any part of a part 70 program is deleted or modified, either by the district hearing board or by court action, it will be notified by the permitting authority. Were such changes to render a program deficient or prevent a permitting authority from adequately implementing the program, EPA would follow the procedures set of under section 70.4(i) to ensure that such inadequacies are promptly corrected. If corrections are not made in a timely manner, part 70 sets out a mechanism for the withdrawal of its approval of the program and for implementation of the federal operating permits program in its place. *See* section 70.10.

C. Final Action

EPA is finalizing its approval of the submitted amendments to the applicability and fee provisions of Pima's title V operating permits program. EPA is also finalizing its approval under section 112(l) to include Pima's program for delegation of section 112 standards as they apply to those sources not required to obtain a title V permit.

EPA's approval of the change in applicability results in the following revision to Pima's title V program: Rule 17.04.340.240 (definition of ''title V source'' adopted September 28, 1993) will be removed from the County's title V program.

EPA's approval of the amendments to Pima County's fee provisions results in the following changes to the County's title V program. Rules 17.12.320, 17.12.500, 17.12.520 , 17.12.580 (adopted September 28, 1993); Rule 17.12.610 (adopted November 14, 1989); and Rules 17.12.640 and 17.12.650 (adopted December 10, 1991) will be removed. Rules 17.12.320, 17.12.500, and 17.12.510 (adopted November 14, 1995) will be added. With this rulemaking, EPA is taking action to approve the fee changes and bring the approved version of the program in line with the current version in place at the county.

IV. Administrative Requirements

A. Docket

Copies of Pima's submittal and other information relied upon for this final action, including public comments, are contained in dockets (AZ–Pima–97–1–OPS, and AZ–Pima–97–2–OPS) maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final approval. The dockets are available for

[1] The language referenced is: ''Before the issuance of a permit to construct and operate a source that is required to obtain a permit pursuant to title V of the Act, the applicant for the permit shall pay to the Director a fee billed by the Director representing the total actual cost of reviewing and action upon the application.'' AMA alleges that Pima interprets this provisions to allow the collection of a ''fee for service'' from an existing source for its initial a permit to operate whereas ADEQ interprets this to mean that a fee for service may only be collected from new sources that are applying for both a permit to construct and a permit to operate.

inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities. The EPA's actions under section 502 of the Act do not create any new requirements, but simply address revisions to Pima County's existing operating permits program that were submitted to satisfy the requirements of 40 CFR part 70.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. 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 in this rulemaking document 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, in any one year. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 23, 1998.

E. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether its regulatory actions are ''significant'' and therefore subject to Office of Management and Budget review and the requirements of the Executive Order. The Order defines a significant regulatory action ''as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $ 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Office of Management and Budget has exempted this action from Executive Order 12866 review.

F. Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule approves preexisting State requirements and does not impose new Federal mandates on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of

regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not impose new Federal mandates on Indian tribal governments and does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: September 14, 1998.

Felicia Marcus,

Regional Administrator, Region 9.

Part 70, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising paragraph (c) under Arizona to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Arizona

* * * * *

(c) *Pima County Department of Environmental Quality:*

(1) Submitted on November 15, 1993 and amended on December 15, 1993; January 27, 1994; April 6, 1994; April 8, 1994; August 14, 1995; July 22, 1996; August 12, 1996; interim approval effective on November 29, 1996; interim approval expires June 1, 2000.

(2) Revisions submitted on January 14, 1997; February 26, 1997; July 17, 1997; July 25, 1997; November 7, 1997; approval effective October 23, 1998; interim approval expires June 1, 2000.

* * * * *

[FR Doc. 98–25323 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300713; FRL–6029–3]

RIN 2070–AB78

Isoxaflutole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolites 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropyl propan-1,3-dione and 2-methylsulphonyl-4-trifluoromethyl benzoic acid, calculated as the parent compound, in or on field corn, grain; field corn, fodder; field corn, forage; and establishes a tolerance for combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolite 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropyl propan-1,3-dione, calculated as the parent compound, in or on the meat of cattle, goat, hogs, horses, poultry, and sheep; liver of cattle, goat, hogs, horses and sheep; meat byproducts (except liver) of cattle, goat, hogs, horses, and sheep; fat of cattle, goat, hogs, horses, poultry, and sheep; liver of poultry; eggs; and milk. Rhone-Poulenc Ag Company requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective September 23, 1998. Objections and requests for hearings must be received by EPA on or before November 23, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300713], 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–300713], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300713]. 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, 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 February 26, 1997 (62 FR 8737)(FRL–5585–2), 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) 6F4664 for tolerance by Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by Rhone-Poulenc Ag Company, the registrant. There were no comments received in response to the notice of filing.

In the **Federal Register** of July 27, 1998 (63 FR 40119)(FRL–6017–3), 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 an amended pesticide petition for this tolerance petition. The revised petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and

its metabolites 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropyl propan-1,3-dione (RPA 202248) and 2-methylsulphonyl-4-trifluoromethyl benzoic acid (RPA 203328), calculated as the parent compound, in or on field corn, grain at 0.20 part per million (ppm); field corn, fodder, at 0.50 ppm, field corn, forage at 1.0 ppm; and by establishing a tolerance for combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolite RPA 202248, calculated as the parent compound, in or on the meat of cattle, goat, hogs, horses, poultry, and sheep at 0.20 ppm, liver of cattle, goat, hogs, horses and sheep at 0.50 ppm, meat byproducts (except liver) of cattle, goat, hogs, horses, and sheep at 0.1 ppm, fat of cattle, goat, hogs, horses, poultry, and sheep at 0.20 ppm, liver of poultry at 0.3 ppm, eggs at 0.01 ppm and milk at 0.02 ppm.

I. Risk Assessment and Statutory Findings

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. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

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 isoxaflutole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the tolerances described above. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

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

1. Several acute toxicology studies places the technical-grade herbicide in Toxicity Category III.

2. In a 21–day dermal toxicity study in rats, eight CD rats/sex/group were treated topically with dosages of either 10, 100 or 1,000 milligrams/kilogram/day (mg/kg/day) of isoxaflutole 8 hours per day for 21 days. The test material was applied using 0.5% w/v methylcellulose in purified water daily at a volume-dosage of 2 ml/kg bodyweight. Treatment-related marginal increase in relative liver weight was observed in both sexes of rats at 1,000 mg/kg/day. This finding was considered as an adaptive response to isoxaflutole treatment. There were no differences between the control and treated groups in any of the other parameters measured. The systemic toxicity Lowest Observable Adverse Effect Level (LOAEL) is greater than 1,000 mg/kg/day for males and females; the systemic toxicity no observable effect level (NOEL) is 1,000 mg/kg or greater for males and females. The dermal toxicity LOAEL is greater than 1,000 mg/kg/day for males and females; the dermal toxicity NOEL is 1,000 mg/kg/day or greater for males and females.

3. In a 28–day oral subchronic toxicity study, RPA 203328 (a metabolite of isoxaflutole) was administered in the diet to male and female Charles River France, Sprague-Dawley rats (10/sex/dose) at dosage levels of 0, 150, 500, 5,000, or 15,000 ppm (0, 11.14, 37.57, 376.96 or 1,117.79 mg/kg/day in males and 12.68, 42.70, 421.53 or 1,268.73 mg/kg/day in females, respectively) for 28 days. Among males, a slightly lower urinary pH at 15,000 ppm and minimally higher urinary refractive index at 500 and 15,000 ppm were noted. In the absence of adverse effects on other parameters, these changes were considered as a normal physiological response to ingestion of an acidic compound. There were no compound related adverse effects on survival, clinical signs, body weight, food consumption, clinical chemistry, hematology, and gross or microscopic pathology. The LOAEL is greater than 1,117.79 mg/kg/day in males and 1,268.73 mg/kg/day in females (15,0000 ppm). The NOEL for both sexes is 1,117.79 mg/kg/day in males and 1,268.73 mg/kg/day in females (15,000 ppm).

4. In a chronic toxicity study, isoxaflutole was administered to five beagle dogs/sex/dose in the diet at dose levels of 0, 240, 1,200, 12,000, or 30,000 ppm (0, 8.56, 44.81, and 453 mg/kg/day, respectively, for males; 0, 8.41, 45.33, 498, or 1,254 mg/kg/day, respectively, for females) for 52 weeks. The 52–week mean intake value for males in the 30,000 ppm treatment group was not available because all dogs in that group were sacrificed after 26 weeks due to severe chronic reaction to the test substance. The LOAEL is 453 mg/kg/day for males; 498 mg/kg/day for females (12,000 ppm), based on reduced weight gains compared to controls and intravascular hemolysis with associated clinical chemistry and histopathological findings. The NOEL is 44.81 mg/kg/day for males; 45.33 mg/kg/day for females (1,200 ppm).

5. In a combined chronic toxicity/carcinogenicity study, isoxaflutole was continuously administered to 75 Sprague-Dawley rats/sex/dose at dietary levels of 0, 0.5, 2, 20 or 500 mg/kg/day for 104 weeks. An additional 20 rats/sex/group were treated for 52 weeks, after which 10 rats/sex/group were sacrificed and the remainder were held for a maximum of 8 weeks without treatment in order to assess reversibility of treatment-related changes. Evidence of systemic toxicity observed at 500 mg/kg/day in one or both sexes included: abnormal gait, limited use of limbs, lower body weight gains and food consumption, decreased food efficiency during the first 14 weeks of the study, elevated cholesterol levels throughout the 104–week study, increased absolute and relative liver weights, and thyroid hyperplasia. Increased incidence of periacinar hepatocytic hypertrophy, portal tract (senile) bile duct changes, focal cystic degeneration of the liver was observed in males at 20 mg/kg/day and greater, females at 500 mg/kg/day. Eye opacity, gross necropsy changes in eyes, corneal lesions, degeneration of sciatic nerve and thigh muscles was observed in males at 20 mg/kg/day and higher doses and in females at 500 mg/

kg/day. The chronic LOAEL is 20 mg/kg/day based on liver, thyroid, ocular, and nervous system toxicity in males and liver toxicity in females. The chronic NOEL is 2.0 mg/kg/day.

Under the conditions of this study, isoxaflutole induced benign and malignant tumors of the liver in both sexes at 500 mg/kg/day hepatocellular adenomas (in 14/75 in males and 29/74 in females vs. 2/75 and 4/74 in the control group rats) and hepatocellular carcinomas (17/75 and 24/74 vs. 5/75 and 0/74 in the controls, respectively). Combined incidences of liver adenoma/carcinoma in males and females were 31/75 and 46/74, respectively, with animals bearing carcinomas in the majority. Thyroid follicular adenomas occurred with increased frequency in 500 mg/kg/day males (15/75 vs 3/74 in controls). The above tumor incidences exceeded the historical incidence of these tumors for this strain in this laboratory. The study demonstrated that isoxaflutole is carcinogenic to rats at a dose of 500 mg/kg/day. The chemical was administered at a dose sufficient to test its carcinogenic potential. At 500 mg/kg/day, there were alterations in most of the parameters measured including clinical signs of toxicity, body weight gain, food consumption, food conversion efficiency, and clinical as well as post-mortem pathology. Thyroid stimulating hormone (TSH) was not measured in this study. However, in a separate special study investigating the mechanism of action of isoxaflutole on the thyroid, tested at the same doses as this study, TSH was indirectly measured since there was a significant reduction in T4 level and thyroid gland weights were significantly increased. These results were sufficient to support the hypothesis that isoxaflutole may have induced thyroid tumors in male rats through a disruption in the thyroid-pituitary hormonal feedback mechanisms.

6. In a 78–week carcinogenicity study, isoxaflutole was fed in diet to 64 or 76 mice/sex/dose at dose levels of 0, 25, 500, or 7,000 ppm daily (means of 0, 3.2, 64.4, or 977.3 mg/kg/day, respectively, for males; and 0, 4.0, 77.9, or 1,161.1 mg/kg/day, respectively, for females). Interim sacrifices were made at 26 weeks (12 mice/sex at the 0 and 7,000 pm doses) and at 52 weeks (12 mice/sex at all dose levels). Isoxaflutole had no significant effect on the survival of animals. Systemic signs of toxicity in the treated groups included: decreased body weight gain in both sexes at 500 ppm and 7,000 ppm and for females at 25 ppm group; food consumption was unaffected except food efficiency was lower for both sexes at 7,000 ppm during the first 14 weeks of the study; absolute and relative/body liver weights were significantly increased in both sexes at 7,000 ppm and at 500 ppm relative liver weight was increased in males at 52 weeks and in females at 78 weeks; gross necropsy at 78–week sacrifice revealed increased occurrences of liver masses in both sexes at 7,000 ppm; non-neoplastic lesions of the liver occurred at 52–week sacrifice in males at 500 ppm and in males and females at 7,000 ppm. At termination, the 500 ppm group males exhibited increased incidence of hepatocyte necrosis. At 7,000 ppm, significant increase in non-neoplastic lesions in both sexes included periacinar hepatocytic hypertrophy, necrosis, and erythrocyte-containing hepatocytes. In addition, males at the high dose had pigment-laden hepatocytes and Kupffer cells, basophilic foci, and increased ploidy; extramedullary hemopoiesis in the spleen was noted in both sexes; increase incidences of hepatocellular adenoma and carcinoma were observed in both sexes at 7,000 ppm in the 52–week and 78–week studies.

Among scheduled and unscheduled deaths in the 78–week study, there were significant occurrences of hepatocellular adenomas in 27/52 males (52%) and 15/52 females (29%), and carcinomas in 17/52 males (33%) and 4/52 females (8%; non-significant). The incidences of these tumors exceeded the corresponding historical incidence with this species, in this laboratory. Combined adenoma and carcinoma incidences at 7,000 ppm were 73% for males and 35% for females. At 500 ppm, the incidences of 17% adenomas and 15% carcinomas in males and 2% adenomas in females were not statistically significant, but exceeded the means for historical controls. The 52– and 78–week studies revealed a dose-related decrease in the first occurrence of carcinomas in males; the earliest carcinomas were observed at 78, 71, 52, and 47 weeks at the 0 through 7,000 ppm doses. There were no carcinomas in females up to 78 weeks at 0, 25, or 500 ppm, although, the earliest finding at 7,000 ppm was at 60 weeks.

The LOAEL for this study is 64.4 mg/kg/day for males and 77.9 mg/kg/day for females (500 ppm), based on decreased body weight gains, increased liver weights, and increased incidences of histopathological liver changes. The NOEL is 3.2 mg/kg/day for males and 4.0 mg/kg/day for females (25 ppm). Although body weight was decreased marginally in females at 25 ppm, there were no corroborating findings of toxicity at this dose. Under conditions of this study, isoxaflutole appears to induce hepatocellular adenomas and carcinomas in male and female CD–1 mice. The chemical was tested at doses sufficient to measure its carcinogenic potential.

7. In a developmental toxicity study isoxaflutole was administered to 25 female Sprague-Dawley rats by gavage at dose levels of 0, 10, 100, or 500 mg/kg/day from gestational days 6–15, inclusive. Maternal toxicity, observed at 500 mg/kg/day, was manifested as an increased incidence of salivation; decreased body weight, weight gain, and food consumption during the dosing period. The maternal LOAEL is 500 mg/kg/day, based on increased incidence of clinical signs and decreased body weights, body weight gains and food consumption. The maternal NOEL is 100 mg/kg/day.

Developmental toxicity, observed at 100 and 500 mg/kg/day, were manifested as increased incidences of fetuses/litters with various anomalies: growth retardations (decreased fetal body weight; increased incidence of delayed ossification of sternebrae, metacarpals and metatarsals). In addition, an increased incidence of vertebral and rib anomalies and high incidence of subcutaneous edema were observed at 500 mg/kg/day. The incidences of these anomalies were higher than the concurrent control values and in some cases exceeded the range for historical controls. The LOAEL for developmental toxicity is 100 mg/kg/day, based on decreased fetal body weights and increased incidences of skeletal anomalies. The developmental NOEL is 10 mg/kg/day.

8. In a developmental toxicity study, isoxaflutole was administered to 25 female New Zealand White Rabbits by gavage at dose levels of 0, 5, 20, or 100 mg/kg/day from gestational days 6–19, inclusive. Maternal toxicity, observed at 100 mg/kg/day, was manifested as increased incidence of clinical signs (little diet eaten and few feces) and decreased body weight gain and food consumption during the dosing period. The maternal LOAEL is 100 mg/kg/day, based on increased incidence of clinical signs, decreased body weight gains and food consumption. The maternal NOEL is 20 mg/kg/day.

Developmental toxicity, observed at 5 mg/kg/day consisted of increased incidence of 27th pre-sacral vertebrae. Additional findings noted at 20 and 100 mg/kg/day were manifested as increased number of postimplantation loss and late resorptions, as well as growth retardations in the form of generalized reduction in skeletal ossification, and increased incidence of 13 pairs of ribs.

At 100 mg/kg/day, an increased incidence of fetuses with incisors not erupted was also observed. Incidences of these anomalies, on a litter basis, were higher than the concurrent control values and in some cases exceeded the range for historical controls. The LOAEL for developmental toxicity is 5 mg/kg/day, based on increased incidence of fetuses with 27th pre-sacral vertebrae. The developmental NOEL was not established.

9. In a 2–generation reproduction study, isoxaflutole was administered to Charles River Crl:CD BR VAF/Plus rats (30/sex/group) at nominal dietary levels of 0, 0.5, 2, 20 or 500 mg/kg/day (actual levels in males: 0, 0.45, 1.76, 17.4 or 414 mg/kg/day; females: 0, 0.46, 1.79, 17.7 or 437 mg/kg/day, respectively). Evidence of toxicity was observed in the male and female parental rats of both generations: at 20 and 500 mg/kg/day, increased absolute and relative liver weights associated with liver hypertrophy was observed; at 500 mg/kg/day (HDT), decreased body weight, body weight gain and food consumption during premating and gestation, and increased incidence of subacute inflammation of the cornea of the eye in F_0 adults as well as keratitis in F_1 adults were reported. There were no other systemic effects that were attributed to treatment, nor was there any indication, at any treatment level, of an effect on reproductive performance of the adults. Treatment-related effects were observed in F_1 and F_2 offspring: at 20 and 500 mg/kg/day, reduction in pup survival was noted; at 500 mg/kg/day, decrease in body weights of F_1 and F_2 pups throughout lactation, increased incidence of chronic keratitis, low incidence of inflammation of the iris, as well as retinal and vitreous bleeding in F_2 pups and weanlings were observed. Necropsy of F_1 and F_2 pups culled on day 4 revealed an increased number of pups with no milk in the stomach and underdeveloped renal papillae. The Systemic LOAEL is 17.4 mg/kg/day for males and females, based upon increased liver weights and hypertrophy and the Systemic NOEL is 1.76 mg/kg/day for males and females. The Reproductive LOAEL is greater than 437 mg/kg/day, based on lack of reproductive effects and the Reproductive NOEL is greater than or equal to 437 mg/kg/day.

10. For parent isoxaflutole, in a *Salmonella typhimurium* reverse gene mutation assay, independently performed tests were negative in *S.typhimurium* strains TA1535, TA1537, TA1538, TA98 and TA100 up to insoluble doses (≧ 500 µg/plate +/-S9) and was non-cytotoxic. In a mouse lymphoma L5178Y forward gene mutation assay, independently performed tests were negative up to insoluble (≧ 150 µg/ml +/-S9) or soluble (≤ 75 µg/ml +/-S9) doses. An *in vitro* cytogenetic assay in cultured human lymphocytes tested negative up to insoluble concentrations (≧ 300 µg/ml -S9; 600 µg/ml +S9) and was non-cytotoxic. A mouse micronucleus assay tested negative in male or female CD–1 mice up to the highest administered oral gavage dose (5,000 mg/kg). No evidence of an overt toxic response in the treated animals or a cytotoxic effect on the target cells was observed.

For the major metabolite RPA 202248, in a *Salmonella typhimurium* reverse gene mutation assay, independently performed plate incorporation or preincubation modification to the standard plate incorporation tests were negative in *S. typhimurium* strains TA1535, TA1537, TA98, TA100 and TA102 up to the highest dose assayed (5,000 µg/plate +/- S9).

For the minor metabolite RPA 203328, in a *Salmonella typhimurium* reverse gene mutation assay, independently performed plate incorporation tests were negative in *S. typhimurium* strains TA1535, TA1537, TA98, and TA100 up to cytotoxic doses (≧ 2,500 µg/plate +/- S9). In an *In vivo* mouse micronucleus assay, male mice were orally dosed with 500, 1,000, or 2,000 mg/kg RPA 203328 (99%) administered in 0.5% methylcellulose at a constant volume of 10 ml/kg. There was no indication of a clastogenic and/or aneugenic effect associated with administration of RPA 203328 under the conditions of this assay, which included administration of a limit dose (2,000 mg/kg) with sacrifice times of 24 and 48 hours. In a Chinese hampster ovary/Hypoxanthine guanine phophoribosyl transferase (CHO/HGPRT) forward mutation assay with duplicate cultures and a confirmatory assay, two independently performed CHO cell HGPRT forward gene mutation assays used duplicate cultures of RPA 203328 that were assayed at concentrations of 84.5 – 2,700 µg/ml -S9 (initial and confirmatory trials) and 338 – 2,700 µg/ml +S9 (initial trial) and 675 – 2,700 µg/ml (confirmatory trial). In the assays, there was no indication of cytotoxicity ±S9 at the highest dose level of 2,700 µg/ml. Although there were a few sporadic instances of statistically significant elevations in mutation frequency, these were not dose-related and were generally below the 15×10^{-6} required for a positive response except in one case (a value of 15.8×10^{-6}). Overall, there was no evidence of any increase in mutation frequency resulting from exposure to RPA 203328. In an *In vitro* cytogenetics assay in cultured Chinese hamster ovary cells (CHO), CHO cells were analyzed from cultures exposed to RPA 203328 (99.0%) at 931, 1,330, 1,900 and 2,710 µg/ml ± S9 in an initial trial (3–hr exposure, followed by wash and 15–hr incubation, then 2–hr exposure to colcemid, followed by fixation). In the confirmatory trial, cells were exposed to concentrations of 924, 1,320, 1,890 and 2,700 µg/ml ± S9(-S9: 17.8–hr exposure to RPA 203328, followed by 2–hr exposure to colcemid; +S9, same schedule as in the first trial). No effect on mitotic indices was observed at the highest dose level +S9 in either trial. The positive controls induced the expected high yield of cells with chromosome aberrations. There was, however, no evidence that RPA 203328 induced a clastogenic response at any dose or harvest time.

11. In a metabolism study, ^{14}C-isoxaflutole was administered to groups (five/sex/dose) of male and female Sprague-Dawley (CD) rats by gavage at a single low oral dose (1 mg/kg), repeated low oral dose (1 mg/kg/day as a final dose in a 15 day repeat dose series), and a single high dose (100 mg/kg). In addition, pharmacokinetics in blood was investigated using 2 groups of 10 rats (five/sex/dose) that received a single oral dose of 1 or 100 mg/kg of ^{14}C-isoxaflutole. Urine and feces were collected at 24, 48, 96, 120, 144, and 168 hours after dosing, and tissues were collected at 168 hours post-dosing. Metabolite analysis was performed on the urine and feces of all dose groups, and on the liver samples of the two low dose group male and female rats.

^{14}C-isoxaflutole was rapidly and extensively absorbed and metabolized. RPA 202248, a major metabolite, a diketonitrile derivative, represented 70% or more of the radioactivity excreted in the urine and feces from the two low dose groups. The other minor metabolite, RPA 203328, was more polar. Elimination was rapid and dose-dependent. The mean total recovery ranged from 98.09% to 99.84% (mean 99.21%). Urinary elimination (males: 61.16% to 66.65%, females: 58.80% to 67.41%) was predominant in the two low dose groups while the major portion of radiolabel was excreted via the feces (males: 62.99%, females: 55.23%) in the high dose group. The higher fecal elimination possibly resulted from the saturation of absorption resulting in elimination of unchanged parent compound. The majority of the radiolabel was eliminated in the first 24 and 48 hours for the low and the high dose groups, respectively. The extensive systemic clearance of the radiolabel was

reflected in the low levels of radioactivity found in tissues at 168 hours post-dosing. For the two low dose groups, liver (0.172 to 0.498 ppm) and kidneys (0.213 to 0.498 ppm) accounted for the major portion of the administered dose found in tissues. In the high dose group, the highest level of radioactivity was found in decreasing order in blood, plasma, liver, and kidney. Sex-related differences were observed in the excretion and distribution pattern among high dose rats. The elimination half-lives were similar among single low and high dose groups, with an estimated mean blood half-life of 60 hours. No sex differences were observed in the metabolism of ^{14}C-isoxaflutole.

12. In an acute neurotoxicity study, CD rats (10/sex/group) received a single oral gavage administration of isoxaflutole in 0.5% aqueous methylcellulose at doses of 0 (vehicle only), 125, 500 or 2,000 mg/kg body weight. No treatment-related effects were observed on survival, body weight, body weight gain or food consumption. There were significant decreases in landing foot splay measurements in males at 2,000 mg/kg during functional observational battery (FOB) tests indicating impairment of neuromuscular function. At 500 mg/kg, males exhibited significant decreases in landing foot splay measurements on day 15. The LOAEL was 500 mg/kg based on significant decreases in landing foot splay on day 15. The NOEL was 125 mg/kg.

In a subchronic neurotoxicity study, isoxaflutole was administered to CD rats (10/sex/group) at dietary levels of 0, 25, 250 or 750 mg/kg/day for 90 days. Treatment-related effects observed in high-dose males consisted of decreases in body weight and body weight gain. The LOAEL was established at 25 mg/kg/day based on significant decreases in mean hind limb grip strength in male rats at 25 mg/kg/day (LDT) during both trials at week 13 as well as a non significant decrease in mean forelimb grip strength at week 13.

13. In a dermal absorption study ^{14}C-Isoxaflutole(99.7%) as a 1% carboxy methylcellulose aqueous suspension was administered to male Crl:CDBR rats (4/dose) as a single dermal application at 0.865, 7.32 or 79 mg/cm^2. Dermal absorption was measured after 0.5, 1, 2, 4, 10 and 24 hours of exposure. At the lowest dose, 3.46% was absorbed at 10 hours and 4.42% was absorbed at 24 hours. All other doses showed less than 1% absorbed at 24 hours.

14. EPA determined that plant tolerances should be established in terms of isoxaflutole and its metabolites RPA 202248 and RPA 203328. EPA also decided that the residues of concern in drinking water are isoxaflutole and its metabolites RPA 202248 and RPA 203328. Structural activity relationship (SAR) and mutagenicity data on RPA 203328 were submitted and reviewed and EPA concluded that RPA 203328 does not pose a special toxicological concern as to carcinogenic toxicity. However, the proposed analytical enforcement method for plants involves hydrolysis of isoxaflutole to RPA 202248, conversion of RPA 202248 to RPA 203328, and then derivatization of RPA 203328 to a methyl ester for gas chromatography (GC) analysis. Therefore, even though there may not be concerns with RPA 203328 for carcinogenic toxicity, it will be included in the dietary (food) risk assessment for food commodities. However, RPA 203328 will not be included in an aggregate cancer risk assessment.

Because there is increased sensitivity to offspring and RPA 203328 is a rat metabolite the Metabolism Committee concluded that the registrant should perform a developmental toxicity study in rats using RPA 203328 to further characterize the toxicity of RPA 203328. Until review of a developmental study on RPA 203328 the Agency will not exclude RPA 203328 from risk assessments based on a developmental endpoint.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA identified the developmental LOAEL of 5 mg/kg/day from the developmental toxicity study in rabbits as the acute dietary endpoint to be used for risk assessments for the subpopulation females (13+). The LOAEL is based on increased incidence of fetuses with 27th pre-sacral vertebrae; a NOEL was not established. The fetal incidence of this anomaly was dose-depended and exceeded the concurrent as well as the historical control incidences. Also at the next higher dose (20 mg/kg/day) there was an increased incidence of fetuses with reduced ossification. It was noted that the developmental anomalies occurred below the dose that caused maternal toxicity (100 mg/kg/day). Because of the use of a LOAEL, an uncertainty factor of 3X in addition to the conventional safety factor of 100X to account for inter- and intra-species variations was applied for this risk assessment. EPA also determined that for acute dietary risk assessment for the subpopulation females (13+), the 10X safety factor for the protection of infants and children (as required by FQPA) should be retained. Thus, a MOE of 3,000 is required for this subgroup.

EPA also identified the NOEL of 125 mg/kg/day from the acute neurotoxicity study as the endpoint of concern to be used in acute dietary risk assessment for the general population including infants and children. The NOEL is based on significant decreases in landing foot splay on day 15. EPA determined that for acute dietary risk assessment for the general population, the 10X safety factor to protect infants and children (as required by FQPA) should be retained. Thus, a MOE of 1,000 is required for the general population including infants and children, and includes the conventional 100X safety factor and 10X safety factor for FQPA.

The conclusion to retain the 10X FQPA safety factor was based on the following factors:

There is increased sensitivity of rat and rabbit fetuses as compared to maternal animals following *in utero* exposures in prenatal developmental toxicity studies. In both species, the developmental effects were seen at doses which were not maternally toxic. (i.e., developmental NOELs were less than the maternal NOELs). In rats, increased sensitivity manifested as growth retardation characterized as decreased fetal body weight and increased incidence of delayed ossification of sternebrae, metacarpals and metatarsals. In rabbits, increased sensitivity was manifested as fetuses with increased pre-sacral vertebrae at the lowest dose tested as well as fetuses with increased incidences of skeletal anomalies at the next two higher doses tested; also a NOEL for developmental toxicity was not established in this study.

There is also concern for the developmental neurotoxic potential of isoxaflutole. This is based on the demonstration of neurotoxicy in functional observational battery (FOB) measurements in the acute and subchronic neurotoxicity as well as evidence of neuropathology in the combined chronic toxicity/carcinogenicity studies.

Finally, a developmental neurotoxicity study is required based on the evidence of neurotoxicity as well as the lack of assessment of susceptibility of the offspring in functional/neurological development in the standard developmental/reproduction toxicity studies. An evaluation of the neurotoxicity studies by EPA identified significant neurobehavioral findings, supported by neuropathology observed in the chronic study in rats following long term exposure. With this information considered in the weight-of-the-evidence evaluation, EPA determined that a developmental

neurotoxicity study in rats with isoxaflutole will be required.

2. *Short - and intermediate - term toxicity.* EPA did not select doses or endpoints for these risk assessments due to the lack of dermal or systemic toxicity in the 21–day dermal toxicity study in rats following repeated dermal applications at doses up to and including 1,000 mg/kg/day (Limit-Dose).

3. *Chronic toxicity.* EPA has established the RfD for isoxaflutole at 0.002 mg/kg/day. This RfD is based on a NOEL of 2 mg/kg/day based on hepato, thyroid, ocular and neurotoxicity in males as well as hepatotoxicity in females at 20 mg/kg/day (LOAEL) following dietary administration of Isoxaflutole (99.2%) at 0, 0.5, 2, 20 or 500 mg/kg/day for 104 weeks to male and female Sprague-Dawley rats. An uncertainty factor of 1,000 was used to account for the protection of infants and children (as required by FQPA) including the potential for increased sensitivity to fetuses following *in utero* exposure, and inter- and intra-species variations.

4. *Carcinogenicity.* In accordance with the EPA proposed Guidelines for Carcinogenic Risk Assessment (April 23, 1996), isoxaflutole was characterized as ''likely to be a human carcinogen,'' based on statistically significant increases in liver tumors in both sexes of mice and rats, and statistically significant increases in thyroid tumors in male rats. Also, the liver tumors in male mice had an early onset.

Administration of isoxaflutole in the diet to CD–1 mice for 78 weeks resulted in statistically significant increases in hepatocellular adenomas and combined adenoma/carcinoma in both sexes at the highest dose (7,000 ppm, equivalent to 977.3 mg/kg/day for males; 1,161.1 mg/kg/day for females). There were also positive significant trends for hepatocellular adenomas, carcinomas and combined adenoma/carcinoma in both sexes. In male mice there was also a statistically significant increase in hepatocellular carcinomas at the highest dose with a positive significant trend and, at the 53–week sacrifice, there was evidence of early onset for hepatocellular adenomas. The incidences of hepatocellular tumors exceeded that for historical controls in both sexes. The CPRC agreed that the highest dose in this study was adequate and not excessive.

Administration of isoxaflutole in the diet to Sprague-Dawley rats for 2 years resulted in statistically significant increases in hepatocellular adenomas, carcinomas and combined adenoma/carcinoma in both sexes at the highest dose (500 mg/kg/day). There were also positive significant trends for hepatocellular carcinomas, adenomas and combined adenoma/carcinoma in both sexes. The incidences of hepatocellular adenomas and carcinomas exceeded that for historical controls in both sexes.

In male rats there was also a statistically significant increase in thyroid follicular cell adenomas, carcinomas and combined adenoma/carcinoma at the highest dose, and positive significant trends for these adenomas and combined adenoma/carcinoma. The incidences of thyroid adenomas and carcinomas exceeded that of historical controls in male rats. The CPRC agreed that the highest dose in the rat study was adequate and not excessive.

There was no evidence of mutagenicity in the studies submitted and no structurally related analogs could be identified, since isoxaflutole is a member of a new class of chemicals.

Studies submitted by the registrant to show a mechanistic basis for the liver tumors were considered to be suggestive, but not convincing. The mechanistic evidence presented for the thyroid tumors appeared to be scientifically plausible and consistent with EPA current policy.

EPA decided that for the purpose of risk characterization, a non-linear MOE approach be applied to the most sensitive precursor lesion in the male rat thyroid, and that a linear low-dose extrapolation be applied for the tumors of the rat liver. The NOEL of 2 mg/kg/day in males from a 104 week combined chronic toxicity/carcinogenicity study in rats was used for the non-linear MOE cancer risk assessment. The endpoint of concern and LOAEL was 20 mg/kg/day based on thyroid hyperplasia. Tumors first appear in this study at the 500 mg/kg/day dose.

It was later decided that there was no reason not to include the results from the 78–week feeding/carcinogenicity study in mice when determining the Q_1* to be used for risk assessment for the linear low-dose extrapolation. A Q_1* was developed for the female mouse liver, female rat liver, male mouse liver and male rat liver and the Q_1* with the highest unit of potency used for risk assessment.

The four resulting estimates of unit potency were 3.55×10^{-3} for female CD–1 mouse liver, 3.84×10^{-3} for female rat liver, 1.14×10^{-2} for male CD–1 mouse liver, and 5.27×10^{-3} for male rat liver. The unit risk, Q_1* $(mg/kg/day)^{-1}$ of isoxaflutole, based upon male mouse liver (adenomas and or carcinomas) tumors is 1.14×10^{-2} in human equivalents, converted from animals to humans by use of the 3/4's scaling factor (1994, Tox—Risk, 3.5–K.Crump). The dose levels used in the 79 week mouse study were 0, 3.2, 64.4 or 977.3 mg/kg/day of isoxaflutole. The corresponding tumor rates for the male mice were 13/47, 15/50, 14/48 or 38/49.

C. Exposures and Risks

1. *From food and feed uses.* No previous tolerances have been established for the combined residues of isoxaflutole and its metabolites. Risk assessments were conducted by EPA to assessed dietary exposures from isoxaflutole as follows:

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 5 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. 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 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food 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 basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (2) that the exposure estimate does not underestimate exposure for any significant subpopulation group; and (3) if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

The Agency used percent crop treated (PCT) information as follows:

A routine chronic dietary exposure analysis for field corn was based on 34% of the crop treated. These estimates were derived from market projections for the end of a 5–year period after the initial registration. Although percent of crop is expected to be significantly less

in initial years of registration, 34% of the market share is considered to be the highest percentage attainable after 5 years and is considered to be conservative. At the end of the 5–year period, EPA will require that data be provided to demonstrate that the percent of corn treated is not above the level anticipated (34%).

The Agency believes that the three conditions listed in Unit II.C.1.(1)-(3) above have been met. With respect to Unit II.C.1.(1), EPA finds that the percent of crop treated information described above is conservative and will be reassessed at the end of 5 years after initial registration. As to Unit II.C.1.(2) and (3), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing isoxaflutole in a particular area.

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. As discussed in the Toxicological Endpoints section, separate acute dietary endpoints of concern were identified for use in risk assessment for females 13+ as compared to the general population including infants and children. The appropriate MOEs for acute dietary risk assessment are 3,000 for females 13+ and 1,000 for the general population including infants and children.

The Dietary Risk Evaluation System (DRES) detailed acute analysis estimates the distribution of single-day exposures for the overall U.S. population and certain subgroups. The analysis evaluates individual food consumption as reported by respondents in the USDA 1977–78 Nationwide Food Consumption Survey (NFCS) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of isoxaflutole in the commodity supply.

The MOE is a measure of how close the high end exposure comes to the NOEL (LOAEL for females 13+) and is calculated as the ratio of the NOEL to the exposure (NOEL/exposure = MOE). For these acute dietary risk assessments, use of isoxaflutole on corn, anticipated residues were used since corn is a blended commodity. The high end MOE for the subgroup of females, 13+ was 10,000, and is no cause for concern given the need for a MOE of 3,000. The high end MOEs for the remaining populations all exceed 125,000, and demonstrate no acute dietary concern given the need for a MOE of 1,000 for the general population including infants and children.

ii. *Chronic exposure and risk.* a. *Chronic non-cancer risk.* A DRES chronic exposure analysis was performed using a RfD of 0.002 mg/kg/day, tolerance level residues and 100 percent crop treated information to estimate the Theoretical Maximum Residue Contribution, and anticipated residues to estimate exposure for the general population and 22 subgroups. Using tolerance level residues and assuming 100 percent crop treated, non-nursing infants (< 1 year old) is the subgroup that utilized the greatest percentage of the RfD at 81%. By refining the chronic dietary risk assessment assuming 34 percent of the corn crop treated and incorporating anticipated residues for corn, animal RACs and processed commodities, less than 1 percent of the RfD is utilized for the general population and 1 percent of the RfD for nursing infants, the subgroup that accounts for the greatest percentage of the RfD.

The refined chronic dietary risk assessment is considered a reasonable estimate of risk since anticipated residues and percent crop treated estimates were incorporated. Based on the risk estimates calculated in this analysis, the chronic (non-cancer) dietary risk from use of isoxaflutole on corn does not exceed EPA's level of concern.

b. *Carcinogenic risk.* Refined dietary risk assessments for cancer were conducted using anticipated residues for isoxaflutole in corn and animal RACs and processed commodities including the metabolites RPA 207048 and RPA 205834, as well as percent crop treated information. The results of these risk assessments are reported below.

As discussed in the Toxicological Endpoints section above, a non-linear MOE methodology was applied for the estimation of human cancer risk. The NOEL of 2 mg/kg/day in males from a 104 week combined chronic toxicity/carcinogenicity study in rats is the endpoint to be used for the non-linear MOE cancer risk assessment. Cancer MOEs are estimated by dividing the carcinogenic NOEL by the chronic exposure. The assessment was conducted for the total U.S. population only. Using this approach, the upper bound cancer risk was calculated and resulted with a MOE of 250,000.

A linear low-dose extrapolation (Q_1*) was also applied for the tumors of the rat liver. It later was decided that there was no reason not to include the results from the 78–week feeding/carcinogenicity study in mice when determining the Q_1* to be used for risk assessment. The unit risk, Q_1* (mg/kg/day)$^{-1}$ of isoxaflutole, based upon male mouse liver (adenomas and or carcinomas) tumors is 1.14×10^{-2} in human equivalents. Using the linear approach and a Q_1* of 0.0114 resulted in an upper bound cancer risk of 9.3×10^{-8}. This linear risk estimate, for use of isoxaflutole on corn, is below EPA's level of concern for life time cancer risk.

2. *From drinking water.* Parent isoxaflutole is not expected to persist in surface water or to reach ground water. However, the metabolites RPA 202248, and RPA 203328 are expected to reach both ground and surface water, where they are expected to persist and accumulate.

EPA estimated exposure for isoxaflutole and its metabolites RPA 202248 and RPA 203328 for both surface and ground water based on available modeling. Since there are no registered uses for isoxaflutole in the United States, there are no monitoring data to compare against the modeling. Environmental concentrations for surface water were estimated using Tier 2 modeling from EPA'a Pesticide Root Zone Model (PRZM)/EXAMS. The acute and chronic groundwater concentrations were estimated using the SCI-GROW model. For surface water, the maximum concentrations were used for acute risk calculations, the annual means (1–10 years) for chronic risk calculations. For ground water, the SCI-GROW numbers for each compound were used for acute, chronic, and cancer risk assessment.

If residues of isoxaflutole reach water resources, they will be primarily associated with the aqueous phase with minimal adsorption to sediment because of their low adsorption coefficients. Standard coagulation-flocculation and sedimentation processes used in water treatment are not expected to be effective in removing isoxaflutole residues, based on their adsorption coefficients. The use of GAC (Granular Activated Carbon) is also not expected to be effective in removing isoxaflutole

residues because of low binding affinity to organic carbon.

i. *Acute exposure and risk.* Drinking water levels of concern (DWLOC) were calculated for acute exposures to isoxaflutole in surface and ground water for females 13+, the general population and children (1–6 years old). Relative to an acute toxicity endpoint, the acute dietary food exposure (from the DRES analysis) was subtracted from the ratio of the acute NOEL to the appropriate MOE to obtain the acceptable acute exposure to isoxaflutole in drinking water. DWLOCs were then calculated from this acceptable exposure using default body weights (70 kg for general population, 60 kg for females and 10 kg for children) and drinking water consumption figures (2 liters general population and females and 1 liter for children). Based on these calculations EPA's DWLOC for acute dietary risk is 4,200 parts per billion (ppb) for the general population, 1,200 ppb for children (1–6 years old) and 36 ppb for females 13+.

For acute dietary risk estimated maximum concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 were used. In surface water, isoxaflutole and its metabolites RPA 202248 and RPA 203328 are estimated to be 0.4 ppb, 2.0 ppb, and 10.0 ppb, respectively. Estimated maximum concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in ground water are 0.00025 ppb, 0.23 ppb and 6.1 ppb, respectively. The maximum estimated concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in surface and ground water were less than EPA's levels of concern for acute exposure in drinking water for the general population, females 13+ and children. Therefore, EPA concludes with reasonable certainty that residues of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in drinking water do not contribute significantly to the aggregate acute human health risk at the present time.

ii. *Chronic exposure and risk*— a. *Chronic non-cancer risk.* EPA has calculated DWLOC for chronic (non-cancer) exposures to isoxaflutole in surface and ground water. To calculate the DWLOC for chronic exposures relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DRES) was subtracted from the RfD (0.002 mg/kg/day) to obtain the acceptable chronic (non-cancer) exposure to isoxaflutole in drinking water. DWLOCs were then calculated from this acceptable exposure using default body weights (70 kg for males, 60 kg for females and 10 kg for children) and drinking water consumption figures (2 liters males and females and 1 liter children). Based on this calculation EPA's DWLOC for chronic (non-cancer) risk is 70 ppb for males, 60 ppb for females and 19 ppb for children.

Estimated annual average concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in surface water are 0.01 ppb, 1.7 ppb and 9.3 ppb, respectively. Estimated annual average concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in ground water are 0.00025 ppb, 0.23 ppb and 6.1 ppb, respectively. For the purposes of the screening level assessment, the maximum and average annual concentrations in ground water are not believed to vary significantly. The estimated annual average concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in surface and ground water were less than EPA's levels of concern for chronic (non-cancer) exposure in drinking water. Therefore, EPA concludes with reasonable certainty that residues of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in drinking water do not contribute significantly to the aggregate chronic (non-cancer) human health risk at the present time.

b. *Carcinogenic risk.* A non-linear cancer aggregate risk assessment has not been conducted since the point of departure for non-linear cancer risk assessment (2 mg/kg/day) is the same endpoint as the RfD and the aggregate cancer linear risk assessment using the Q* is considered more restrictive. Therefore, to calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure (from the DRES analysis) was subtracted from the ratio of the negligible cancer risk (1×10^{-6}) to the recommended linear low-dose extrapolation (Q_1*, 1.14×10^{-2}) to obtain the acceptable chronic (cancer) exposure to isoxaflutole in drinking water. DWLOCs were then calculated from this acceptable exposure using default body weights (70 kg) and drinking water consumption figures (2 liters). Based on this calculation EPA's DWLOC for carcinogenic risk is 3.1 ppb.

As stated in the Toxicological Profile section, Unit II.A. above, RPA 203328 does not have to be included in an aggregate cancer risk assessment. Estimated annual mean concentrations of isoxaflutole and its metabolite RPA 202248 in surface water are 0.01 ppb and 1.7 ppb, respectively. Estimated annual average concentrations of isoxaflutole and its metabolites RPA 202248 in ground water are 0.00025 ppb and 0.23 ppb, respectively. The estimated concentrations of isoxaflutole and its metabolite RPA 202248 in ground and surface water were less than EPA's levels of concern. Therefore, EPA concludes with reasonable certainty that residues of isoxaflutole and its metabolite RPA 202248 in drinking water do not contribute significantly to the aggregate cancer human health risk at the present time.

3. *From non-dietary exposure.* There are no registered or proposed residential uses for isoxaflutole.

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.''

EPA does not have, at this time, available data to determine whether isoxaflutole 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, isoxaflutole 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 isoxaflutole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7).

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

1. *Acute risk.* Separate acute dietary endpoints of concern were identified for use in risk assessment for females 13+ as compared to the general population including infants and children. The appropriate MOEs for acute dietary risk assessment are 3,000 for females 13+ and 1,000 for the general population including infants and children. For these acute dietary risk assessments, use of isoxaflutole on corn, anticipated residues were used since corn is a blended commodity. The high end MOE for the subgroup of females, 13+ was 10,000, and is no cause for concern given the need for a MOE of 3,000. The high end MOEs for the remaining populations all exceed 125,000, and

demonstrate no acute dietary concern given the need for a MOE of 1,000 for the general population including infants and children.

DWLOC's were calculated for acute exposures to isoxaflutole in surface and ground water for females 13+, the general population and children (1–6 years old). Relative to an acute toxicity endpoint, the acute dietary food exposure (from the DRES analysis) was subtracted from the ratio of the acute NOEL to the appropriate MOE to obtain the acceptable acute exposure to isoxaflutole in drinking water. Based on these calculations EPA's DWLOC for acute dietary risk is 4,200 ppb for the general population, 1,200 ppb for children (1–6 years old) and 36 ppb for females 13+. For acute dietary risk estimated maximum concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 were used. In surface water, isoxaflutole and its metabolites RPA 202248 and RPA 203328 are estimated to be 0.4 ppb, 2.0 ppb, and 10.0 ppb, respectively. Estimated maximum concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in ground water are 0.00025 ppb, 0.23 ppb and 6.1 ppb, respectively. The maximum estimated concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in surface and ground water were less than EPA's levels of concern for acute exposure in drinking water for the general population, females 13+ and children. Therefore, EPA concludes with reasonable certainty that residues of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in drinking water do not contribute significantly to the aggregate acute human health risk at the present time.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to isoxaflutole from food will utilize 1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to isoxaflutole 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 isoxaflutole residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. There are no proposed residential uses for isoxaflutole. Therefore, short and intermediate aggregate risks are adequately addressed by the chronic aggregate dietary risk assessment.

4. *Aggregate cancer risk for U.S. population.* Using the linear approach and a Q_1* of 0.0114 resulted in an upper bound cancer risk of 9.3×10^{-8}. This linear risk estimate, for use of isoxaflutole on corn, is below EPA's level of concern for life time cancer risk. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure (from the DRES analysis) was subtracted from the ratio of the negligible cancer risk (1×10^{-6}) to the recommended linear low-dose extrapolation (Q_1*, 1.14×10^{-2}) to obtain the acceptable chronic (cancer) exposure to isoxaflutole in drinking water. DWLOCs were then calculated from this acceptable exposure using default body weights (70 kg) and drinking water consumption figures (2 liters). Based on this calculation EPA's DWLOC for carcinogenic risk is 3.1 ppb. Estimated annual mean concentrations of isoxaflutole and its metabolite RPA 202248 in surface water are 0.01 ppb and 1.7 ppb, respectively. Estimated annual average concentrations of isoxaflutole and its metabolites RPA 202248 in ground water are 0.00025 ppb and 0.23 ppb, respectively. The estimated concentrations of isoxaflutole and its metabolite RPA 202248 in ground and surface water were less than EPA's levels of concern. Therefore, EPA concludes with reasonable certainty that no harm will result from aggregate exposure to residues of isoxaflutole and its metabolites.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to isoxaflutole residues.

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of isoxaflutole, 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 data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and post-natal sensitivity.* As described in the Toxicological Endpoints section, Unit II.B. above, EPA has determined that the 10X safety factor to protect infants and children (as required by FQPA) should be retained based on the increased sensitivity of rat and rabbit fetuses as compared to maternal animals following *in utero* exposures in prenatal developmental toxicity studies, the concern for the developmental neurotoxic potential of isoxaflutole, and the lack of assessment of susceptibility of the offspring in functional/neurological development in the standard developmental/reproduction toxicity studies. Thus, a safety factor of 1,000 is required for infants and children, and includes the conventional 100X safety factor and 10X safety factor for FQPA.

2. *Acute risk.* The appropriate MOEs for acute dietary risk assessment is 1,000 for infants and children. For the acute dietary risk assessment, use of isoxaflutole on corn, anticipated residues were used since corn is a blended commodity. The high end MOE for infants and children exceed 125,000, and demonstrate no acute dietary concern given the need for a MOE of 1,000. DWLOC's were then calculated for acute exposures to isoxaflutole in surface and ground water. Relative to an acute toxicity endpoint, the acute

dietary food exposure (from the DRES analysis) was subtracted from the ratio of the acute NOEL to the appropriate MOE to obtain the acceptable acute exposure to isoxaflutole in drinking water. Based on these calculations, EPA's DWLOC for acute dietary risk is 1200 ppb for children (1–6 years old). For acute dietary risk, estimated maximum concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 were used. In surface water, isoxaflutole and its metabolites RPA 202248 and RPA 203328 are estimated to be 0.4 ppb, 2.0 ppb, and 10.0 ppb, respectively. Estimated maximum concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in ground water are 0.00025 ppb, 0.23 ppb and 6.1 ppb, respectively. The maximum estimated concentrations of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in surface and ground water were less than EPA's levels of concern for acute exposure in drinking water for infants and children. Therefore, EPA concludes with reasonable certainty that residues of isoxaflutole and its metabolites RPA 202248 and RPA 203328 in drinking water do not contribute significantly to the aggregate acute risk to infants and children at the present time.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to isoxaflutole from food will utilize 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to isoxaflutole in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* There are no proposed residential uses for isoxaflutole. Therefore, short and intermediate aggregate risks are adequately addressed by the chronic aggregate dietary risk assessment.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to isoxaflutole residues.

III. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants is adequately understood. The major terminal residues of regulatory concern are the parent compound, isoxaflutole and its metabolites, RPA 202248 and RPA 203328. The nature of the residue in ruminants is also considered to be understood. The major terminal residues of regulatory concern are the parent compound, isoxaflutole and it metabolite, RPA 202248.

B. Analytical Enforcement Methodology

For plants, a modification of the gas chromatography/mass spectrometry detection (GC/MSD) method is used involving hydrolysis of residues of isoxaflutole to RPA 202248, conversion of RPA 202248 residues to RPA 203328, and then derivatization of RPA 203328 to a methyl ester for GC analysis. The limit of quantitation (LOQ) is 0.01 ppm. For animals, isoxaflutole is converted to RPA 202248 by base hydrolysis. RPA 202248 is with high performance liquid chromatography. The LOQ is 0.01 ppm for milk and eggs; 0.40 ppm for beef and poultry liver, 0.20 ppm for beef and poultry muscle and fat; and 0.20 ppm for beef kidney.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

Residues of isoxaflutole and its metabolites are not expected to exceed the established tolerance levels in the raw agricultural commodities or on animal commodities as a result of this use.

D. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits for residues of isoxaflutole and its metabolites in corn.

E. Rotational Crop Restrictions

An accumulation study on confined rotational crops was submitted. Isoxaflutole was applied to outdoor plots at a rate of 200 g a.i./hectare (0.18 lbs. ai/A) using preplant incorporation or preemergence application to separate plots. Lettuce, sorghum and radishes were planted 34 days after treatment; mustard, radishes and wheat were planted 123 days after treatment; and lettuce, sorghum and radishes were planted 365 days after treatment. All crops were harvested when mature. Immature samples of wheat and sorghum forage, radish roots and foliage and mustard or lettuce were also taken. The highest residue levels were seen in 34 days after treatment sorghum forage (0.13–0.24 ppm).

The petitioner has provided stability data only for the parent and two metabolites instead of investigating the stability of the metabolite profile present in the samples at harvest. Further, the data submitted indicate that isoxaflutole was extensively metabolized to RPA 202248 and RPA 203328 during storage. As RPA 202248 and RPA 203328 were the only metabolites identified and these metabolites are determined in the proposed enforcement method, the petitioner will not be required to repeat the confined rotational crop study. Due to uncertainties in the composition of the samples at harvest, EPA will base its conclusions from this study on the total radioactive residue. The results of this study show that residues are 0.01 ppm or greater in all crops at the 12–month plantback interval. Field accumulation studies in rotational crops are required to determine the appropriate plantback intervals and/or the need for rotational crop tolerances. Until limited field trial data are submitted, reviewed and found acceptable, crop rotation restrictions are required. The end-use product label should contain a statement limiting the planting of rotational crops to 6 months after application.

IV. Conclusion

Therefore, tolerances are established for combined residues of isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolites RPA 202248 and RPA 203328, calculated as the parent compound, in field corn, grain at 0.20 ppm; field corn, fodder, at 0.50 ppm, field corn, forage at 1.0 ppm; and tolerances are established for combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolite 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropyl propan-1,3-dione, calculated as the parent compound, in or on the meat of cattle, goat, hogs, horses, poultry, and sheep at 0.20 ppm, liver of cattle, goat, hogs, horses and sheep at 0.50 ppm, meat byproducts (except liver) of cattle, goat, hogs, horses, and sheep at 0.1 ppm, fat of cattle, goat, hogs, horses, poultry, and sheep at 0.20 ppm, liver of poultry at 0.3 ppm, eggs at 0.01 ppm and milk at 0.02 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance

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

Any person may, by November 23, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300713] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

B. Executive Order 12875

Under Executive Order 12875, entitled Enhancing Intergovernmental Partnerships (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation

with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: September 11, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding § 180.537 to read as follows:

§ 180.537 Isoxaflutole; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolites 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropyl propan-1,3-dione (RPA 202248) and 2-methylsulphonyl-4-trifluoromethyl benzoic acid (RPA 203328), calculated as the parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million
Field corn, fodder	0.50
Field corn, forage	1.0
Field corn, grain	0.20

(2) Tolerances are established for combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolite 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropyl propan-1,3-dione (RPA 202248), calculated as the parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.20
Cattle, liver	0.50
Cattle, meat	0.20
Cattle, meat byproducts (except liver)	0.10
Eggs	0.01
Goat, fat	0.20
Goat, liver	0.50
Goat, meat	0.20
Goat, meat byproducts (except liver)	0.10
Hogs, fat	0.20
Hogs, liver	0.50
Hogs, meat	0.20
Hogs, meat byproducts (except liver)	0.10
Horses, fat	0.20
Horses, liver	0.50
Horses, meat	0.20
Horses, meat byproducts (except liver)	0.10
Milk	0.02
Poultry, fat	0.20
Poultry, liver	0.30
Poultry, meat	0.20
Sheep, fat	0.20
Sheep, liver	0.50
Sheep, meat	0.20
Sheep, meat byproducts (except liver)	0.10

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

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

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

[FR Doc. 98–25449 Filed 9–22–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300712; FRL–6028–8]

RIN 2070–AB78

Flufenacet; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for indirect or inadvertent residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety hereafter referred to as flufenacet, the proposed common chemical name, in or on certain raw agricultural commodities when present therein as a result of the application of flufenacet to field corn and soybeans as a herbicide. Bayer Corporation requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170). The tolerance will expire on April 30, 2003.

DATES: This regulation is effective September 23, 1998. Objections and requests for hearings must be received by EPA on or before November 23, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300712],

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–300712], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300712]. 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: James A. Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 23,1998 (63 FR 34179)(FRL–5795–1), 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 6F4631) for tolerance by Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120–0013. This notice included a summary of the petition prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.527 be amended by establishing tolerances for inadvertent residues of the herbicide, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide, flufenacet, and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the raw agricultural commodities of Crop Group 15 (cereal grains), Crop Group 16 (forage, stover and hay of cereal grains), Crop Group 17 (grass forage, and grass hay), alfalfa forage, alfalfa hay, alfalfa seed, clover forage, and clover hay at 0.1 parts per million (ppm) when present therein as a result of the application of flufenacet to field corn and soybeans. This tolerance will expire on April 30, 2003.

I. Risk Assessment and Statutory Findings

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. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

A. Toxicity

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

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

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

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure

that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

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

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

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

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

B. Aggregate Exposure

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

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants 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 flufenacet and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for indirect or inadvertent residues of flufenacet and its metabolites in certain raw agricultural commodities at 0.1 ppm when present therein as a result of the application of flufenacet to field corn and soybeans as a herbicide. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows:

A. Toxicological Profile

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

1. A rat acute oral study with a LD_{50} of 1,617 milligrams (mg)/kilogram (kg) for males and 589 mg/kg for females.

2. A 84–day rat feeding study with a No Observed Effect Level (NOEL) less than 100 ppm (6.0 mg/kg/day) for males and a NOEL of 100 ppm (7.2 mg/kg/day) for females and with a Lowest Observed Effect Level (LOEL) of 100 ppm (6.8 mg/kg/day) for males based on suppression of thyroxine (T4) level and a LOEL of 400 ppm (28.8 mg/kg/day) for females based on hematology and clinical chemistry findings.

3. A 13–week mouse feeding study with a NOEL of 100 ppm (18.2 mg/kg/day for males and 24.5 mg/kg/day) for females and a LOEL of 400 ppm (64.2 mg/kg/day for males and 91.3 mg/kg/day) for females based on histopathology of the liver, spleen and thyroid.

4. A 13–week dog dietary study with a NOEL of 50 ppm (1.70 mg/kg/day for males and 1.67 mg/kg/day for females) and a LOEL of 200 ppm (6.90 mg/kg/day for males and 7.20 mg/kg/day for females) based on evidence that the biotransformation capacity of the liver has been exceeded, (as indicated by increase in LDH, liver weight, ALK and hepatomegaly), globulin and spleen

pigment in females, decreased T4 and ALT values in both sexes, decreased albumin in males, and decreased serum glucose in females.

5. A 21–day rabbit dermal study with the dermal irritation NOEL of 1,000 mg/kg/day for males and females and a Systemic NOEL of 20 mg/kg/day for males and 150 mg/kg/day for females and a Systemic LOEL of 150 mg/kg/day for males and 1,000 mg/kg/day for females based on clinical chemistry data (decreased T4 and FT4 levels in both sexes) and centrilobular hepatocytomegaly in females.

6. A 1–year dog chronic feeding study with a NOEL was 40 ppm (1.29 mg/kg/day in males and 1.14 mg/kg/day in females) and a LOEL of 800 ppm (27.75 mg/kg/day in males and 26.82 mg/kg/day in females) based on increased alkaline phosphatase, kidney, and liver weight in both sexes, increased cholesterol in males, decreased T2, T4 and ALT values in both sexes, and increased incidences of microscopic lesions in the brain, eye, kidney, spinal cord, sciatic nerve and liver.

7. A rat chronic feeding/carcinogenicity study with a NOEL less than 25 ppm (1.2 mg/kg/day in males and 1.5 mg/kg/day in females) and a LOEL of 25 ppm (1.2 mg/kg/day in males and 1.5 mg/kg/day in females) based on methemoglobinemia and multi-organ effects in blood, kidney, spleen, heart, and uterus. Under experimental conditions the treatment did not alter the spontaneous tumor profile.

8. In a mouse carcinogenicity study the NOEL was less than 50 ppm (7.4 mg/kg/day) for males and the NOEL was 50 ppm (9.4 mg/kg/day) for females and the LOEL was 50 ppm (7.4 mg/kg/day for males) and the LOEL was 200 ppm (38.4 mg/kg/day) for females based on cataract incidence and severity. There was no evidence of carcinogenicity for flufenacet in this study.

9. A two-generation rat reproduction study with a parental systemic NOEL of 20 ppm (1.4 mg/kg/day in males and 1.5 mg/kg/day in females) and a reproductive NOEL of 20 ppm (1.3 mg/kg/day) and a Parental Systemic LOEL of 100 ppm (7.4 mg/kg/day in males and 8.2 mg/kg/day in females) based on increased liver weight in F_1 females and hepatocytomegaly in F_1 males and a reproductive LOEL of 100 ppm (6.9 mg/kg/day) based on increased pup death in early lactation (including cannibalism) for F_1 litters and the same effects in both F_1 and F_2 pups at the high dose level of 500 ppm (37.2 mg/kg/day in F_1 males and 41.5 mg/kg/day in F_1 females, respectively).

10. A rat developmental study with a maternal NOEL of 25 mg/kg/day and with a maternal LOEL of 125 mg/kg/day based on decreased body weight gain initially and a developmental NOEL of 25 mg/kg/day and a developmental LOEL of 125 mg/kg/day based on decreased fetal body weight, delayed development mainly delays in ossification in the skull, vertebrae, sternebrae, and appendages, and an increase in the incidence of extra ribs.

11. A rabbit developmental study with a maternal NOEL of 5 mg/kg/day and a maternal LOEL of 25 mg/kg/day based on histopathological findings in the liver and a developmental NOEL of 25 mg/kg/day and a developmental LOEL of 125 mg/kg/day based on increased skeletal variations.

12. An acute rat neurotoxicity study with a NOEL less than 75 mg/kg/day and a LOEL of 75 mg/kg/day based on decreased motor activity in males.

13. A rat subchronic neurotoxicity study with a NOEL of 120 ppm (7.3 mg/kg/day in males and 8.4 mg/kg/day in females) and a LOEL of 600 (38.1 mg/kg/day in males and 42.6 mg/kg/day in females) based on microscopic lesions in the cerebellum/medulla and spinal cords.

14. Flufenacet was negative for mutagenic/genotoxic effects in a Gene mutation/*In vitro* assay in bacteria, a Gene mutation/*In vitro* assay in chinese hamster lung fibroblasts cells, a Cytogenetics/*In vitro* assay in chinese hamster ovary cells, a Cytogenetics/*In vivo* mouse micronucleus assay, and an *In vitro* unscheduled DNA synthesis assay in primary rat hepatocytes.

15. A rat metabolism study showed that radio-labeled flufenacet was rapidly absorbed and metabolized by both sexes. Urine was the major route of excretion at all dose levels and smaller amounts were excreted via the feces.

16. A 55–day dog study with subcutaneous administration of thiadone flufenacet metabolite supports the hypothesis that limitations in glutathione interdependent pathways and antioxidant stress result in metabolic lesions in the brain and heart following flufenacet exposure.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA has concluded that a risk estimate is required based on the LOEL of 75 mg/kg/day established in the Acute Neurotoxicity Study. For this risk assessment a Margin of Exposure (MOE) of 900 is required based on 10X for inter-species extrapolation, 10X for intra-species variation, 3X required to protect infants and children, and 3X for the use of a LOEL.

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

3. *Chronic toxicity*. EPA has established the RfD for flufenacet at 0.004 milligrams/kilogram/day (mg/kg/day). This RfD is based on LOEL of 1.2 mg/kg/day in the combined chronic toxicity/carcinogenicity study in rats with a 300-fold safety factor to account for inter-species extrapolation (10X), intra-species variability (10X), lack of a NOEL in a critical study (3X). An extra safety factor to protect infants and children is not needed because the NOEL used in deriving the RfD is based on Methemoglobinemia and multi-organ effects (not developmental or neurotoxic effects) in adult rats after chronic exposure and thus are not relevant for enhanced sensitivity to infants and children.

4. *Carcinogenicity*. The Health Effects Division RfD/Peer Review Committee has classified flufenacet as ''not likely'' to be carcinogenic to humans based on the lack of carcinogenicity in rats and mice.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.527 (63 FR 17692)(FRL–5782–9)) for the combined residues of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety, in or on the raw agricultural commodities field corn and soybeans. There is no reasonable expectation of residues of flufenacet or its metabolites occurring in meat, milk, poultry, or eggs. Risk assessments were conducted by EPA to assess dietary exposures from flufenacet 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. An acute dietary risk assessment was conducted for flufenacet and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety based on the LOEL of 75.0 mg/kg/day from the acute neurotoxicity study. The acute analysis estimates the distribution of single-day exposures for the overall U.S. population and certain subgroups. The Margin of Exposure (MOE) is a measure of how closely the exposure comes to the LOEL and is calculated as a ratio of the LOEL to the exposure. The calculated MOE for acute risk of

flufenacet and its metabolites for the General U.S. population was 50,000 and for the most exposed subgroups, Infants (< 1 year old) and Children (1–6 years old), the MOE was 37,500. These figures are above the MOE of 900 which is the level of concern based on interspecies extrapolation (10X), intraspecies variability (10X), the lack of a NOEL in the acute neurotoxicity study (3X), and providing additional protection to infants and children (3X).

ii. *Chronic exposure and risk.* The Reference Dose (RfD) for flufenacet is 0.0004 mg/kg/day. This value is based on the systemic LOEL of 1.2 mg/kg/day in the rat chronic feeding/carcinogenicity study with a 300–fold safety factor to account for interspecies extrapolation (10X), intraspecies variability (10X), and the lack of a NOEL in the rat chronic feeding/carcinogenicity study (3X).

A DRES chronic exposure analysis was conducted using tolerance levels for field corn, soybeans and rotated crops and percent crop treated information to estimate dietary exposure for the general population and 22 subgroups. The chronic analysis showed that exposures from the tolerances in or on field corn, soybeans and rotated crops for non-nursing infants (the subgroup with the highest exposure) would be 6.5% of the Reference Dose (RfD). The exposure for the general U.S. population would be 2.6% of the RfD.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (a) That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (b) that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used.

The Agency used percent crop treated (PCT) information as follows. A routine chronic dietary exposure analysis for flufenacet was based on 16% of field corn crop treated and 26% of the soybean crop treated. The Agency believes that the three conditions listed above have been met. With respect to Unit II. B.1.ii.(a), EPA finds that the (PCT) information described above for flufenacet used on field corn is reliable and has a valid basis. Bayer Corporation's flufenacet production capacity does not exceed that needed to treat 16% of the total corn and 26% of the total soybean acres planted in the United States. at the average application rates for products containing flufenacet. Before the petitioner can increase production of product, permission from the Agency must be obtained. As to Unit II.B.1.ii.(b) and (c), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which flufenacet may be applied in a particular area.

2. *From drinking water.* Drinking water estimated concentrations (DWECs) for groundwater (parent flufenacet and degradate thiadone) were calculated from the monitoring data to be 0.18 parts per billion (ppb) for acute and 0.03 ppb for chronic concentrations. The DWECs for surface water based on the computer models Pesticide Root Zone Method (PRZM) 2.3 and EXAMS 2.97.5 were calculated to be 17.0 ppb for the acute concentration and 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone).

3. *From non-dietary exposure.* There are no non-food uses of flufenacet currently registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether flufenacet has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Flufenacet is structurally a thiadiazole. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, flufenacet 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 flufenacet has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* The acute endpoint for flufenacet and its metabolites is 75 mg/kg/day. The acute exposure for flufenacet and its metabolites is 0.0015 mg/kg/day for the general U.S. population and 0.002 mg/kg/day for children 1-6 years of age. The drinking water level of concerns (DWLOCs) for acute exposure to flufenacet in drinking water calculated for U.S. population was 2.87 ppm and for children (1–6 years old) was 813 ppb. These figures were calculated as follows. First, the acceptable acute exposure flufenacet in drinking water was obtained by subtracting the acute dietary food exposures from the ratio of the acute LOEL to the acceptable MOE for aggregate exposure. Then, the DWLOCs were calculated by multiplying the acceptable exposure to flufenacet in drinking water by estimated body weight (70 kg for adults, 10 kg for children) and then dividing by the estimated daily drinking water consumption (2 l/day for adults, 1 l/day for children). The Agency's SCI-Grow model estimates peak levels of flufenacet and its metabolite thiadone in groundwater to be 15.3 ppb. PRZM/EXAMS estimates peak levels of flufenacet and its metabolite thiadone in surface water to be 17 ppb. EPA's acute drinking water level of concern are well above the estimated exposures for flufenacet in water for the U.S. population and subgroup with highest estimated exposure.

2. *Chronic risk.* The chronic endpoint for flufenacet is 0.0004 mg/kg/body weight(bwt)/day. Using tolerance levels and percent crop treated, the residues in the diet (food only) are calculated to be 0.0001 mg/kg bwt/day or 2.6% of the RfD for the general U.S. population and 0.00023 mg/kg bwt/day or 5.8% of the RfD for children aged 1–6. Therefore, residues of flufenacet in drinking water

may comprise up to 0.0039 mg/kg bwt/day (0.0040-0.0001 mg/kg bwt/day) for the U.S. population and 0.0038 mg/kg bwt/day (0.0040-0.00023 mg/kg bwt/day) for children 1–6 years old (the highest exposed group from residues of flufenacet in both food and water).

The drinking water level of concerns (DWLOCs) for chronic exposure to flufenacet in drinking water calculated for U.S. population was 136 ppb assuming that an adult weighs 70 kg and consumes a maximum of 2 liters of water per day and for children (1–6 years old) the DWLOC was 37.7 ppb assuming that a child weighs 10 kg and consumes a maximum of 1 liter of water per day.

The drinking water estimated concentration (DWECs) for groundwater (parent flufenacet and degradate thiadone) calculated from the monitoring data is 0.03 ppb for chronic concentrations which does not exceed DWLOC of 37.7 ppb for children (1–6 years old). The DWEC for surface water based on the computer models PRZM 2.3 and EXAMS 2.97.5 was calculated to be 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone) which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old).

EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to flufenacet residues.

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

1. *Safety factor for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of flufenacet, 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. Although there is no indication of increased sensitivity to young rats or rabbits following pre-and/or post-natal exposure to flufenacet in the standard developmental and reproductive toxicity studies, an additional developmental neurotoxicity study, which is not normally required, is needed to access the susceptibility of the offspring in functional/neurological development. Therefore, EPA has required that a developmental neurotoxicity study be conducted with flufenacet and a three fold safety factor for children and infants will be used in the aggregate dietary acute and chronic risk assessments. Although there is no indication of additional sensitivity to young rats or rabbits following pre-and/or post-natal exposure to flufenacet in the developmental and reproductive toxicity studies; the Agency concluded that the FQPA safety factors should not be removed but instead reduced because: (a) There was no assessment of susceptibility of the offspring in functional/neurological development and reproductive studies, (b) there is evidence of neurotoxicity in mice, rats, and dogs, (c) there is concern for thyroid hormone disruption.

III. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in field corn, soybeans, rotational crops, and livestock is adequately understood. The residues of concern for the tolerance expression are parent and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use on field corn and soybeans.

B. Analytical Enforcement Methodology

An adequate analytical method, gas chromatography/mass spectrometry with selected ion monitoring, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-5229).

C. Endocrine Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effect . . . '' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. Based on the toxicological findings for flufenacet relating to endocrine disruption effects, flufenacet should be considered as a candidate for evaluation as an endocrine disrupter when the criteria are established.

D. Magnitude of Residues

Based on the results of animal metabolism studies it is unlikely that significant residues would occur in secondary animal commodities from the use on corn and soybeans.

Due to the following data gaps: (1) Data regarding the stability of the glucoside conjugate and the malonylalanine conjugate of thiadone and subsequent bioavailability of any release free thiadone or thiadone glucuronide; (2) a revised analytical method; (3) validation of the product chemistry enforcement analytical methods; (4) additional rotational crop data; (5) additional water monitoring data; and (6) a developmental neurotoxicity study; EPA believes it is inappropriate to establish permanent tolerances for the uses of flufenacet at this time. EPA believes that the existing data support time-limited tolerances to April 30, 2003. The nature of the residue in plants is adequately understood for the purposes of these time-limited tolerances.

E. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for flufenacet.

F. Rotational Crop Restrictions

Tolerances for indirect or inadvertent residues of flufenacet established by this regulation will cover any residues in the crops planted in treated soybean and corn fields in accordance with the restrictions that appear on the labeling proposed for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

IV. Conclusion

Therefore, the tolerances are established for indirect or inadvertent residues of the herbicide, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on Crop Group 15 (cereal grains), Crop Group 16 (forage, stover and hay of cereal grains), Crop Group 17 (grass forage, and grass hay), alfalfa forage, alfalfa hay, alfalfa seed, clover forage, and clover hay at 0.1 ppm when present therein as a result of the application of flufenacet to field corn and soybeans as a herbicide. These time-limited tolerances will expire on April 30, 2003

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 November 23, 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 Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300712] (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

A. Certain Acts and Executive Orders

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

B. Executive Order 12875

Under Executive Order 12875, entitled Enhancing Intergovernmental Partnerships (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule

does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: September 10, 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 § 180.527, by adding paragraph (d) to read as follows:

§ 180.527 N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; tolerances for residues.

* * * * *

(d) *Indirect or inadvertent residues.* (1) Time-limited tolerances are established for indirect or inadvertent residues of the herbicide, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following raw agricultural commodities from application of this herbicide to the raw agricultural commodities listed in paragraph (a)(1) of this section:

Commodity	Parts per million	Expiration/ Revocation Date
Alfalfa, forage	0.1	4/30/03
Alfalfa, hay	0.1	4/30/03
Alfalfa, seed	0.1	4/30/03
Clover, forage	0.1	4/30/03
Clover, hay	0.1	4/30/03
Crop Group 15 (cereal grains)	0.1	4/30/03
Crop Group 16 (forage, stover and hay of cereal grains)	0.1	4/30/03
Crop Group 17 (grass forage, and grass hay)	0.1	4/30/03

(2) Residues in these commodities not in excess of the established tolerance resulting from the use described in paragraph (d)(1) of this section remaining after expiration of the time-limited tolerance will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the above regulation.

[FR Doc. 98–25451 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 98–176]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses. In this *C Block Fourth Report and Order*, the Commission resolves its proposals in its *C Block Further Notice of Proposed Rule Making*. In so doing, the Commission sets forth the rules that will govern reauctions of C block spectrum surrendered to the Commission pursuant to the *C Block Second Report and Order* and the *C Block Order on Reconsideration of the Second Report and Order*, as well as any other C block spectrum available for reauction.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Fourth Report and Order*, in WT Docket No. 97–82, adopted July 27, 1998 and released August 19, 1998, is available for inspection and copying during

normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

Synopsis of Fourth Report and Order

I. Background

A. C. Block Proceedings

1. Consistent with Congress' mandate to promote the participation of small business and other ''designated entities'' in the provision of spectrum-based services, the Commission limited eligibility in the initial C block auctions to entrepreneurs and small businesses. The C block auction concluded on May 6, 1996, and the subsequent reauction of defaulted licenses concluded on July 16, 1996, with a total of 90 bidders winning 493 licenses. The winning bidders were permitted to pay 90 percent of their net bid price over the ten-year license term.

2. The Commission decided in the *C Block Second Report and Order*, 62 FR 55348 (October 24, 1997) (as modified by the *C Block Order on Reconsideration of the Second Report and Order* (''*C Block Reconsideration Order*''), 63 FR 17111 (April 8, 1998)) to allow each C block licensee to elect one of four options for each of its licenses: resumption of payments under the licensee's original installment payment plan, disaggregation, amnesty, or prepayment. The array of choices was intended to provide limited relief to financially troubled licensees without harming the integrity of the auction process. The Commission required C block licensees to file a written election notice, specifying whether they would resume payments under the terms of the original installment payment plan or would proceed under one of the alternative options. Included with the *C Block Second Report and Order* was the *C Block Further Notice of Proposed Rule Making* (''*C Block Further Notice*''), 62 FR 55375 (October 24, 1997), in which the Commission sought comment on proposed changes to the C block rules to govern the reauction of surrendered spectrum in the C block. The Wireless Telecommunications Bureau (the ''Bureau'') announced by public notice on April 17, 1998 an election date of June 8, 1998 and a payment resumption date for C block licensees of July 31, 1998.

B. Part 1 Proceedings

3. On December 31, 1997, the Commission released a *Third Report and Order and Second Further Notice of Proposed Rule Making*, 63 FR 2315 (January 15, 1998), (*Part 1 Third Report and Order*), which adopts general competitive bidding rules to supplant, wherever practicable, auction rules that were specific to each auctionable service or class of service. The Commission's purpose was to streamline competitive bidding regulations, eliminate unnecessary rules, and increase the overall efficiency and consistency of the auction process. In the process, the Commission resolves many of the issues that had been raised in the *C Block Further Notice*. Accordingly, future C block reauctions will adhere to Part 1 rules, as amended, to the extent applicable. Where the Commission's rules in Part 1 are not determinative, bidders will continue to look to Part 24 rules, as amended in this *C Block Fourth Report and Order*.

II. Licenses to be Reauctioned

A. Background

4. In the *C Block Further Notice*, the Commission proposed that it reauction: (1) all licenses representing C block spectrum returned pursuant to the disaggregation, prepayment, or amnesty options; and (2) all C block licenses held as a result of defaults. The Commission believed that including all available licenses in a reauction would allow it fairly and efficiently to facilitate the rapid provision of service to the public and also would allow for the most efficient aggregation of licenses.

B. Discussion

5. The Commission adopts its proposal in the *C Block Further Notice* to reauction all available C block licenses held by the Commission. Several commenters agree, and no commenter disagrees, with this proposal. The Commission's recent modifications to the C block payment options in the *C Block Reconsideration Order* provide no reason to deviate from this basic approach. Any C block license that becomes available for reauction after the next C block reauction will be reauctioned in a subsequent reauction as soon as practicable.

6. Some Commenters argue that the next reauction should include licenses owned by entities that have filed for bankruptcy protection. One commenter maintains that if licenses held by C block bankruptcy petitioners are excluded from the next reauction, the uncertainty surrounding the fate of those licenses will make business planning difficult for other C block entities. Another commenter urges the Commission to amend its rules in order to be able to revoke automatically the licenses of licensees that have declared bankruptcy.

7. In the *Part 1 Third Report and Order*, the Commission addressed the issue of whether it can immediately reclaim and reauction licenses held by a licensee that declares bankruptcy. As the Commission stated there, it is confident of its position that the Commission can reclaim licenses quickly since the Commission conditions licenses upon payment and requires automatic cancellation in the event of nonpayment. Nevertheless, until controlling precedent is established by the courts, or legislation addressing conflicting rights is enacted, a delay in the reauction of licenses in bankruptcy litigation may occur. The pendency of bankruptcy proceedings involving certain C block licenses makes it impossible for the Commission to resolve at this time whether those licenses will be available in the next C block reauction. The Commission does not intend, however, to delay a reauction of other available C block licenses because of such litigation. Such a delay easily could become the first in an interminable series of delays, undermining the Commission's primary goal of getting licenses into the hands of parties that will provide service to the public and competition in the market. For this reason, the Commission believes that the public will realize a greater benefit if the Commission auctions all available C block spectrum as soon as practicable than the public will realize if the Commission postpones a reauction until it has resolved all issues connected with every bankruptcy proceeding. Licenses made available in any bankruptcy proceeding will be included in the next appropriate reauction.

III. Eligibility for Participation

A. Background

8. In the *C Block Second Report and Order*, the Commission decided that the public interest considerations mandated by Section 309(j) of the Communications Act, 47 U.S.C. 309(j), would be furthered by applying to a C block reauction the same eligibility rules that had been used for the original C block auction. The Commission, therefore, deemed eligible to participate in a C block reauction: (1) all applicants qualifying, as of the start of the reauction, as entrepreneurs under the Commission's rules; and (2) all entities that had filed a short-form application (FCC Form 175) to participate in, and had been eligible to participate in, the original C block auction. Accordingly,

the Commission decided that all entities that had participated in the original C block auction would be eligible to participate in the next reauction; however, the Commission prohibited C block licensees that return spectrum pursuant to the disaggregation or prepayment options from reacquiring their returned spectrum for a period of two years from the start date of the next C block reauction. This prohibition extended to qualifying members of the licensee's control group, and their affiliates.

9. In the *C Block Further Notice*, the Commission sought comment on whether it should restrict participation in the C block reauction to entities that have not defaulted on any payments owed the Commission. The Commission asked for comment on possible alternatives to excluding defaulters from participation in a reauction. One possibility was for the Commission to have an expedited hearing on a winning defaulter's financial qualifications, allowing the defaulter to attempt to rebut a presumption that it is not financially qualified. Another idea was for the Commission to require defaulters to submit either more detailed financial information at the application stage or a larger upfront payment. The Commission observed that C block licensees would not be in default simply by virtue of having elected the alternative payment options established in the *C Block Second Report and Order*.

10. In the *C Block Reconsideration Order*, the Commission modified the alternative payment options to, *inter alia*, divide the amnesty option into two categories: ''pure amnesty'' and ''amnesty/prepayment.'' The Commission decided that, while licensees returning spectrum pursuant to the ''pure amnesty'' option would not be prohibited from reacquiring their returned spectrum, licensees returning spectrum pursuant to the ''amnesty/prepayment'' option would have to forgo, for a period of two years from the start date of next C block reauction, eligibility to reacquire their spectrum. This prohibition extends to qualifying members of a licensee's control group, and their affiliates. In addition, the Commission retained the two-year prohibition on the reacquisition of spectrum returned pursuant to the disaggregation or prepayment options established in the *C Block Second Report and Order*. The Commission also responded to petitions for reconsideration of the *C Block Second Report and Order* which disagreed with a comment filed in response to the *C Block Further Notice*, asking that the Commission open eligibility for a reauction to ''all qualified bidders.'' The Commission disagreed with that proposal, affirming its ruling in the *C Block Second Report and Order* to limit eligibility for participation in C block reauctions to applicants meeting the Commission's definition of entrepreneur.

B. Discussion

11. The Commission retains the C block eligibility parameters established in the *C Block Second Report and Order*. The following entities will be eligible for C block reauctions: (1) entities that filed an FCC Form 175 short-form application for, and were eligible for, the original C block auction and (2) entities qualifying as entrepreneurs under Section 24.709 of the Commission's rules, as of the deadline for the filing of short-form applications for the reauction. While, under these rules, entities that participated in the original C block reauction will be eligible for C block reauctions, the Commission retains the eligibility restriction established in the *C Block Second Report and Order*, as modified in the *C Block Reconsideration Order*, for licensees that surrender licenses pursuant to the disaggregation, prepayment, and/or ''amnesty/prepayment'' options. Such licensees will be ineligible to reacquire their surrendered licenses through reauction or by any other means for a period of two years from the start date of the next C block reauction.

12. The Commission's decision in the *C Block Second Report and Order* to impose a two-year bar on the eligibility of licensees to reacquire licenses they return pursuant to the disaggregation and prepayment options sparked comment. A commenter wants all licensees to be permitted to participate in a reauction, regardless of their election of an alternative payment option. Another commenter, on the other hand, urges the Commission to bar licensees electing the amnesty option from bidding on their surrendered spectrum in a reauction. The Commission dealt with both of these requests in the *C Block Reconsideration Order*. As the Commission stated there, it believes that the modified approach the Commission adopted in that order addresses the concerns of both of these parties. Therefore, the Commission affirms the decision it made in that order. Another commenter asks that the qualifications of licensees electing any of the alternative payment options be subjected to a higher level of scrutiny regarding their financial qualification to deal with the requirements of additional licenses. The Commission believes that a higher level of scrutiny is not warranted. As noted above, C block licensees that have elected alternative payment options are not defaulters. Moreover, all applicants for C block reauctions will be required to pay a substantial upfront payment, which should help ensure that only serious, qualified bidders participate.

13. Because the Commission is not planning to include C block licenses that remain involved in bankruptcy proceedings in the next C block reauction, there likely will be more than one reauction for C block. Accordingly, the Commission must evaluate whether to allow applicants for and participants in the original C block auction to remain eligible to participate in all future C block reauctions, regardless of whether they still qualify as entrepreneurs under the Commission's rules at the deadline for filing a short-form application. While the Commission believes that flexibility in this regard is appropriate, it also believes that fairness to other future bidders prevents its providing an open eligibility standard indefinitely. Consequently, in order to be eligible for any C block reauction that begins more than two years from the start date of the next C block reauction, an applicant must qualify as an entrepreneur under the Commission's rules at the time of filing its short-form application.

14. Several parties commented on the eligibility rules established in *C Block Second Report and Order*, with most commenters supporting the Commission's decision. As mentioned, however, one commenter urges the Commission not to limit a reauction just to entrepreneurs but rather to allow ''all qualified bidders'' to participate. That commenter argues that a restricted auction skews the marketplace and that the increasing level of competition in the wireless arena makes it less likely that small business entrepreneurs can survive. According to the commenter, the Commission could enable small businesses to bid competitively by providing them bidding credits and permitting them to partition and disaggregate 30 MHz licenses after the auction. No other commenter supports these views, and several parties oppose them. As stated, the Commission recently denied this request in the *C Block Reconsideration Order*, and the record in this proceeding provides the Commission with no basis to alter its decision.

15. The Commission's FCC Form 175 short-form application for all auctions requires applicants to certify that they are not in default on any Commission licenses and that they are not

delinquent on any non-tax debt owed to any Federal agency. The Commission believes that, in order to preserve the integrity of C block reauctions and to support its ongoing effort to streamline the licensing process, it is necessary to limit participation in C block reauctions to entities that can make the certification. Consequently, to be eligible to participate in any future C block reauction, an applicant must certify on its short-form application that it is not in default on any Commission licenses and not delinquent on any non-tax debt owed to any Federal agency. At the same time, the Commission believes that past business misfortunes do not inevitably preclude an entity from being able to meet its present and future responsibilities as a Commission licensee. Therefore, the Commission will allow ''former defaulters,'' i.e., applicants that have defaulted or been delinquent in the past, but have since paid all of their outstanding non-Internal Revenue Service Federal debts and all associated charges or penalties, to be eligible to participate in C block reauctions, provided that they are otherwise qualified.

IV. Application of General Auction Rules to C Block

A. Background

16. The Commission tentatively concluded in the *C Block Further Notice* that the next reauction will be conducted in conformity with the general competitive bidding rules in Part 1, Subpart Q, of the Commission's rules, as revised, consistent with other auctions for wireless services. The Commission also proposed to use Part 24 rules to the extent they do not conflict with the Commission's Part 1 rules or with rules specifically adopted or proposed in the *C Block Second Report and Order* and *C Block Further Notice*. The Commission sought comment on the application of Part 1 rules to the following aspects of the C block reauction: competitive bidding mechanisms; bidding application and certification procedures and prohibition of collusion; submission of upfront payment, down payment and filing of long-form applications; procedures for filing long-form applications; and procedures regarding license grant, denial, and default.

17. Subsequently, in the *Part 1 Third Report and Order*, the Commission adopted general competitive bidding rules that apply to each auctionable service or class of service, including the C block of broadband personal communications services. In that order, the Commission addressed, and in some cases completely or partly resolved, the issues raised in the *C Block Further Notice*, except for the two issues discussed above in this *C Block Fourth Report and Order*, i.e., licenses to be reauctioned and eligibility for participation in C block reauctions. The Commission also clarified that specific auction procedures not established by its rules will be established by the Bureau in advance of each auction, pursuant to public notice and comment. However, the Commission received sufficient comment in response to the *C Block Further Notice* to make further comment unnecessary for many of the C block reauction procedures. Consequently, in the remainder of this *C Block Fourth Report and Order*, the Commission reviews the issues raised in the *C Block Further Notice* and addressed in the *Part 1 Third Report and Order*. Where necessary, the Commission clarifies the effect of the *Part 1 Third Report and Order* on the rules for future C block reauctions. In cases where C block auction rules are the same as or parallel to F block auction rules, the Commission also clarifies the effect of the *Part 1 Third Report and Order* on the rules for F block reauctions.

B. Discussion

1. Competitive Bidding Design

18. The Commission tentatively concluded in the *C Block Further Notice* that it would award all licenses and spectrum in the C block reauction by means of a simultaneous multiple-round electronic auction. This type of auction would facilitate any aggregation strategies of bidders and provide the most information about license values during the auction. The Commission further tentatively concluded that telephonic bidding (instead of electronic bidding) should be permitted only in exceptional circumstances, and that those circumstances would be determined by the Bureau in each instance. This tentative conclusion was prompted by the Commission's desire to conduct the reauction quickly, as well as by recent improvements in its electronic bidding software. In the *Part 1 Third Report and Order*, the Commission clarified that the Bureau, consistent with its existing delegated authority, would seek comment in advance of each auction on auction-specific issues, including the competitive bidding design of the auction. The Commission notes, as previously mentioned, that there likely will be more than one C block reauction.

19. Even though the Bureau normally would determine the bidding design of an auction, because no commenter opposed the proposal for a simultaneous multiple-round auction, the Commission believes that the simultaneous multiple-round design is appropriate for the next C block reauction. If, however, in preparing for a C block reauction, the Bureau determines that another design might be warranted, it remains within the Bureau's authority to seek comment on, and to modify, the competitive bidding design of the reauction. The Commission received two comments addressing the subject of telephonic bidding, with one party supporting the proposal that telephonic bidding be permitted only in exceptional circumstances and the other party asking that telephonic bidding remain an option. The Commission has decided, on further consideration, to permit the use of telephonic bidding as an alternative to electronic bidding in the next C block reauction. In the recent local multipoint distribution service (LMDS) auction (Auction No. 17), telephonic bidding was a viable option; and telephonic bidding is being made available to bidders in the upcoming Phase II 220 MHz service auction (Auction No. 18). The Commission believes that allowing parties to use either electronic or telephonic bidding, as their circumstances dictate, will promote auction participation by as many qualified applicants as possible and is not inconsistent with the Commission decision to require that, beginning January 1, 1999, all short and long-form applications for auctionable services be filed electronically.

2. Activity Rules

20. In the *C Block Further Notice*, the Commission tentatively concluded that a reauction should be conducted in three stages, as the Commission has done in other simultaneous multiple-round auctions. The Commission proposed to use high activity requirements in C block reauctions, with bidders required to be more active in each subsequent stage than they had been in the last. These activity levels would be similar to those used in other auctions, such as requiring bidders to be active on eighty percent of their eligible licenses in Stage I, ninety percent in Stage II, and ninety-eight percent in Stage III. The Commission also proposed requiring the Bureau to use its delegated authority to schedule bidding rounds aggressively, to move quickly into the next stage of the auction when bidding activity falls, and to use higher minimum bid increments for very active licenses. In the *Part 1 Third Report and Order*, the Commission directed the

Bureau to seek comment prior to the start of each auction on activity requirements for each stage of the auction and activity rule waivers.

21. The Commission believes that the proposal to conduct reauctions in three stages is reasonable for the next C block reauction, particularly in the absence of opposing comment and in light of the general interest in beginning the reauction as soon as possible. The Bureau normally would determine this structure, however; and it remains within the Bureau's discretion to deviate from the proposed three-stage structure if, after appropriate notice and comment, it determines that a different structure would better serve the public interest. Given that the *C Block Further Notice* mentioned the eighty, ninety, and ninety-eight percent activity levels as an example, the Commission continues to delegate to the Bureau determination of the specific activity levels to employ for each C block reauction. As proposed, the Bureau will use its delegated authority to schedule bidding rounds aggressively, move quickly into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses.

3. Reserve Price, Minimum Opening Bid, and Minimum Bid Increments

22. The Balanced Budget Act of 1997 requires the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established, unless the Commission determines that neither is in the public interest. In the *C Block Further Notice,* the Commission stated that, in the C block reauction, employing a minimum opening bid would help make certain that the public is fairly compensated, the auction is expedited, and the Commission is able to make adjustments based on the competitiveness of the auction. The Commission sought comment on its proposal to use a minimum opening bid for a reauction, as well as on which methodology to employ and factors to consider in establishing minimum opening bids. The Commission proposed minimum opening bids for each market equal to ten percent of the corresponding net high bid for the market in the original C block auction. The Commission asked commenters to explain whether this proposal would be reasonable or would result in a substantial number of unsold licenses. The Commission asked further whether the amount of the minimum opening bid should be capped and whether the Commission should establish a different amount.

23. After requesting comment on minimum opening bids in the *C Block Further Notice,* the Commission clarified in the *Part 1 Third Report and Order* that the Bureau has the authority to seek comment on minimum opening bids and reserve prices and to establish such mechanisms for each auction, consistent with the Bureau's role in managing the auction process and setting valuations for other purposes. The Commission instructed the Bureau to consider such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors that could reasonably affect valuation of the spectrum being auctioned.

24. For the next C block reauction, the Commission believes that the proposal of a minimum opening bid for each market equal to ten percent of the corresponding net high bid for the market in the original C block auction is appropriate. Because the Commission has already sought and received comment on this issue, and because there is a strong public interest in beginning the next C block reauction as soon as possible, the Bureau will not seek further comment on a specific amount for a minimum opening bid for the next reauction. Instead, the specific amount of the minimum opening bid for each market will be listed in a public notice to be released by the Bureau in advance of the next C block reauction. The Bureau may exercise its discretion to set forth a minimum opening bid smaller than ten percent if, based upon further evaluation, the Bureau believes that a smaller amount is warranted.

4. Electronic Filing

25. In the *C Block Further Notice,* the Commission sought comment on its tentative conclusion to require electronic filing of all short-form applications in a reauction. The Commission believed that electronic filing of applications would serve the best interests of auction participants and members of the public monitoring a reauction. Commission policies have consistently encouraged electronic filing. In the *Part 1 Third Report and Order,* the Commission pointed out that electronic filing helps ensure the accuracy and completeness of applications prior to submission, and the Commission required electronic filing of all short-form and long-form applications by January 1, 1999, unless operationally infeasible. More recently, the Commission proposed mandatory electronic filing of applications for all wireless services, whether auctionable or non-auctionable. Accordingly, the Commission will require electronic filing of both short-form and long-form applications for C block reauctions.

5. Upfront Payment

26. In accordance with § 1.2106 of the Commission's rules, 47 CFR 1.2106, which requires submission of an upfront payment as a prerequisite to participation in spectrum auctions, the Commission proposed in the *C Block Further Notice* to set an upfront payment for the next C block reauction at $.06 per MHz per pop. The Commission determined that this amount was appropriate to further its goal of allowing only serious, qualified applicants to participate in a reauction. The Commission noted that it had adopted the same upfront payment for its most recent broadband PCS auction, the D, E, and F block auction. The Commission explained that, in the *Competitive Bidding Second Report and Order,* 59 FR 22980 (May 4, 1994), it had indicated that the upfront payment should be set using a formula based upon the amount of spectrum and population (''pops'') covered by the license(s) for which the parties intend to bid. It had also concluded that the best approach would be to determine the amount of the upfront payment on an auction-by-auction basis. In the *C Block Further Notice,* the Commission sought comment on its $.06 per MHz per pop proposal, as well as on alternative methods of establishing an upfront payment and, in particular, on how the Commission may estimate the present market value of the spectrum to be auctioned. Subsequently, in the *Part 1 Third Report and Order,* the Commission affirmed its reasoning in the *Competitive Bidding Second Report and Order,* stating the Commission's belief that it should maintain the current competitive bidding rules, which allow the amount of the upfront payment and the terms under which it is assessed to be determined on an auction-by-auction basis.

27. Deciding the amount and terms of the upfront payment amount on an auction-by-auction basis pursuant to the Part 1 rule is consistent with past auction procedure. The Bureau normally establishes the upfront payment after public notice and comment. The Commission, therefore, finds that specific provisions contained in Part 24 of the its rules addressing the upfront payment amount for C block (and F block) auctions are unnecessary. Accordingly, and consistent with its ongoing streamlining effort, the Commission removes those Part 24

provisions as of the effective date of this order.

28. There is support among the commenters for setting the upfront payment amount at the proposed $.06 per MHz per pop, and the Commission believes that in the next C block reauction the upfront payment should be no higher than this amount. The Bureau may establish a lower upfront payment if it deems a lower amount to be reasonable. Because the Commission has already sought and received comment on this issue, and because there is a strong public interest in beginning the next C block reauction as soon as possible, there is no need for the Bureau to seek further comment on the upfront payment amount for the next reauction. Instead, the specific upfront payment amount for each market will be listed in a public notice to be released by the Bureau in advance of the next C block reauction.

29. While the Commission has decided not to prohibit ''former defaulters'' from participating in C block reauctions, it believes that the integrity of the auctions program and the licensing process dictates requiring a more stringent financial showing from applicants with a poor Federal financial track record. Consequently, the Commission amends its rules to require that the upfront payment amount for ''former defaulters'' be fifty percent more than the normal amount set by the Bureau for any given license in a C block reauction. So that the Bureau may implement this rule, the Commission will require applicants to make an additional certification on their short-form applications revealing whether they have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The Commission's policy here is analogous to the Congressional policy reflected in the Debt Collection Improvement Act, which bars delinquent Federal debtors from obtaining Federal loans, loan insurance, or guarantees.

6. Down Payment and Full Payment

30. The Commission tentatively concluded in the *C Block Further Notice* that each winning bidder should be required to tender a down payment sufficient to bring its total amount on deposit with the Commission up to twenty percent of its winning bid within ten business days after issuance of a public notice announcing the winning bidder for the license. The Commission also proposed to require a winning bidder to file an FCC Form 600 long-form application (since renumbered FCC Form 601) with a timely down payment, pursuant to Section 1.2107 of the Commission's rules, 47 CFR 1.2107. Upon review of the long-form applications and receipt of the down payments, the Commission would announce the applications that were accepted for filing, triggering the filing window for petitions to deny. If any or all petitions to deny were dismissed or denied, a public notice announcing that the Commission was prepared to grant the license conditioned upon final and full payment would be issued. The winning bidder would then have ten days following release of that public notice to submit the balance of its winning bid in order to be awarded its license(s). The *C Block Further Notice* proposed having a period of fifteen days, following the issuance of the public notice announcing that an application had been accepted for filing, in which to file petitions to deny.

31. The *Part 1 Third Report and Order* adopted a standard down payment of twenty percent of an applicant's high bids, which is similar to the proposal in the *C Block Further Notice*. It also amended Sections 1.2109(a) of the Commission's rules, 47 CFR 1.2109(a), to permit auction winners to make their final payments within ten business days after the designated deadline, provided that they also pay a late fee equal to five percent of the amount due. In accordance with the 1997 Balanced Budget Act, the *Part 1 Third Report and Order* amended §§ 1.2108(b) and (c), 47 CFR 1.2108(b), (c), to prohibit the Commission from granting a license earlier than seven days following issuance of the public notice announcing the application is accepted for filing. Additionally, the *Part 1 Third Report and Order* established that the filing periods for petitions to deny, oppositions, and replies are to be no shorter than five days.

32. The conclusions the Commission reached in the *Part 1 Third Report and Order* do not conflict with its proposals in the *C Block Further Notice*. Accordingly, the Commission will apply the Part 1 rules, as amended. The Bureau will announce by public notice the deadline for petitions to deny. As discussed in the *Part 1 Third Report and Order*, in order to preserve the integrity of the auction process, it is important to use an indicator of potential licensees' financial capability to attract capital to build out and operate systems. The Commission believes that the use of one substantial down payment is a necessary tool to gauge an applicant's financial viability, its seriousness in building its system, and the likelihood of default. For these reasons, the Commission repeals the Part 24 C block rules on down payment and full payment. Pursuant to the same rationale, the Commission also repeals the Part 24 F block rules on down payment and full payment.

7. Amendments and Modifications of Applications

33. In the *C Block Further Notice*, the Commission proposed to allow applicants to amend or modify their short-form applications at any time before or during the auction, pursuant to Section 1.2105 of the Commission's rules, 47 CFR 1.2105. In the *Part 1 Third Report and Order*, the Commission created a uniform definition of minor and major amendments to an applicant's short-form application (FCC Form 175). The Commission also amended Section 1.2105 of the Commission's rules so that it would mirror the Part 24 rule, § 24.822, 47 CFR 24.822, and allow applicants, after the short-form filing deadline, to make minor amendments to their short-form applications both prior to and during the auction. The amendment to § 1.2105 of the Commission's rules has rendered § 24.822 unnecessary. Accordingly, the Commission repeals § 24.822 of the rules.

34. The Commission also proposed in the *C Block Further Notice* to create an exception to the general rule prohibiting major amendments and permit short-form amendments to reflect the departure of a consortium member. In the *Part 1 Third Report and Order*, the Commission determined that, under Part 1 of its rules, major amendments to the short-form include changes in license areas, ownership changes constituting a change in control, and the addition of members to a bidding consortium. Minor amendments include, *inter alia*, any amendment not identified as major. The Commission did not identify the deletion of members to a bidding consortium as a major amendment. Consequently, such a change would be a minor amendment under the Part 1 rules, as amended, and permitted after the short-form filing deadline. Accordingly, the Commission's proposal in the *C Block Further Notice* to allow short-form amendments reflecting the departure of a consortium member is no longer necessary.

8. Bid Withdrawal, Default, and Disqualification

35. The Commission tentatively concluded in the *C Block Further Notice* that the withdrawal, default, and disqualification rules for a reauction should be based upon the procedures established in the Commission's general

competitive bidding rules. In the *Part 1 Third Report and Order*, the Commission recognized that bidders sometimes improperly withdraw bids (e.g., to delay the close of an auction for strategic purposes), and the Commission suggested that the Bureau exercise its discretion to prevent such abuses of the auction process. The Commission is considering limiting the number of rounds in which bids may be withdrawn, thereby preventing any entities that violate the Commission's withdrawal procedures from continuing to bid on that particular market. The Bureau has announced that, in the upcoming Phase II 220 MHz service auction (Auction No. 18), it will limit the number of rounds in which bids may be withdrawn, and it has proposed such a limitation for the upcoming 156–162 MHz VHF public coast station spectrum auction. Similarly, the Bureau will seek comment in advance of the next C block reauction on limiting the number of rounds in that reauction in which bids may be withdrawn.

36. For bids submitted in error, the Commission proposed in the *C Block Further Notice* to follow the guidelines it had developed to provide relief from the bid withdrawal payment requirements under certain circumstances. In the *Part 1 Third Report and Order*, the Commission decided that when a winning bidder or licensee defaults, and its license has yet to be reauctioned, the Commission will assess an initial default payment of at least three percent, but not exceeding twenty percent, of the defaulted bid amount. Once the license has been reauctioned, when the total default payment can be determined, the Commission will either assess the balance of the remaining default payment or refund any amounts due. As a result of ''click box bidding'' and other mechanisms employed to reduce erroneous bids, the Commission concluded that a decreased bid withdrawal payment rule, meant to provide some bidders relief from full application of bid withdrawal payments, is not necessary. The Commission directs the Bureau to follow the Part 1 rule on bid withdrawal, default, and disqualification, § 1.2104(g), 47 CFR 1.2104(g), to the extent applicable.

9. Anti-Collusion Rules

37. The Commission proposed in the *C Block Further Notice* to apply the anti-collusion rules enumerated in the *Competitive Bidding Second Report and Order*. In the *Part 1 Third Report and Order*, the Commission created an exception to its general anti-collusion rules. Under this exception, a non-controlling attributable interest holder in an applicant may obtain an ownership interest in, or enter into a consortium arrangement with, another applicant for a license in the same geographic area, provided that the original applicant has withdrawn from the auction, is no longer placing bids, and has no further eligibility. The exception provides flexibility for non-controlling investors to invest in other auction applicants if their original applicant fails to complete the auction.

38. Although one commenter to the *C Block Further Notice* raised the issue of creating a ''safe harbor'' for discussions of non-auction related business matters between applicants in the same license area, the Commission determined in the *Part 1 Third Report and Order* that there was no need to create a ''safe harbor.'' Section 1.2105(c) of the Commission's rules, 47 CFR 1.2105(c), places significant limitations on applicants seeking business opportunities in geographic license areas where they plan to bid. The Commission concluded that interpretations of the anti-collusion rules provided by the Bureau instruct the public as to permissible non-auction discussions, obviating the need for a ''safe harbor'' in the auction process.

39. As the Commission noted in the *Third Report and Order*, however, auction applicants should be aware that communications concerning, but not limited to, issues such as management, resale, roaming, interconnection, partitioning and disaggregation may all raise impermissible subject matter for discussion because they may convey pricing information and bidding strategy. Because auction applicants should avoid all communication with each other that will likely affect bids or bidding strategies, the Commission believes that individual applicants, and not the Commission, are in the best position to determine in the first instance which communications are permissible and which are not. Bidders should familiarize themselves with Commission rules and rule interpretations regarding unauthorized communications in auction proceedings, and they should report any such communications to the Bureau. As always, the Commission retains the right to investigate possible instances of collusion or to refer any allegations of collusion to the United States Department of Justice for investigation.

10. Bidding Credits

40. The original C block auction offered winning bidders qualifying as a small business or a consortium of small businesses a bidding credit of twenty-five percent of winning bids. The Commission's rules defined a small business as ''an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the preceding three years.'' Subsequent to that auction, the Commission amended its rules to define also a *very* small business in the C or F blocks as ''an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than fifteen million dollars for the preceding three years.'' The Commission proposed in the *C Block Further Notice* to have two tiers of bidding credits for the next C block reauction, a twenty-five percent bidding credit for small businesses and a thirty-five percent bidding credit for very small businesses.

41. In order to provide continuity and certainty for auction participants, the Commission adopted a schedule of bidding credits in the *Part 1 Third Report and Order* to be used in future auctions for all services. The schedule sets the bidding credit percentage according to the average annual gross revenues of the designated entity. Applying the Part 1 schedule to the gross revenue thresholds for small and very small businesses under its rules for C and F block auctions, the Commission concludes that a small business will receive a fifteen percent bidding credit, and a very small business will receive a bidding credit of twenty-five percent. The Commission recognizes that the amount of bidding credits differs from its proposal in the *C Block Further Notice*; however, use of the Part 1 schedule benefits potential bidders by providing them with certainty about the size of available bidding credits well in advance of C block reauctions. The Commission will amend §§ 24.712 and 24.717 of its rules, 47 CFR 24.712, 24.717, to reflect its application of the Part 1 bidding credits schedule to C and F block reauctions.

42. Eligibility for bidding credits will be determined at the deadline for filing short-form applications. Thus, if an entity no longer qualifies as a small business as of the deadline for filing short-form applications, but is eligible to participate in the next C block reauction because it was eligible to participate in the original C block auction, it will *not* be eligible for bidding credits. Because of the complex issues involved in the original C block auction, the Commission is willing to allow former C block auction participants and eligible applicants to

participate in the next reauction (and in reauctions for the ensuing two years). However, the Commission does not feel that it is in the best interests of the public and, in particular, of competing small business bidders and licensees to provide a discount to applicants that no longer meet the small business size standards.

43. The Commission reminds applicants that, under § 1.2111(d) of its rules, as amended, 47 CFR 1.2111(d), C block licensees that utilize a bidding credit, and during their initial license term seek to make a change in the ownership or control of a license that would result in the license's being owned or controlled by an entity that does not meet the eligibility criteria for a bidding credit, or that is eligible for a lower bidding credit, will have to reimburse the U.S. Government for a percentage of the amount of the bidding credit. This percentage, in some circumstances, will be as high as the full amount of the bidding credit plus interest.

11. Installment Payment Program

44. The Commission tentatively concluded in the *C Block Further Notice* that it would not provide an installment payment program in the next reauction. Subsequently, in the *Part 1 Third Report and Order*, the Commission suspended the installment payment program for the immediate future.

45. The Commission will apply its decision in the *Part 1 Third Report and Order* and not offer installment payments in the next reauction. It is the Commission's responsibility to balance the competing goals in Section 309(j) that require, *inter alia*, that it promote the development and rapid deployment of new spectrum-based services, while ensuring that designated entities are given an opportunity to participate in the provision of such services. The Commission recognizes that conditioning receipt of a license upon payment requires greater financial resources. However, many C block licensees have requested relief from their installment payment obligations and three have sought bankruptcy protection. The objective of Section 309(j) to speed service to the public cannot be achieved when licenses are held in abeyance in bankruptcy court. Other financing alternatives, such as the provision of bidding credits, will help to ensure meaningful small business participation.

VI. Procedural Matters and Ordering Clauses

A. Final Regulatory Flexibility Analysis

46. The Final Regulatory Flexibility analysis, pursuant to the Regulatory Flexibility Act, *see* 5 U.S.C. 604, is attached.

B. Paperwork Reduction Act Analysis

47. This Order contains a modified information collection that was submitted to the Office of Management and Budget requesting clearance under the Paperwork Reduction Act of 1995.

C. Ordering Clauses

48. Accordingly, it is ordered that, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 156(c)(1), 303(r), and 309(j), this *Fourth Report and Order* is hereby adopted, and §§ 1.2105, 24.703, 24.704, 24.705, 24.706, 24.707, 24.709, 24.711, 24.712, 24.716, 24.717, 24.822 of the Commission's rules, 47 CFR 1.2105, 24.703, 24.704, 24.705, 24.706, 24.707, 24.709, 24.711, 24.712, 24.716, 24.717, 24.822, are amended as set forth in the rule changes, effective November 23, 1998.

49. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Fourth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

50. It is further ordered that, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.331, the Chief of the Wireless Telecommunications Bureau is granted delegated authority to prescribe and set forth procedures for the implementation of the provisions adopted herein.

Paperwork Reduction Act

Notice of Public Information Collections Submitted to the Office of Management and Budget for Emergency Review and Approval

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Please Note: The Commission is seeking emergency approval for these information collections by October 9, 1998, under the provisions of 5 CFR 1320.13.

DATES: Written comments should be submitted on or before October 7, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554, or via internet to jboley@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections, contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0801.

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees.

Type of Review: Emergency Revision.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 750.

Estimated Time for Response: 0.25 hours.

Total Annual Burden: 187.5 hours.

Total Cost to Respondents: $0.

Needs and Uses: The *C Block Fourth Report and Order* requires each applicant for C block spectrum to attach to its short-form application a statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to

any Federal agency. This information collection allows the Federal Communications Commission to ascertain whether or not applicants for C block PCS spectrum have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The information will allow the Commission to determine the amount of the upfront payment to be paid by each applicant and will help ensure that C block reauctions are conducted fairly and efficiently, thereby speeding the flow of payments to the U.S. Treasury and accelerating the provision of PCS to the public.

List of Subjects

47 CFR Part 1

Practice and procedure, Competitive bidding proceedings, Telecommunications.

47 CFR Part 24

Personal communications services, Competitive bidding procedures for broadband PCS, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 1 and 24 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r), unless otherwise noted.

2. Section 1.2105 is amended by adding (a)(2)(xi) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion

(a) * * *

(2) * * *

(xi) For C block applicants, an attached statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency.

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

§ 24.703 [Removed]

4. Section 24.703 is removed.

5. Section 24.704 is revised to read as follows:

§ 24.704 Withdrawal, default and disqualification penalties.

See § 1.2104 of this chapter.

§ 24.705 [Removed]

6. Section 24.705 is removed.

7. Section 24.706 is amended by revising paragraph (a) to read as follows:

§ 24.706 Submission of upfront payments and down payments.

(a) All auction participants are required to submit an upfront payment in accordance with § 1.2106 of this chapter. Any C block applicant that has previously been in default on any Commission licenses or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license.

* * * * *

§ 24.707 [Removed]

8. Section 24.707 is removed.

9. Section 24.709 is amended by adding paragraphs (a)(4) and (a)(5) and revising paragraphs (b)(9)(i) and (e) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) * * *

(4) In order to be eligible for participation in a C block auction, an applicant must certify that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. *See* § 24.706 of this part.

(5) An applicant for participation in a C block auction must state under penalty of perjury whether or not it has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency. See § 24.706 of this part.

(b) * * *

(9) * * *

(i) In addition to entities qualifying under this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the reauction for frequency block C, which began on July 3, 1996, will be eligible to bid in any reauction of block C spectrum that begins within two years of the start date of the first reauction of C block spectrum following the effective date of this rule.

* * * * *

(e) *Definitions.* The terms affiliate, business owned by members of minority groups and/or women, and gross revenues used in this section are defined in § 1.2110 of this chapter. The terms consortium of small businesses, control group, existing investor, institutional investor, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, small business, and total assets used in this section are defined in § 24.720 of this chapter.

10. Section 24.711 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 24.711 Upfront payments, down payments and installment payments for licenses for frequency Block C.

(a) * * *

(1) Each eligible bidder for licenses subject to auction on frequency Block C shall pay an upfront payment as set forth in a Public Notice pursuant to the procedures in § 1.2106 of this chapter.

(2) Each winning bidder shall make a down payment and pay the balance of its winning bids pursuant to § 1.2107 and § 1.2109 of this chapter.

* * * * *

11. Section 24.712 is revised to read as follows:

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) of this part may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) of this part may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment. See* § 1.2111 of this chapter.

12. Section 24.716 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 24.716 Upfront payments, down payments and installment payments for licenses for frequency Block F.

(a) * * *

(1) Each eligible bidder for licenses subject to auction on frequency Block F shall pay an upfront payment as set forth in a Public Notice pursuant to the procedures in § 1.2106 of this chapter.

(2) Each winning bidder shall make a down payment and pay the balance of

its winning bids pursuant to § 1.2107 and § 1.2109 of this chapter.

* * * * *

13. Section 24.717 is revised to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) of this part may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) of this part may use a bidding credit of twenty-five percent, as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment. See* § 1.2111 of this chapter.

§ 24.822 [Removed]

14. Section 24.822 is removed.

Note: This attachment will not appear in the Code of Federal Regulations.

Attachment—Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *C Block Further Notice of Proposed Rule Making in WT Docket No. 97–82 (''C Block Further Notice''*). The Commission sought written public comment on the proposals in the *C Block Further Notice,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the C Block Fourth Report and Order in WT Docket No. 97–82

This *C Block Fourth Report and Order* sets forth the rules that will govern reauctions of C block spectrum surrendered to the Commission pursuant to the *C Block Second Report and Order* and the *C Block Order on Reconsideration of the Second Report and Order* (''*C Block Reconsideration Order*''), as well as any other C block spectrum available for reauction. The *C Block Fourth Report and Order* also reflects the Commission's ongoing effort to streamline auction procedures by eliminating overlapping or redundant rules and simplifying procedures for auction participants.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed directly in response to the IRFA. The Commission, however, has considered the economic impact on small businesses of the rules adopted herein. *See* section E, *infra.*

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA'').

The rule changes effected by this C Block Fourth Report and Order affect all small businesses that participate in future reauctions of C block and F block spectrum, including small businesses currently holding C block and F block broadband personal communications services (PCS) licenses that choose to participate and other small businesses that may acquire licenses through reauction. The Commission grants C block and F block licenses only to applicants that, together with their affiliates and persons or entities that hold interests in the applicants and their affiliates, have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million. The Commission, with respect to broadband PCS, defines small businesses as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average annual gross revenues that are not more than forty million dollars for the preceding three years. This definition has been approved by the SBA.

On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on January 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of its evaluations and conclusions in this RFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *C Block Fourth Report and Order,* are small entities. In addition to the 178 current small business licensees that may participate at the reauction of C block licenses, a number of additional small business entities may seek to acquire licenses through reauction and would thus be affected by these rules.

In addition, the Commission will provide small business bidders and very small business bidders in C block and F block reauctions with bidding credits, with a greater discount given to very small businesses. Under Commission rules, very small businesses in the C block and F block are entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average annual gross revenues of not more than fifteen million for the preceding three years. As discussed below, small businesses will receive a fifteen percent bidding credit, and very small businesses will receive a bidding credit of twenty-five percent.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements

As a result of the *C Block Fourth Report and Order,* each applicant for a C block reauction will be required to attach to its short-form application a statement indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency.

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

The Commission will include in the next C block reauction all licenses representing C block spectrum returned to the Commission under the disaggregation, prepayment, or amnesty options established in the *C Block Second Report and Order,* as modified in the *C Block Reconsideration Order,* as well as all C block licenses held by the Commission as a result of defaults. While some commenters argue that the next reauction should include licenses that have filed for bankruptcy protection, the Commission believes that the public and C block reauction applicants will realize a greater benefit if the Commission auctions all available C block spectrum as soon as practicable than they will if the Commission postpones a reauction until it has resolved all issues connected with ongoing bankruptcy proceedings.

The following two types of entities will be eligible to participate in C block reauctions: (1) Entities that filed an FCC Form 175 short-form application for, and were eligible for, the original C block auction, and (2) entities qualifying under Section 24.709 of the Commission's rules, 47 CFR 24.709, as of the deadline for the filing of short-form applications for the reauction. All but two of the entities that applied for and were eligible to participate in the original C block auction qualified as small businesses under Section 24.720 of the Commissions rules, 47 CFR 24.720. In order to ensure the integrity of C block reauctions, the Commission retains the eligibility restriction established in the *C Block Second Report and Order,* as modified in the *C Block Reconsideration Order,* for licensees that surrender licenses pursuant to the disaggregation, prepayment, and/or ''amnesty/prepayment'' options. Such licensees will be ineligible to reacquire their surrendered licenses through reauction or by any other means for a period of two years from the start date of the next C block reauction.

To further ensure auction integrity for the benefit of applicants as well as the general public, the Commission will restrict C block reauctions to entities not in default on any Commission debt and not delinquent on any non-tax debt owed to any Federal agency.

However, the Commission believes that past business misfortunes do not inevitably preclude an entity from being able to meet its present and future responsibilities as a Commission licensee. Therefore, the Commission will allow ''former defaulters,'' *i.e.*, applicants that have defaulted or been delinquent in the past, but have since paid all of their outstanding non-Internal Revenue Service Federal debts and all associated charges or penalties, to be eligible to participate in C block reauctions, provided that they are otherwise qualified.

In the *Part 1 Third Report and Order*, the Commission adopted general competitive bidding rules to supplant, wherever practicable, specific auction rules for each auctionable service or class of service. Accordingly, future C block reauctions will adhere to Part 1 rules, insofar as applicable. Part 1 rules are determinative for the following aspects of C block reauctions: competitive bidding design; activity rules; reserve price, minimum opening bid, and minimum bid increments; electronic filing; upfront payment; down payment and full payment; amendments and modifications of applications; bid withdrawal, default, and disqualification; anti-collusion, and installment payment financing. Based upon the record in this proceeding, the Commission sets a ceiling for minimum opening bids that is no more than ten percent of the amount of the net high bid for the corresponding market in the original C block auction. The Commission also sets the upfront payment amount for the next C block reauction at no higher than $.06 per MHz per pop. The Commission will require that the upfront payment for ''former defaulters'' be 50 percent more than that required from applicants that do not have a history of default. This increased upfront payment formula reflects the increased risk associated with these parties.

In the *Part 1 Third Report and Order*, the Commission adopted a schedule of bidding credits to be used in future auctions for all services. Applying the Part 1 schedule to the gross revenue thresholds under the Part 24 rules for small and very small C block and F block businesses, gives small business applicants in C block reauctions a fifteen percent bidding credit and very small business applicants a twenty-five percent bidding credit. Eligibility for bidding credits will be determined by the size of the applicant as of the deadline for filing short-form applications.

Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j), as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that the *C Block Fourth Report and Order* promotes these goals while maintaining the fair and efficient execution of the auctions program.

F. Report to Congress

The Commission will send a copy of the *C Block Fourth Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). A copy of the *C Block Fourth Report and Order* and this FRFA (or summary thereof) will be published in the **Federal Register**. *See* 5 U.S.C. 604(b). A copy of the *C Block Fourth Report and Order* and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

[FR Doc. 98–25344 Filed 9–22–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket no. 971112269–8047–02; I.D. 102997A]

RIN 0648–AK13

Fisheries of the Exclusive Economic Zone Off Alaska; Management Authority for Black and Blue Rockfish; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule pertaining to Fisheries of the Exclusive Economic Zone Off Alaska published in the **Federal Register** on March 6, 1998.

DATES: This action becomes effective September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on March 6, 1998, that implemented Amendment 46 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) by removing black and blue rockfish from the complex of species managed under the FMP (63 FR 11167). That document contained an error.

Correction

In rule FR Doc. 98–5839 published on March 6, 1998 (63 FR 11167), make the following correction. On page 11168, in the second column, in amendatory instruction 3., ''In § 679.21, paragraph (e)(3)(iv)(D) is revised to read as follows:'' is corrected to read ''In § 679.21, paragraph (e)(4)(iv)(D) is revised to read as follows:''.

Dated: September 17, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–25460 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 184
Wednesday, September 23, 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

Agricultural Marketing Service

7 CFR Part 956

[Docket Nos. 98AMA–FV–956–1;FV98–956–1]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 956

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The proposed amendments would broaden the scope of the order by adding authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, a proposal is included to make a minor change in the Walla Walla Sweet Onion Committee (committee) name. The committee is responsible for local administration of the order. These proposals are intended to improve the operation and functioning of the Walla Walla sweet onion marketing order program.

DATES: Written exceptions must be filed by October 23, 1998.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0200; telephone: (202) 720–1509, or Fax: (202) 205–6632. 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) 205–6632.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 25, 1998, and published in the April 1, 1998, issue of the **Federal Register** (63 FR 15787).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 956, regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon (hereinafter referred to as the order), and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Kathleen M. Finn whose address is listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendment of Marketing Agreement and Order No. 956 is based on the record of a public hearing held in Walla Walla, Washington, on April 7, 1998. Notice of this hearing was published in the **Federal Register** on April 1, 1998. The notice of hearing contained proposals submitted by the committee.

The committee's proposed amendments would add the authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, the committee proposed changing its name from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposed to allow such changes as may be necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment.

At the conclusion of the hearing, the Administrative Law Judge fixed May 8, 1998, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. None were filed.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether to add the authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions; and

(2) Whether to change the committee name to the Walla Walla Sweet Onion Marketing Committee.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

Material Issue Number 1

The Walla Walla sweet onion marketing order was promulgated in May 1995. The order sets forth the production area, which consists of designated parts of Walla Walla County, Washington, and designated parts of Umatilla County, Oregon. The order authorizes production and marketing research and marketing development and promotion projects, including paid advertising. In addition, the order authorizes the establishment of container marking requirements.

The promulgation record indicates that the production area was designated

as it currently is because it was determined that the unique soil and growing conditions in that highly localized area constituted the definitive and smallest geographical area recognized for the production of Walla Walla sweet onions. The proponents of the marketing order did not want any other geographic area to have the authority to use the ''Walla Walla Sweet Onion'' name. The promulgation hearing record indicated that growers in the Walla Walla Valley spent time and effort attempting to market the Walla Walla sweet onion as one that has unique characteristics because of the area where it is grown. Other growers and handlers were selling onions produced outside the production area and marketing them as Walla Walla sweet onions, which the record indicated was detrimental to the integrity of the name Walla Walla sweet onions.

In addition, the proponents of the marketing order believed that research and promotion efforts were imperative if the industry was to remain competitive with other sweet onion areas. The proponents of the marketing order believed that pooling available resources under a marketing order for marketing and production research and promotion would allow the industry to expand existing markets, create new ones, improve grower returns and compete with other sweet onion growing areas.

At the April 7, 1998, hearing on the proposed amendments to the marketing order, the record revealed that prior to the promulgation proceedings, the industry discussed including authority for quality and size regulations in the order at that time. However, because of consternation on the part of some growers about how quality and size regulations would impact their individual businesses, it was determined not to include the proposals at that time. The intent was that the aspects of the marketing order that were included during the promulgation proceeding would address the major problems facing the industry.

Testimony at the amendment hearing indicated that the committee now realizes that poor quality on the market is a serious marketing problem. The committee believes that market share is being lost because of inconsistent quality of Walla Walla sweet onions.

The committee has discussed quality problems since the order was promulgated and delegated some of the discussions to a compliance subcommittee. Recently, more serious discussions concerning quality issues revealed that the majority of the industry supported moving toward establishing minimum quality and size authority in the order.

Currently, the Walla Walla sweet onion industry is comprised of 71 industry members, 33 of which are registered handlers. There are a total of 64 growers, which includes growers who are also handlers. There are 7 commercial packinghouses that pack approximately 90 percent of the industry's onions.

In 1997, 43 percent of the Walla Walla sweet onion crop was shipped to the Pacific Northwest United States (U.S.); 20 percent to North Central U.S.; 12 percent to export markets; 10 percent to the Western/Southwestern U.S.; 7 percent to the Western U.S.; and 3 percent or less to the Rocky Mountain states, Southeast and Northeast U.S. and to roadside stands.

In 1988, 1,800 acres of Walla Walla sweet onions were planted. In 1997, 900 acres of Walla Walla sweet onions were planted and harvested. This represents a 50 percent decline in plantings since 1988. Similarly, acres harvested have decreased from 1,600 in 1988 to 900 in 1997. Yields during this period ranged from 600 50-pound containers to 820 50-pound containers per acre and averaged 734 50-pound containers. Production of Walla Walla sweet onions for 1988 was 1,280,000 50-pound containers. In 1997, production was 666,000 50-pound containers, a 48 percent decrease in production in the last 10 years.

Record testimony indicates that the major reasons for the decreases in plantings and production relate to uncertainty of grower returns, and the increased competition from other sweet onion production areas. These other sweet onion areas have established higher quality standards than Walla Walla sweet onions, and have made substantial promotional efforts that make the competition with these areas challenging. In addition, poor shelf life and storability problems concern many Walla Walla sweet onion industry members. Although research is being conducted on behalf of the committee to address these quality problems, it has been difficult to keep pace with the competition.

The record testimony indicated that large wholesale and chainstore markets have been lost due to quality and shelf life problems and that if these issues were addressed successfully, these markets could be regained. With a higher quality onion, more distant markets could be established and production could increase significantly.

The season-average f.o.b. prices for Walla Walla sweet onions have ranged from a low of $4.14 per 50-pound container in 1983 to a high of $11.95 per 50-pound container in 1991. Prices have generally trended upward, but have been highly variable, which suggests unsteady market conditions. The average price over an 18-year period is $7.45 per 50-pound container.

Since 1981, U.S. per capita consumption of fresh onions has increased from 10.7 pounds per year to 17.5 pounds per year. A witness testifying for the committee stated that other onion groups and associations are promoting various onion products and increasing consumer awareness and use of onions, in general. This grower-handler further stated that Walla Walla sweet onions still have a nationally recognizable name. He believed that if the industry could improve the quality of their onions and be consistent with that quality, the industry could stabilize their market, regain consumer and chainstore confidence, and gain some of this share of the market indicated by the increased per capita consumption of onions.

Walla Walla sweet onions are a type of sweet onion. Sweet onions are distinguished from other onion groups by their sweet taste and the absence of the strong, pungent taste of yellow, red, white and other storage onions and are usually only available during the spring and summer months. Generally, these onions do not store well and have a short shelf life. In addition, sweet onions usually bring higher prices than other onions.

Other sweet onion growing areas that compete with Walla Walla sweet onions at some time during its season are: Georgia Vidalia Onions; Texas hybrid 1015Y's (spring and summer crops), Maui Sweets from Hawaii, and New Mex. Sweets from New Mexico.

Statistical data shows that Vidalia and Maui Sweet onions have increased their acres harvested while others have declined. Texas has the largest volume of acres harvested (average—14,839 acres) while Maui has the smallest (average—142 acres). Surprisingly, these two onion areas have the lowest yield per acre. Although yields in all onion producing areas are highly variable, New Mexico and Walla Walla have the highest yields.

Texas, New Mexico and Vidalia sweet onions have the highest production, with Vidalia sweet onions experiencing the most dramatic increase in production in recent years. Walla Walla and Maui onions have the lowest production, mostly due to the amount of acres planted in recent years.

Maui onions' f.o.b. prices are the highest among the sweet onion

producing areas with an average price of $43 per 50-pound container over the last 18 years. Vidalia onions are second with an average price of $14 per 50-pound container for a nine-year period. These two onion groups have clearly differentiated their production from the other sweet onion groups and are receiving premium prices. These higher prices may be based on superior quality and taste. However, these premium prices demonstrate the marketing potential for other sweet onion producing areas. Walla Walla sweet onions averaged $7.50 per 50-pound container during this same period.

Comparing Vidalia onions with Walla Walla sweet onions for the nine-year period that Vidalia onion data has been available, Vidalia onion prices have always been higher than Walla Walla sweet onion prices. The difference in f.o.b prices ranges from a low of $1.50 per 50-pound container in 1994 to a high of $9.90 per 50-pound container in 1990. The average difference between the two prices is $5.

Crop value statistics (based on price and production) for the sweet onion producing areas show that while Maui onions receive the highest prices, its total crop value is the lowest of the six producing areas due to its low level of production. Vidalia and New Mexico onion crop values have been increasing, while Texas, Maui, and Walla Walla's crop values have been stagnant or slowly declining. The high crop values of Vidalia onions are the result of increasing levels of production and higher prices.

A witness for the committee testified that poor quality and shelf life of Walla Walla sweet onions limits marketing firms to distribute their products into the nearer markets, particularly the Pacific Northwest. The grower-handler testified that these shipping patterns tend to saturate these markets. If quality and shelf life were improved, more product could be shipped outside of the Pacific Northwest area and thereby, increase production and improve crop values of Walla Walla sweet onions.

Record testimony indicates that the potential exists for Walla Walla sweet onions to become more competitive with other sweet onion growing regions. A witness for the committee testified that he believes that part of the Vidalia onion industry's success has been due to the proximity of the growing area to a large population base on the East Coast. However, if the quality of Walla Walla sweet onions was improved, more onions could be shipped to those areas where sweet onions are widely accepted by consumers, which would result in an increase in total production of Walla Walla sweet onions.

The season for Walla Walla sweet onions generally begins in middle or late June and continues until the end of July. The season is approximately 6 weeks long. The Department's Market News Service collects data on Walla Walla sweet onions. Prices are published for jumbo and medium 50-pound sacks and cartons. This data shows that in most seasons, the prices start relatively high. As the season progresses, prices generally fall. The high prices at the beginning of the season are due to the low supply of sweet onions at that time of the season and the high demand as summer approaches. The quality at the beginning of the season sets the market tone for the remainder of the season. If quality is high at the beginning of the season, this makes a favorable impression on receivers as well as consumers. With high quality onions at the start of the season, consumers are more willing to become repeat customers. However, if quality is low at the beginning of the season, receivers as well as consumers will be disappointed. This low quality will result in consumers shopping for alternative sweet onions and they will not be repeat purchasers.

This seasonal price behavior where prices start high and then fall may cause producers to harvest onions before they are fully matured. This may result in poor quality onions being sold on the market which tends to make an unfavorable impression on consumers, supermarkets, and other outlets that handle Walla Walla sweet onions.

Most Walla Walla onions meet U.S. No. 2 grade but the majority do not meet U.S. No. 1. Testimony revealed that the committee would not make a recommendation to impose a minimum grade requirement that would be difficult for most handlers to make and would result in a higher volume of onions being unmarketable. Initially, the committee would likely recommend a minimum grade, less than a U.S. No. 1, such as a modified U.S. Commercial, with stronger maturity requirements. This would enable handlers and growers to modify their operations in a cost-effective manner. In time, as growers and handlers realize the benefits of minimum quality and size requirements, they would be more prepared to further increase the quality of their onions.

Record evidence revealed that the Walla Walla sweet onion marketing season is shortening because of the typical high prices at the beginning of the season. A witness for the committee testified that he believes that growers are harvesting immature onions in order to obtain these higher prices. The witness stated that immature onions on the market early in the season have a negative impact on the market at the middle and the end of the season. He further testified that growers are concerned with this and are targeting this problem. He believes that these problems could be alleviated to a great extent by establishing quality standards for defects such as sprouting and staining which would address the maturity problem early in the season and increase demand for Walla Walla sweet onions for a longer period. He further stated that if a higher quality product is consistently available, promotional efforts would be enhanced. These efforts would improve buyers' confidence in purchasing Walla Walla sweet onions.

Statistical data evidenced on the record indicates that Walla Walla sweet onions are currently sorted by size and packed in cartons or sacks. Different prices are realized between sacks and cartons and between jumbo and medium sized onions. Higher prices are received for cartons as compared to sacks. Higher prices are received for jumbo as compared with medium size onions. Data shows that larger sized onions receive an average of $3 a container more than smaller onions.

The record revealed that when purchasing sweet onions, consumers prefer a larger onion. There is a perception that sweet onions should be larger than storage onions. Consumers are willing to pay a premium price for a larger sweet onion. Proper seed spacing during planting is a critical factor in producing larger onions. In addition, handlers who can pack larger onions can realize larger returns.

Since the majority of handlers are already sorting onions by size, record evidence revealed that handlers would not have to purchase new equipment should these proposals be implemented. A grower-handler testified that the majority of the larger handlers always try to pack to certain established quality and size standards. Costs associated with handlers modifying their grading facilities would be minimal because most handlers already have the equipment necessary to implement these proposals. These proposals, if implemented, would require that all handlers conform to the same established quality and size standards, which would provide a consistent product to buyers and consumers. A primary cost associated with these proposals would be the cost of inspection procedures, which are

discussed later in this recommended decision.

Another potential cost item is the cost associated with growers having to purchase additional or improved equipment in order to meet minimum quality or size standards. A handler testified that growers could update their mechanical seeders so that the seeds could be planted equidistant from each other, which would result in onions with better shape and uniformity and larger onions. There are increasingly more growers that are purchasing this equipment or contracting with other growers that have the seeders. Seed coating or pelleting is another alternative to achieve better seed placement, which is less expensive than the purchase of a highly advanced seeder. The seed coating adds a clay-like material to the exterior of the seed, so that the seeders do not cause two or three seeds to drop at the same time. It appears that costs associated with growers modifying their cultural practices to abide by minimum quality and size standards would be minimal and offset by improved returns.

Currently, there are limited secondary outlets for Walla Walla sweet onions. Record testimony indicates that the primary outlets for non-marketable or cull onions are livestock feed, charitable institutions or disposal. A minimal amount is sent to processors, but there are no returns realized other than the reduced cost of packing.

If quality control and size provisions were implemented, it could be assumed that more onions would become non-marketable which could produce hardships for some producers. A witness for the committee testified that if a U.S. Commercial grade were established as a minimum quality standard, about 5 to 10 percent of the onions would not meet that grade and would have to be disposed of in secondary outlets. The witness testified that increased grower returns would offset any increase in cull onions. In addition, if a minimum quality or size standard were established, this would provide an incentive for growers to modify and improve their cultural practices so that only onions that would make that quality or size standard would be sent to the packing houses. This would minimize the percentage of onions that do not make quality or size standards.

The inspection and certification portion of the proposed amendments would require that during any period when Walla Walla sweet onions are regulated, the onions would be inspected by representatives of the Federal-State Inspection Service. The proposal contains a provision regarding re-inspection procedures. Handlers who handle a specified minimum quantity would be exempt from inspection, but still be required to meet any minimum quality or size regulations in effect. The minimum quantity would be established at 2,000 pounds or less of onions per shipment, but could be modified through informal rulemaking, if necessary.

The Federal-State Inspection Service Office that is responsible for inspecting Walla Walla sweet onions is currently located in Pasco, Washington, less than 50 miles from Walla Walla. According to record testimony, inspectors would be staffed in Walla Walla during the season if mandatory inspection was implemented.

Inspection costs in the State of Washington are computed on an hourly basis or a per unit basis, whichever is greater. If the hourly rate is used, the rate applies to the total number of the inspector's hours, including travel time. Depending upon the workload, inspectors could be based in Walla Walla during the season, which would lessen travel costs. Record testimony indicated that the hourly inspection rate is $26, with a two-hour minimum, or $52, for inspection or $208 for an eight-hour day. However, the State of Washington Agriculture Code regulations appearing at Chapter 16–400–210 WAC provide that the hourly inspection rate is $23, with no minimum time required. In accordance with the Rules of Practice and Procedure governing the formulation of marketing agreements and orders (7 CFR Part 900), official notice is taken of the fees set forth in the State of Washington regulations at Chapter 16–400–210 WAC. The fee schedule will be used in our analysis. On a per unit basis, the inspection fee is $.04 per 50-pound unit.

As stated above, inspection costs are computed on an hourly basis or a per unit basis, whichever is greater. For example, if an inspection was requested on 100 50-pound containers and the inspection lasted one hour, the per unit cost for inspecting the lot would be $4, and the per hour cost would be $23. Under this scenario, the handler would be charged $23 for the inspection, the greater amount. This would average $.23 per unit.

Under the current fee schedule, it would be necessary for the inspection office to inspect over 4,600 50-pound units of onions per day in order to maintain the fee at $.04 per 50-pound unit. If handlers do not handle over 4,600 50-pound units per day, their inspection costs would be computed at the hourly rate. Even for handlers who normally handle that volume, there would be times during the season, particularly in the beginning and end of the season, where the volume of onions inspected would not be at a level where the $.04 per 50-pound unit could be used. The fees would convert to the hourly rate.

Record testimony indicated that the committee is concerned with increased costs associated with these proposals, particularly, the costs of inspection. The committee discussed options to address these concerns and developed two remedies intended to alleviate the cost burdens on small handlers. First, the committee recommended adding authority in the order for the committee to contract with the Federal-State Inspection Service and pay for all inspections of Walla Walla sweet onions. Second, the committee recommended an exemption from inspection for handlers of small lots of onions.

Under the scenario of contracting with the inspection service, each handler would pay a separate assessment for inspection costs at a per unit price. All handlers would pay the same price per bag for inspection, whether exempt or not. Under such a contract, the larger volume handlers would pay more of the inspection costs because they handle so many more onions. In this manner, the burden of inspection costs for smaller volume handlers would be minimized. This was discussed at committee meetings with representatives of the inspection service.

Testimony confirmed that travel costs would be lessened if an inspector was based in Walla Walla. However, the witness indicated that $.04 per 50-pound unit would be the minimum cost for the inspection. Costs could increase depending on the workload. If the workload was light, such as late in the season when the quantities of onions are diminishing, it could be more costly for an inspector to conduct inspections on smaller lots. It could be necessary to convert the cost to an hourly cost, which would exceed $.04 per 50-pound unit.

A witness for the committee stated that there were discussions at committee meetings regarding contractual relationships with the inspection service but factors such as inspection of small quantities would need to be addressed in the contract. The inspector testified that the inspection office must cover the cost of inspectors and if there was not a full day's work in Walla Walla, the inspector would need to travel elsewhere. These situations would need to be factored

into any contractual agreements. Because of the variables associated with inspecting Walla Walla sweet onions, a witness for the committee estimated the cost of inspection would range between $.04 and $.06 per 50-pound unit if the per unit price were used in a contractual agreement.

Another option the committee developed to address the issues of costs on small handlers would provide an exemption for handlers who handle up to, but not more than 2,000 pounds of Walla Walla sweet onions per shipment. These handlers would be exempt from inspection requirements, but these exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. Handlers could make more than one exempt shipment per day as long as each shipment was at or below the 2,000-pound exemption. These exempt onions would not be exempt from assessments. The committee would be able to recommend modification of the minimum quantity exemption through informal rulemaking, if necessary. The committee would be responsible for monitoring compliance with this proposal. If necessary, the committee would conduct spot inspections at the committee's expense to ensure that inspection-exempt onions were meeting the established quality and size regulations.

A witness for the committee projected that the committee manager's work hours may need to be increased in order to monitor compliance with these proposals, which could result in increased administrative costs for the committee. The committee projects a possible increase of $3,000, or a 3 percent increase in the current committee budget.

Currently, there are 7 commercial packers that pack approximately 90 percent of the industry's onions. The remaining 10 percent are handled by approximately 26 handlers. If the 2,000 pound minimum quantity exemption were implemented, it is estimated that 50 percent of the remaining 26 handlers would be exempt from inspection. This would represent approximately 42 acres (25,000 50-pound containers), or 5 percent of the crop. This minimum quantity exemption addresses concerns regarding possible increased costs that could be encountered by small handlers without jeopardizing the objectives of a quality and size program.

Record testimony revealed that consideration to modify this exemption provision would primarily relate to the effectiveness of the amount exempted. If it was determined that 2,000 pounds or less was insufficient, the committee could recommend raising the amount. A similar recommendation could be made if it was determined the amount was too large and too many onions were exempt from inspection. In making any recommendations, consideration would be given to alleviating any inordinate cost burden on handlers without jeopardizing the objectives of quality and size requirements. Testimony indicated that the committee does not believe it would ever recommend eliminating the minimum quantity exemption.

The cost of inspection is a primary cost factor related to these proposals. The record reveals that the industry is ready to accept this additional cost in order to improve the competitiveness of the industry. It is believed in the long run, increased production, increased prices, and increased demand for Walla Walla sweet onions would offset these inspection costs. The committee is concerned with increased costs and is willing to take steps to mitigate these costs for the benefit of the industry. It is believed that without implementation of these proposals, the industry cannot improve and may continue to decline.

Adding quality and size provisions to the marketing order would provide an incentive for producers to allow their onions to fully mature, resulting in a more favorable impression of the onions purchased. Consumers prefer larger onions and are willing to pay a premium price for large sweet onions. A better quality and larger onion would provide an opportunity to establish consistent quality and size of onions throughout the season. This would tend to benefit consumers with a higher quality of onion and would benefit producers through a higher demand for their product. In the long run, high quality, seasonal product would build name recognition and help enhance demand for Walla Walla sweet onions.

It is determined that there would be costs associated with implementing these proposals. The primary costs relate to inspection fees and administration by the committee for overseeing the program. In addition, it is possible that some growers would need to modify their cultural practices and handlers would need to modify their packing operations in order to provide a higher quality product.

Witnesses testifying at the hearing represented small and large handlers and growers. The majority of the industry is prepared to incur some additional costs because they believe, that in the long run, increased production and sales, and higher grower returns and buyer confidence in Walla Walla sweet onions would offset any increased costs. In fact, some growers testified that these proposals were not strong enough. They would have been even more supportive of the proposals if stronger quality requirements had been included.

One grower-handler testified that unless the minimum grade regulations were established higher than a U.S. Commercial grade, they would not benefit his company. He believed that the minimum grade should not be lower than the standards to which most handlers already pack. In addition, this grower-handler was concerned about the committee being under-funded and wanted to be assured that these proposals would be properly funded and that other programs, such as the promotion program, would not suffer. In testimony, a witness noted that the committee has considered the funding issues and has determined that if these proposals were implemented, additional income would be realized in the long run, which could be used for promotions and research projects.

Another grower-handler testified that the industry used to ship higher quality onions but perhaps because of lack of competition, the quality decreased. Competition in the sweet onion business has dramatically increased in recent years. The grower-handler stated that the purpose of these proposals is for the industry to put a better quality onion in the bag from the start, and then the onion would be a better product when it reaches the consumer. As far as costs, this grower-handler stated that the committee considered the costs very seriously and even discussed the cost burden between larger and smaller handlers. He believed the minimum quantity exemption addresses such concerns.

This grower-handler also testified that Walla Walla sweet onions are labor intensive and expensive to produce. With a quality control system in place, poor quality onions could not be shipped by handlers. Acreage could be increased, better prices could be realized, and positive name recognition would result. Increased acreage and production would result in additional funds for promotion and research, including development of controlled atmosphere storage for Walla Walla onions. In addition, the major cost of these proposals, the cost of inspection, is not considered a high cost item compared to the cost of labor and growing costs. Preharvest costs of production are estimated to increase by 0.4 to 0.6 percent an acre due to inspection. Because so much is invested up front per acre, a premium price is

necessary for growers to realize a reasonable return.

A witness for the proposals testified that lack of quality controls has depleted repeat business. This handler did not believe that handlers would need to purchase new equipment to implement grading schemes in their businesses.

A witness testified that if these proposals are implemented, possible increased administrative costs of $3,000 are projected. These costs relate to the additional duties involved in overseeing compliance of the inspection-exempt onions. The committee manager position is currently a part-time position. The witness testified that the committee has discussed increasing the hours of the manager's position to provide adequate coverage of the new duties.

A witness for the committee indicated that an advertising agency conducted market research at seven retail chains in the Los Angeles, California area. The research concluded that the retail trade perception of the Walla Walla sweet onion is that it is a high cost, high shrink, and short shelf life alternative to low cost alternatives already in the Los Angeles area. Retailers are concerned with paying a premium price for a product with inconsistent quality.

Record evidence revealed that without the implementation of these proposals, the Walla Walla sweet onion industry would remain stagnant or decline further. With the tremendous rise in consumption of fresh onions, and the success of other sweet onion producing areas, it is clear that this industry has the potential to improve. These proposals would enhance that opportunity.

The industry has attempted to regulate quality voluntarily. Prior to implementation of the marketing order, the Walla Walla Sweet Onion Commission, a voluntary organization composed of producers and handlers, implemented quality requirements for its members. These requirements restricted the sale of U.S. No. 2 grade onions and culls from fresh market use, and included random inspections. Common defects that caused the onions to fail to meet these conditions were seed stems, immaturity, and decay. Because of the voluntary nature of these imposed requirements, this project was unsuccessful.

Although the marketing order currently addresses problems the industry is facing with the establishment of a production area and the authority to conduct promotions and research projects, it is lacking in that the current authorities cannot directly address the quality problems that are detrimental to the industry. The record evidence revealed that the establishment of quality control and size requirements would specifically address the marketing problems being experienced by the industry. The evidence showed conclusively that the industry is facing further decline if nothing is done to improve the quality of the onions marketed. Adding these authorities to the order would enhance the program's effectiveness and provide the committee with the tools needed to administer a productive, more useful program.

The committee is composed of 10 voting members. Seven concurring votes, or a super majority, would be needed to pass a recommendation relative to quality and size requirements. Other committee actions require a simple majority or six votes. With the requirement of preparing an annual marketing policy, the committee would review market conditions each year. The committee could recommend that no regulations be imposed on handlers.

It is determined that the costs related to implement these proposals would be offset by improved grower returns, increased production, re-established markets, new markets, and more effective promotional efforts. Handlers are willing to impose these requirements on themselves to save their industry. The record evidence provided a compelling justification of these proposals.

Therefore, the proposals relating to authorizing quality control and size requirements by adding new § 956.15 (Grade and Size), § 956.16 (Pack), § 956.60 (Marketing Policy), 956.70 (Inspection and Certification) and amending §§ 956.62 (Container Markings) and 956.64 (Minimum Quantities) are recommended.

As stated above, implementation of the above proposals would entail adding and modifying several sections of the Walla Walla Sweet Onion marketing order. These sections are interrelated and should be considered together. For instance, there would be no need to have a minimum quantity exemption if there were no mandatory inspection requirements. If it is determined that these proposals would not address problems facing the industry, none of the above proposals would be implemented.

A new § 956.14, a definition for ''grading'', would not be added to the order. In the proposal, grading is defined as synonymous with ''preparing for market'' and means the sorting or separation of Walla Walla Sweet Onions into grades, sizes, and packs for market purposes.

Currently, the term ''grading'' does not appear in the marketing order. It is also not used in the proposed amendatory text. Testimony indicated that the possibility exists for this term to be used in future regulations.

If these proposals are adopted and regulations implemented, handlers would be required to implement grading schemes in their operations. Informal rulemaking actions would be necessary to implement any minimum quality and size requirements. If this term is necessary in the future, it can easily be included in the regulations without having this term defined in the order. Therefore, this section is not proposed herein.

A new § 956.15, a definition for ''grade and size'', should be added to the order. In the proposal, ''grade'' means any of the officially established grades of onions and ''size'' means any of the officially established sizes of onions, each set forth in the U.S. Standards for grades of onions or the States of Washington and Oregon standards. This section would authorize modifications or variations to these standards if recommended by the committee and approved by the Secretary.

It was determined that the above Federal and State standards would be a commonly accepted basis for the committee to use in recommending regulations on quality and size. The committee's intent is to have this language flexible so that any subsequent amendments to these grade standards would be applicable to the order.

Testimony indicated that it is common practice in the industry to refer to onions by grades and/or sizes and these definitions would provide a basis for making recommendations for regulations. The proposal includes the authority to make variations from the U.S. and State standards. This would allow the committee flexibility in determining an appropriate quality or size to recommend which may deviate from what the standards specify, but better serve the needs of the industry. The definitions for grade and size are recommended.

A new § 956.16, Pack, should be added to the order. ''Pack'' would be defined as a quantity of Walla Walla sweet onions specified by grade, size, weight, or count or by type or condition of container recommended by the committee and approved by the Secretary. Normally, onions are sorted by grade or size. The intent of having a definition for pack is to reduce the incidences of co-mingling grades and

sizes that could dissuade customers from purchasing the products. This would provide the authority to restrict different grades and sizes to certain containers in order to obtain higher prices and increase sales. An example provided by a witness for the committee at the hearing related to the possibility of establishing a premium pack which would require a higher quality onion to be shipped in a container marked ''premium.'' The definition for pack is recommended.

A new § 956.60, Marketing Policy, should be added to the order. Specifically, this provision would require that the committee annually consider and prepare a policy for marketing onions grown in the production area prior to the beginning of the season. The committee's marketing policy would rely on the conditions that exist at the time the policy is adopted and projections for the upcoming season. It is therefore, essential that the committee have as much information as possible concerning marketing conditions, including information that affects supply and demand.

Primary information that would assist the committee in determining its marketing policy are supplies of Walla Walla sweet onions, expected harvest, expected yield, quality, quality and supplies of competing onions, and consumer preferences. The marketing policy would provide a means of determining the recommendation of regulations relating to quality and size for that year in order to prevent onions of inferior quality or small size from being marketed. The marketing policy would also assist the committee in recommending quality and size regulations that would bring producers the greatest possible return consistent with the supply and demand conditions, while protecting the interest of consumers by making available for purchase better quality and preferred sizes of onions. The marketing policy would focus on the optimization of returns to growers given the conditions in the industry that year.

The committee would consider several factors in determining its marketing policy. These factors include market prices for sweet onions, supplies of sweet onions (including competitors), the trend and level of consumer income, establishment and maintenance of orderly marketing conditions, orderly marketing on behalf of the public, and other relevant factors. A witness for the committee indicated that all of this information is available through industry sources, the Department, and University Extension Services. These available resources along with the expertise of the committee members would guide the committee in making informed effective marketing policies that would benefit growers and consumers.

The committee would submit a report to the Secretary setting forth the marketing policy and notify producers and handlers of the report. Testimony indicated that the report would need to be prepared well ahead of the shipping season, perhaps in January or February. A specific due-date for the marketing policy could be established through informal rulemaking, but the committee is aware that the policy must be prepared well enough in advance of the season in order to be effective and in order to effectuate timely regulations.

The marketing policy could also be amended depending on changed supply and demand situations. Any amendments would be reported to the Secretary and to producers and handlers.

Requiring the preparation of an annual marketing policy statement is a good business practice to implement when establishing the authority for quality control provisions. It would set forth a process for the committee to follow and consider and provide adequate timeframes to be effective. Therefore, this section is recommended.

Section 956.62, Issuance of Regulations, should be amended and re-titled. This section is currently entitled ''Container markings'' and sets forth the authority to recommend regulations for fixing the marking of containers that may be used in the packaging or handling of Walla Walla sweet onions.

The section would still include the regulations regarding container markings but this proposal expands the section by adding the authority for recommending regulations to the Secretary on quality and size. The proposed amendment of this section would include the limitation of shipments of Walla Walla sweet onions by: regulating grades, sizes, qualities or maturities of Walla Walla sweet onions in any or all portions of the production area during any period; regulating grades, sizes, qualities or maturities for different varieties or packs for any period; and establishing minimum standards of quality and maturity. This section also provides that the Secretary may amend, terminate, or suspend any or all portions of any regulation issued under this section.

Portions of the production area or certain varieties could be regulated, and record testimony revealed that this was recommended to cover possible problems should a certain growing area or variety experience a specific problem during the year, possibly due to adverse weather conditions in one growing area. The overall intent of this proposal is to establish the ability to make recommendations for the entire industry and production area. Testimony revealed that the proposal was meant to be flexible and cover a variety of situations that could occur so that the amendment, if implemented, could be more effective.

The proposed amendment is adequate to cover the needs of the industry and has sufficient flexibility to cover any unusual circumstances that may arise. Therefore, this section is recommended.

Section 956.64, Minimum Quantities, should be amended. This section currently provides for establishing minimum quantities for which Walla Walla sweet onions would be exempt from assessments, container markings, and special purpose shipment requirements. The proposal amends the section by adding a minimum quantity exemption for inspection requirements.

Under this proposal, each handler could ship a maximum of 2000 pounds of sweet onions per shipment without regard to inspection requirements. However, the exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. This requirement could be modified through informal rulemaking.

The reason for the exemption is to provide a benefit for smaller handlers. Onions would still be required to meet established quality and size standards. It is estimated that only 5 percent of the crop would not be inspected. If circumstances warrant modification of the exemption amount in the future, it could be accomplished through informal rulemaking. The amount of the exemption could be raised or lowered depending on the effectiveness of the quality and size program and the impact on handlers, especially small handlers. Testimony revealed that reference should be made to § 956.70, ''Inspection and certification'' in the last sentence in the section. This reference has been added to the amendatory language. Therefore, this section is recommended as modified.

The committee proposes adding a new § 956.70, Inspection and Certification. This section sets forth the inspection requirements if these proposals are implemented. The section states that during periods of regulation, no onions, unless exempted, could be handled unless a representative of the Federal-State Inspection Service or another inspection service designated by the Secretary inspects the onions. This section allows for modification of

these requirements through informal rulemaking.

If onions are regraded, resorted, or repacked, the prior inspection would be invalid. If the onions are regraded, resorted or repacked, they must be re-inspected to ensure that the quality or size established is met prior to shipment of re-inspected onions. These requirements could also be modified through informal rulemaking.

The committee could recommend that appropriate seals, stamps, or tags identify the inspected onions, or that other identification be affixed to the containers or master containers.

The committee could recommend the length of time for which an inspection is valid and inspection certificates would be made available to the committee. Finally, the section would authorize the committee to enter into an agreement with the inspection service with respect to costs of inspection and the committee would collect pro-rata shares of such costs from handlers.

The portion relating to contracting with the inspection service would cover a situation where the committee would try to lessen the financial burden on handlers, especially by paying for all inspections and assessing a pro-rata share back to the handlers. A witness representing the inspection service testified that this was possible but variables would have to be incorporated into any contractual arrangement to cover all costs incurred by the inspection service. It is reasonable to allow this provision in the order should a contractual arrangement be necessary, to provide additional flexibility. Section 956.70(f) of this section has been modified to clarify that the inspection service is as set forth in paragragh (a) of that section.

Regarding the identification procedures, the committee could recommend that all onions have positive lot identification or PIQ (Partners in Quality) certification. These procedures are identification processes developed by the Department's inspection service to aid in maintaining identity and integrity of products after inspection. The proposed amendment was written as such to allow for flexibility in determining the most effective and beneficial procedure to use. For example, if a new identification process is developed by the Department, the proposed amendment would allow the committee to consider and recommend this new process.

Regarding establishing a time of validity for inspection certificates, testimony revealed that Walla Walla sweet onions are not stored and have a short shelf life. Three to five days is the maximum that onions should be stored. Therefore, it is anticipated that the committee could recommend a certificate validity of three to five days.

These inspection procedures are normal and customary procedures set forth in marketing orders when mandatory inspection requirements are authorized. They provide sufficient flexibility without losing effectiveness. Therefore, this section is recommended.

Material Issue Number 2

The committee proposes to change its name from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee. This proposal would entail an amendment to paragraph (a) of § 956.20, Establishment and membership, which sets forth the name of the committee. The reason for the proposed change is to better reflect the goals and accomplishments of the committee.

The committee believes adding the word ''marketing'' to their name would better reflect the goals of the committee and better portray the image sought. The committee is charged with improving the marketing practices of Walla Walla sweet onions by using the authorities in the marketing order and therefore, this proposal should be authorized.

The Agricultural Marketing Service proposed to make such changes as may be necessary to the order to conform with any amendment that may result from the hearing. No necessary conforming changes have been identified by the Department.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that growers and handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1996–97 crop year, approximately 33 handlers were regulated under Marketing Order No. 956. In addition, there were about 64 producers of Walla Walla sweet onions in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Twenty-four of the 33 handlers are also producers who handle their own onions. There are seven commercial packinghouses that pack approximately 90 percent of all Walla Walla sweet onions. In the 1996–97 season, the average f.o.b. price for Walla Walla sweet onions was $8.70 per 50-pound sack. Total production for the 1996–97 season was 666,000 50-pound containers. A handler who packed over 550,000 50-pound units would exceed the SBA definition of a small handler. According to record evidence, there are two dominant handlers in the industry and at least one of these handlers could be considered a large handler under this definition. The record revealed that all Walla Walla sweet onion growers would be considered small producers. Therefore, it can be concluded that the majority of growers and handlers would be considered small businesses.

The marketing order, promulgated in 1995, currently defines the production area where onions must be grown to be designated as Walla Walla sweet onions. It also provides the authority to fund research and promotion activities through assessments on handlers, as well as establish container regulations. Although the marketing order as currently written addresses some of the marketing problems facing the industry, the Walla Walla sweet onion industry continues to experience marketing problems.

Economic data presented on the record indicates that the acres planted have decreased from 1,800 in 1988 to 900 acres planted in 1997. This is a 50% decrease since 1988. Similarly, acres harvested have decreased from 1,600 in 1988 to 900 in 1997.

In addition, the data shows production has decreased dramatically from 1,280,000 50-pound containers in 1988 to 666,000 50-pound containers in 1997. This is a 48% decrease in production in the last 10 years.

Total crop values have declined from $9,345,000 in 1989 to $5,794,000 in

1997. This is a 38% decrease in total crop values in 9 years.

U.S. per capita consumption of fresh onions has increased from 10.7 pounds per year in 1981 to 17.5 pounds per year in 1997. This is a 64% increase in per capita use of fresh onions, while the production of Walla Walla sweet onions has decreased. This increased consumption shows that this industry has the potential to improve.

In addition, economic data shows that competition from other sweet onion producing areas has increased dramatically. Producers of Walla Walla sweet onions have lost market share to other sweet onions such as Georgia Vidalia onions, California Imperial onions, Hawaii Maui Sweets, New Mex. Sweets from New Mexico, and Texas hybrid 1015Y's.

The acres harvested and production of Vidalia onions have increased by 236% and 447%, respectively, since 1989. The Vidalia sweet onion industry's normal harvesting and shipping season begins in the middle of April and ends in late July. The Vidalia onion industry has been successful in extending its shipping season into September and October by establishing controlled atmosphere storage capabilities. This may be having a price dampening effect on Walla Walla sweet onions because of the overlap of shipping seasons and direct competition caused by the extended season of Vidalia onions.

Of the six sweet onion-producing areas in the U.S., Walla Walla sweet onion prices are lower than Maui, Vidalia and Texas onions. In addition, the economic report presented on the record shows that Vidalia onions always receive higher prices than Walla Walla sweet onions with an average price differential of $5 per 50-pound container.

The Walla Walla sweet onion season begins in middle or late June and continues until the end of July. The shipping season lasts for approximately six weeks. Prices for Walla Walla sweet onions at the beginning of the season start relatively high. As the season progresses, prices generally fall. This seasonal price behavior has resulted in producers harvesting onions before they are fully matured. This has led to poor quality onions being sold on the market that make an unfavorable impression on consumers, supermarkets, and other outlets that handle Walla Walla sweet onions. In addition, this situation appears to have shortened the marketing season.

The quality at the beginning of the season has a tendency to set the market tone for the remainder of the season. If quality is high at the beginning of the season, this makes a favorable impression on buyers as well as consumers. With high quality onions at the start of the season, consumers are likely to become repeat customers. However, if quality is low at the beginning of the season, receivers as well as consumers are disappointed. Initial low quality will result in consumers shopping for alternative sweet onions and they will not be repeat purchasers.

Minimum quality and size requirements are established under marketing orders to ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns. The objective of implementing quality control and size provisions under marketing orders is to make the markets work more efficiently, improve quality, and to market preferred sizes. The use of quality and size standards through a grading scheme benefits consumers by assuring the buyers that they are getting high quality produce of desirable size. This helps build consumer demand in the long run. Minimum quality and size standards are deemed desirable because they prevent the shipment of poor quality produce, which ends up harming producers' ability to sell their product and consumers' willingness to buy.

The reputation of Walla Walla sweet onions has deteriorated over the recent years due to the poor quality of some of the onions marketed. Record evidence indicated that a surveillance project conducted during the 1997 harvest season by the Washington State Department of Agriculture on behalf of the committee noted that a significant amount of onions sold within the immediate Walla Walla area did not meet minimum U.S. standards. Walla Walla sweet onions usually meet at least U.S. No. 2 grade, but only a small volume meets U.S. No. 1 grade.

Establishing quality and size provisions under the Walla Walla sweet onion marketing order would provide an incentive for producers to allow their onions to fully mature, resulting in a higher quality of onion marketed. Establishing quality and size requirements would ensure consistent quality and acceptable sizes of onions throughout the season. This tends to benefit consumers through a higher quality of onion and benefits producers with a higher demand for their product. In the long run, high quality, seasonal produce builds name recognition and helps enhance demand.

The Walla Walla sweet onion industry has attempted to voluntarily implement quality control. Prior to implementation of the marketing order, the Walla Walla Sweet Onion Commission, a voluntary organization composed of producers and handlers, implemented quality rules for its members. These rules restricted the sale of U.S. No. 2 grade onions and culls from fresh market use, and included random inspections. Common defects that caused the onions to fail to meet these requirements were seed stems, immaturity, and decay. Because of the voluntary nature of these imposed regulations, this project was unsuccessful.

Currently, the marketing order allows only onions grown in the designated production area to be marketed as Walla Walla sweet onions. Research activities as well as promotional activities are also authorized under the current order. Broadening the scope of the order by authorizing minimum quality and size requirements would add another marketing tool to help the industry solve marketing problems, especially those related to quality. Minimum quality and size requirements would allow the industry to improve their name recognition with a quality product. Amending the order by authorizing the establishment of minimum quality and size requirements would help to expand markets and deliver a more consistent quality product of desirable size to the consumer.

Without any quality and size provisions in place, industry members can place substandard product on the market that is severely impacting the credibility and marketability of all Walla Walla sweet onions. Because of these current practices, the industry is experiencing problems establishing and maintaining markets in areas that have traditionally been strong. The industry has lost markets due to poor quality, short shelf life and increased competition from other sweet onion producing areas.

Minimum quality and size requirements would help alleviate some of these problems and work to improve producer returns by strengthening consumer and retail demand. Mandatory inspection requirements would make all producers and handlers responsible for the quality of the industry's output. Poor quality would not be mixed with better quality. The record revealed that most handlers are already sorting by size. The Department's Market News Service reports prices for jumbo and medium onions, which further indicates that handlers are sorting by size. Most handlers also pack to a certain quality standards, usually based on U.S. grade standards. Therefore, handlers would

not be required to drastically modify their packing operations or purchase new equipment. The committee considered grower and handler costs very seriously and even discussed the cost burden between larger and smaller handlers. The minimum quantity exemption should address such concerns.

Growers may be faced with a potential cost item related to improved equipment that could be needed in order to meet minimum quality or size standards. A handler testified that growers could update their mechanical seeders so that the seeds could be planted equidistant from each other, which would result in onions with better shape, more uniformity and larger size. There are increasingly more growers that are purchasing this equipment or contracting with other growers that have the seeders. Seed coating or pelleting is another alternative for better seed placement, which is less expensive than the purchase of a highly advanced seeder. The seed coating adds a clay-like material to the exterior of the seed, so that the seeders do not cause two or three seeds to drop at the same time. It appears that costs associated with growers modifying their cultural practices to abide by minimum quality and size standards would be minimal and offset by improved producer returns.

A witness for the committee testified that the benefits of including the authority for minimum quality and size standards would far outweigh any negative impact to producers and handlers and the industry could start rebuilding markets and creating new ones.

The Federal-State Inspection Service Office that is responsible for inspecting Walla Walla sweet onions is currently located in Pasco, Washington, less than 50 miles from Walla Walla. According to record testimony, inspectors would be staffed in Walla Walla during the season if mandatory inspection was implemented.

Inspection costs in the State of Washington are computed on an hourly basis or a per unit basis, whichever is greater. If the hourly rate is used, the rate applies to the total number of the inspector's hours, including travel time. Depending upon the workload, inspectors could be based in Walla Walla during the season, which would lessen travel costs. Record testimony indicated that the hourly inspection rate is $26, with a two-hour minimun, or $52, for inspection or $208 for an eight-hour day. However, the State of Washington Agriculture Code regulations appearing at Chapter 16–400–210 WAC provide that the hourly inspection rate is $23, with no minimum time required. In accordance with the Rules of Practice and Procedure governing the formulation of marketing agreements and orders (7 CFR part 900), official notice has been taken of the fees set forth in the State of Washington regulations at Chapter 16–400–210 WAC. The fee schedule will be used in our analysis. On a per unit basis, the inspection fee is $.04 per 50-pound unit.

As stated above, inspection costs are computed on an hourly basis or a per unit basis, whichever is greater. For example, if an inspection was requested on 100 50-pound containers and the inspection lasted one hour, the per unit cost for inspecting the lot would be $4, and the per hour cost would be $23. Under this scenario, the handler would be charged $23 for the inspection, the greater amount. This would average $.23 per unit.

Under the current fee schedule, it would be necessary for the inspection office to inspect over 4,600 50-pound units of onions per day in order to maintain the fee at $.04 per 50-pound unit. If handlers do not handle over 4,600 50-pound units per day, their inspection costs would be computed at the hourly rate. Even for handlers who normally handle that volume, there would be times during the season, particularly in the beginning and end of the season, where the volume of onions inspected would not be at a level where the $.04 per 50-pound unit could be used. The fees would convert to the hourly rate.

Record testimony indicated that the committee is concerned with increased costs associated with these proposals, particularly, the costs of inspection. The committee discussed options to address these concerns and developed two remedies intended to alleviate the cost burdens on small handlers. First, the committee recommended adding authority in the order for the committee to contract with the Federal-State Inspection Service and pay for all inspections of Walla Walla sweet onions. Second, the committee recommended an exemption from inspection for handlers of small lots of onions.

Under the scenario of contracting with the inspection service, each handler would pay a separate assessment for inspection costs at a per unit price. All handlers would pay the same price per bag for inspection, whether exempt or not. Under such a contract, the larger volume handlers would pay more of the inspection costs because they handle so many more units of onions. In this manner, the burden of inspection costs for smaller volume handlers could be minimized. This was discussed with representatives of the inspection service.

A Washington State inspector confirmed that travel costs would be lessened if an inspector was based in Walla Walla. However, the inspector indicated that $.04 per 50-pound unit would be the minimum cost for the inspection. Costs could increase depending on the workload. If the workload was light, such as late in the season when the quantities of onions are diminishing, it could be more costly for an inspector to conduct inspections on smaller lots. It could be necessary to convert the cost to an hourly cost, which would exceed $.04 per 50-pound unit.

There have been discussions regarding contractual relationships with the inspection service but factors such as inspection of small quantities would need to be addressed in the contract. The inspector testified that the inspection office must cover the cost of inspectors and if there was not a full days work in Walla Walla, the inspector would need to travel elsewhere. These situations would need to be factored into any contractual agreements. A witness for the proposals testified that because of the variables associated with inspecting Walla Walla sweet onions, it is estimated the cost of inspection would range between $.04 and $.06 per 50-pound unit if the per unit price were used in a contractual agreement. The committee could consider only contracting with the inspection service during the busiest parts of the season in order to keep the inspection cost lower. The committee could also consider only regulating for part of the season.

Another option the committee developed to address the issues of costs on small handlers would provide an exemption for handlers who handle up to, but not more than 2,000 pounds of Walla Walla sweet onions per shipment. These handlers would be exempt from inspection requirements, but these exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. Handlers could make more than one exempt shipment per day as long as each shipment was at or below the 2,000-pound exemption. These exempt onions would not be exempt from assessments. The committee would be able to recommend modification of the minimum quantity exemption through informal rulemaking, if necessary. The committee would be responsible for monitoring compliance with this proposal. If necessary, the

committee would conduct spot inspections at the committee's expense to ensure that inspection-exempt onions were meeting the established quality and size regulations.

Record testimony indicated the implementation of these proposals could necessitate that the committee increase the manager's work hours in order to monitor compliance with these provisions. This could result in the need to recommend an increase in the marketing order assessment rate. However, an increase is not expected because the increased production, demand, and expanded markets would help to supply ample funds to administer the program without increasing the assessment rate.

When the committee was considering amending the marketing order to include quality and size requirements, a compliance subcommittee was appointed to address concerns of small producers and handlers. The subcommittee is composed of producers and handlers who developed the minimum quantity exemption provisions of the committee's proposals. The subcommittee considered different options during their deliberations and determined that the current proposed amendments were the most advantageous to small growers and handlers while still allowing quality objectives to be met.

Inspection requirements would not apply to shipments of Walla Walla sweet onions that are 2,000 pounds or less. However, these onions would be required to meet any minimum requirements in effect at the time of shipment. This would be enforced through periodic spot examinations conducted by the committee. A general consensus among industry members was that establishing a minimum quantity exemption was necessary to relieve any undue financial burden on small volume handlers. The committee would be responsible for monitoring compliance with this proposal by conducting spot inspections, if necessary, at the committee's expense. It is estimated that compliance with these proposals could increase administrative costs for the committee by $3,000, or a 3 percent increase in the current committee budget.

As previously stated, 7 commercial handlers pack 90 percent of the industry's crop. Approximately 26 handlers handle the remaining 10 percent. With the 2,000 pound inspection exemption implemented, it is estimated that 50 percent of the remaining 26 handlers would be exempt from mandatory inspection. This represents approximately 42 acres or 25,000 50-lb. units, which is 5 percent of the crop. Therefore, it appears that at least 13 handlers would be exempt from inspection, while 95 percent of the production would still be inspected. This proposed amendment would minimize the impact on small handlers without jeopardizing quality objectives.

These exempt onions would not be exempt from assessments. In addition, exempt onions would still be required to meet the minimum quality and size requirements established by the committee and approved by the Secretary. Committee staff would conduct spot inspections to monitor the exempt handlers' activities. The proposal allows for modification of this provision depending on industry needs. The committee does not believe it would ever recommend not having a minimum quantity exemption.

A witness for the proposals testified that the only cost increase would be the cost of inspection. He further stated that the cost of inspection is a minor cost item, compared to labor and growing costs. Walla Walla sweet onion production is labor-intensive and high cost. A premium price is necessary for the onions to pay the costs of production.

This witness testified that a grower normally has $1,800 to $2,000 an acre invested in production prior to harvest. Using this estimate and assuming a yield of 190 50-pound units per acre, inspection costs (estimated at $.04 to $.06 per 50-pound unit) are estimated to be $7.60 to $11.40 per acre, or an estimated 0.4 to 0.6 percent increase of pre-harvest cost.

Following is an example of possible costs associated with implementing quality and size standards. Testimony revealed that if a U.S. Commercial grade were established as a minimum quality standard, 5 to 10 percent of the onions would not meet that grade and would have to be disposed of in secondary outlets. Using last year's production figures (1996–97), 666,000 50-pound containers were produced for sale. If 10 percent would not make U.S. Commercial grade, 66,600 50-pound containers would need to be disposed of in secondary outlets. It is estimated that 5 percent of the crop, or 33,300 pounds, would be exempt from inspection. Therefore, approximately 566,100 50-pound containers would need to be inspected. Using the high inspection cost estimate of $.06 per container, inspection costs for the entire crop would be $33,966. Seven commercial packing houses pack 90 percent of the crop which would account for $30,569.40 of the costs. The remaining 26 small handlers would be responsible for the remaining inspection costs of $3,396.60, or approximately $131 per handler for inspection fees for that season.

Minimum quality and size standards would maintain the integrity of the product so that the commodities' overall quality image is not diminished by a low quality sample. The principle objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns.

The ability of producers of Walla Walla sweet onions to increase the demand for their product depends on their ability to differentiate their product and to create a favorable image (including quality) with consumers. In recent years, this favorable image has deteriorated. Culling out low quality produce of undesirable size, even though the demand for it may be elastic, may increase total returns. The price increase from the higher quality sold is expected to be large enough to offset the effect of the reduced quantity sold, even after the costs of culling are covered.

Record evidence also shows that the collection of information under the marketing order would not be effected if the amendments were made to the marketing order. No increase in information collection would occur with the adoption of the amendments alone. However, if these proposals are implemented and the committee recommends regulations to impose quality and size requirements, it is possible that additional information would be needed from handlers to aid in administering the program effectively. It is also possible that because inspection certificates would be received by the committee, needed information could be collected from the certificates and the information collection requirements could be reduced. Whatever information collection changes result from any regulations, the committee and the Department would submit such changes to the Office of Management and Budget (OMB) for approval. Current information collection requirements for

part 956 are approved by OMB under OMB number 0581–0172.

The proposed amendment to modify the name of the committee from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee would have no regulatory impact on handlers or growers.

Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion 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 Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

While the implementation of quality and size requirements may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of these costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the meetings regarding these proposals as well as the hearing date were widely publicized throughout the Walla Walla Sweet onion production area industry and all interested persons were invited to attend the meetings and the hearing and participate in committee deliberations on all issues. All committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because the committee would like to have the opportunity to discuss these amendments if they are implemented and recommend appropriate regulations prior to the 1999 season which starts in June 1999. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of Walla Walla sweet onions grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of Walla Walla sweet onions grown in the production area as defined in the marketing agreement and order, as hereby proposed to be amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Recommended Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 956 is proposed to be amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHWEST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 956, new §§ 956.15 and 956.16 are added to read as follows:

§ 956.15 Grade and size.

Grade means any of the officially established grades of onions, including maturity requirements and *size* means any of the officially established sizes of onions as set forth in the United States standards for grades of onions or amendments thereto, or modifications thereof, or variations based thereon, or States of Washington or Oregon standards of onions or amendments thereto or modifications thereof or variations based thereon, recommended by the committee and approved by the Secretary.

§ 956.16 Pack.

Pack means a quantity of Walla Walla Sweet Onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

§ 956.20 [Amended]

3. In § 956.20, paragraph (a) is amended by adding the word ''Marketing'' immediately following the word ''Onion'' in the first sentence.

4. In part 956, a new § 956.60 is added to read as follows:

§ 956.60 Marketing policy.

(a) *Preparation.* Prior to each marketing season, the committee shall consider and prepare a proposed policy for the marketing of Walla Walla Sweet Onions. In developing its marketing policy, the committee shall investigate

relevant supply and demand conditions for Walla Walla Sweet Onions. In such investigations, the committee shall give appropriate consideration to the following:

(1) Market prices for sweet onions, including prices by variety, grade, size, quality, and maturity, and by different packs;

(2) Supply of sweet onions by grade, size, quality, maturity, and variety in the production area and in other sweet onion producing sections;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for Walla Walla Sweet Onions;

(5) Orderly marketing of Walla Walla Sweet Onions as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy, and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare an amended or revised marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

5. Section 956.62 is revised to read as follows:

§ 956.62 Issuance of regulations.

(a) Except as otherwise provided in this part, the Secretary shall limit the shipment of Walla Walla Sweet Onions by any one or more of the methods hereinafter set forth whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities of any or all varieties of Walla Walla Sweet Onions, or combinations thereof, during any period or periods;

(2) Regulate the handling of particular grades, sizes, qualities, or maturities of Walla Walla Sweet Onions differently, for different varieties or packs, or for any combination of the foregoing, during any period or periods;

(3) Provide a method, through rules and regulations issued pursuant to this part, for fixing the size, capacity, weight, dimensions, markings or pack of the container or containers, which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof;

(4) Regulate the handling of Walla Walla Sweet Onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this part whenever the Secretary finds that such amendment would tend to effectuate the declared policy of the Act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever the Secretary finds that such regulation or amendment obstructs or no longer tends to effectuate the declared policy of the Act.

6. Section 956.64 is revised to read as follows:

§ 956.64 Minimum quantities.

During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this part, each handler may handle up to, but not to exceed, 2,000 pounds of Walla Walla Sweet Onions per shipment without regard to the inspection requirements of this part: *Provided,* That such Walla Walla Sweet Onion shipments meet the minimum requirements in effect at the time of the shipment pursuant to § 956.62. The committee, with the approval of the Secretary, may recommend modifications to this section and the establishment of such other minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, 956.63, and 956.70, or any combination thereof.

7. In part 956, a new center heading and § 956.70 are added to read as follows:

Inspection

§ 956.70 Inspection and certification.

(a) During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this subpart, no handler shall handle Walla Walla Sweet Onions unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to §§ 956.63 and 956.64, or both. Upon recommendation of the committee, with approval of the Secretary, inspection providers and certification requirements may be modified to facilitate the handling of Walla Walla Sweet Onions.

(b) Regrading, resorting, or repacking any lot of Walla Walla Sweet Onions shall invalidate prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship Walla Walla Sweet Onions after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That such inspection requirements on regraded, resorted, or repacked Walla Walla Sweet Onions may be modified, suspended, or terminated under rules and regulations recommended by the committee, and approved by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, all Walla Walla Sweet Onions that are required to be inspected and certified in accordance with this section shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of the Federal-State or Federal inspector, or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When Walla Walla Sweet Onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may enter into an agreement with an inspection service with respect to the costs of the inspection as provided by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

Dated: September 17, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–25400 Filed 9–22–98; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 140

RIN 3150–AF79

Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: request to solicit additional public comment.

SUMMARY: On October 30, 1997, the Nuclear Regulatory Commission (NRC) published for comment proposed amendments to its regulations to allow licensees of permanently shutdown nuclear power reactors to reduce onsite and offsite insurance coverage under certain conditions (62 FR 58690). In a late comment letter submitted on April 17, 1998, the Nuclear Energy Institute (NEI) argued that the required level of onsite insurance coverage should be lowered to $25 million. In NEI's view, $25 million would be adequate for on-site cleanup costs for radioactive liquid spills. The NRC proposed rulemaking would require $50 million insurance coverage. The NRC used a postulated rupture of a 450,000 gallon borated water storage tank as the defining event for determining the required insurance coverage. NEI also proposed that the requirement for onsite insurance be eliminated if less than 1000 gallons of contaminated liquid were onsite.

NEI based its recommendation on a model that apportioned the removal of the contaminated soil to various disposal facilities according to the degree of contamination. Hence, under the NEI's model, some soil would be sent to a Barnwell type facility, some to a lower cost facility like Envirocare, and some soil could be left on site under the Commission's decommissioning regulation. NEI stated that under this type of parceling of contaminated soil, $25 million of onsite insurance coverage would be more than adequate to cover cleanup of any postulated radioactive spill. NEI further stated that there has never been a spill in the operating history of commercial nuclear power plants that resulted in remediation costs of $50 million. However, NEI did not provide any specific cost figures, estimates of the amount or degree of soil contamination, or analyses, to support its recommendation to lower the onsite insurance coverage to $25 million.

The NRC is requesting public comment on the potential cost of cleanup of the on-site spill from a large vessel (>1000 gal) containing radioactive liquid and the appropriate level of insurance coverage. The NRC also has requested NEI to provide further information supporting its assessment of the costs of cleaning up a large (>1000 gal) on-site spill of radioactive material and its basis for recommending that onsite coverage should be reduced to zero when there is less than 1000 gallons of radioactive liquid on site.

DATES: The comment period expires November 9, 1998.

ADDRESSES: Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, DC 20555–0001.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments by way of the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905, e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including NEI's comments, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically through the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: George J. Mencinsky, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–3093, e-mail GJM@nrc.gov.

Dated at Rockville, Maryland, this 15th day of September, 1998.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25414 Filed 9–22–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 98N–0361]

Administrative Practices and Procedures; Internal Agency Review of Decisions; Companion Document to Direct Final Rule; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of June 16, 1998 (63 FR 32772). The document proposed to amend the FDA regulations governing the review of agency decisions by inserting a statement that sponsors, applicants, or manufacturers of drugs (including biologics) or devices may request review of a scientific controversy by an appropriate scientific advisory panel, or an advisory committee. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Silvia R. Fasce, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2996.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–15814, appearing on page 32772 in the **Federal Register** of Tuesday, June 16, 1998, the following correction is made:

1. On page 32773, in the third column, under the authority citation for 21 CFR part 10, in the second line, ''1451–4161'' is corrected to read ''1451–1461''.

Dated: September 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25365 Filed 9–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106221–98]

RIN 1545–AW53

Guidance Under Section 1032 Relating to the Treatment of a Disposition by One Corporation of the Stock of Another Corporation in a Taxable Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the treatment of a disposition by a corporation (the acquiring corporation) of the stock of another corporation (the issuing corporation) in a taxable transaction. The proposed regulations interpret section 1032 of the Internal Revenue Code. The proposed regulations affect corporations and their subsidiaries.

DATES: Written comments must be received by December 22, 1998. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Thursday, January 7, 1999 must be received by Thursday, December 17, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–106221–98), 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–106221–98), 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. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lee A. Dean, (202) 622–7550; concerning submissions and the hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 1032(a) provides that no gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

Before the enactment of section 1032 in 1954, Treasury regulations provided that ''where a corporation deals in its own shares as it might in the shares of another corporation, the resulting gain or loss is to be computed in the same manner as though the corporation were dealing in the shares of another.'' (Treas. Reg. 111, § 29.22(a)–15 (1934)).

As applied, this regulation resulted in the recognition of gain or loss on the disposition by a corporation of its treasury stock, even though the corporation would not have recognized gain or loss on the disposition of newly issued shares. See, e.g., *Firestone Tire & Rubber Co.* v. *Commissioner,* 2 T.C. 827 (1943). This disparity of treatment gave rise to tax avoidance possibilities. A corporation expecting a gain upon disposition of treasury shares might avoid such gain by canceling its treasury shares and issuing new stock, whereas a corporation might produce a fictitious loss by purchasing its own shares and reselling them at a lower price.

Congress enacted section 1032(a) in 1954 to eliminate this potential disparity between the tax treatment of a disposition by a corporation of its treasury stock and a disposition of newly issued stock. H.R. No. 1337, 83d Cong., 2d Sess. 268 (1954).

Rev. Rul. 74–503 (1974–2 C.B. 117) considers the tax consequences of a parent corporation's transfer to its subsidiary of its own treasury stock in a transaction to which section 351 applies. The ruling states that ''[t]he transfer of [parent] stock was not for the purpose of enabling [the subsidiary corporation] to acquire property by the use of such stock.'' Rev. Rul. 74–503 holds that, since the basis of previously unissued parent stock in the hands of the parent corporation is zero, the basis of the parent corporation's treasury stock in the hands of the parent corporation is also zero. Accordingly, under the transferred basis rule of section 362(a), the subsidiary corporation's basis of the treasury stock of the parent corporation is also zero (the zero basis result).

Section 1.1032–2(b), applicable to certain triangular reorganizations occurring on or after December 23, 1994, eliminates gain recognition in certain cases when an acquiring corporation (S) acquires property or stock of another corporation (T) in exchange for stock of the corporation (P) in control of S. Section 1.1032–2(b) provides that, ''For purposes of § 1.1032–1(a), in the case of a forward triangular merger, a triangular C reorganization, or a triangular B reorganization (as described in § 1.358–6(b)), P stock provided by P to S, or directly to T or T's shareholders on behalf of S, pursuant to the plan of reorganization is treated as a disposition by P of its own stock for T's assets or stock, as applicable.'' Section 1.1032–2(c) provides that S must recognize gain or loss on its exchange of P stock if S did not receive the P stock pursuant to the plan of reorganization.

Section 1.1502–13(f)(6)(ii), initially published as temporary regulations applicable to transactions occurring on or after July 12, 1995 (TD 8598, 1995–2 C.B. 188), eliminates gain recognition under certain conditions on a member's disposition of the stock of its common parent. If the requirements of that section are satisfied, § 1.1502–13(f)(6)(ii) provides that ''If a member, M, would otherwise recognize gain on a qualified disposition of P stock, then immediately before the qualified disposition, M is treated as purchasing the P stock from P for fair market value with cash contributed to M by P (or, if necessary, through any intermediate members).'' Among other requirements, the member must, pursuant to a plan, transfer the stock ''immediately to a nonmember that is not related.'' See § 1.1502–13(f)(6)(ii)(B). The preamble to the temporary regulations explains that the gain relief provisions ''prevent taxpayers from being subject to inappropriate taxation on gains in certain transactions.'' (TD 8598, 1995–2 C.B. 188, 189.)

Section 83 provides rules for property, including parent's stock, transferred in connection with the performance of services. Section 83(h) provides, in part, that ''there shall be allowed as a deduction under section 162, to the person for whom were performed the services in connection with which such property was transferred, an amount equal to the amount included * * * in the gross income of the person who performed such services.'' Section 1.83–6(b) provides that ''[e]xcept as provided in section 1032, at the time of the transfer of property in connection with the performance of services the transferor recognizes gain to the extent that the transferor receives an amount that exceeds the transferor's basis in the property.'' Section 1.83–6(d) provides

that, ''[i]f a shareholder of a corporation transfers property to an employee of such corporation * * * in consideration of services performed for the corporation, the transaction shall be considered to be a contribution of such property to the capital of such corporation by the shareholder, and immediately thereafter a transfer of such property by the corporation to the employee. * * * .''

Rev. Rul. 80–76 (1980–1 C.B. 15) addresses the use of a parent corporation's stock as compensation to an employee of a subsidiary corporation. Under the facts, A, a shareholder of P, transfers P stock directly to B, an employee of S. The ruling holds in part that, ''because section 83 applies to the transfer of P stock to B, S does not recognize gain or loss on the transfer of the P stock.''

Explanation of Provisions

Some of the concerns that ultimately led to the enactment of section 1032 are present where a subsidiary corporation holds the stock of a parent corporation. For example, a parent corporation could place treasury stock in a subsidiary corporation in order to attempt to recognize losses if the price of the parent corporation stock goes down, or could sell shares directly if the price rises. See Rev. Rul. 74–503 (1974–2 C.B. 117). The zero basis result limits such planning opportunities.

These tax avoidance possibilities are not present, however, in transactions where one corporation transfers its own stock to another corporation pursuant to a plan by which the second corporation immediately transfers the stock of the first corporation to acquire money or other property. The risk of selective loss recognition does not arise where the stock of the parent corporation is used immediately by the subsidiary corporation to acquire money or other property and therefore does not have sufficient time to depreciate in value. This concept is reflected in Rev. Rul. 74–503, which provides a factual carve-out for transfers of parent corporation stock made for the purpose of enabling a subsidiary corporation to acquire property. Also, the IRS and the Treasury have not applied the zero basis result in such integrated transactions, regardless of whether such a disposition of stock is part of a tax-free reorganization or is part of a taxable acquisition. See §§ 1.1502–13(f)(6)(ii) and 1.1032–2(b). These proposed regulations provide that no gain or loss is recognized in certain taxable transactions where one corporation immediately disposes of the stock of another corporation pursuant to a plan to acquire money or other property. The IRS and Treasury believe that, in such transactions, the nonapplicability of the zero basis result avoids inappropriate gain recognition and is consistent with the purposes of section 1032. No inference is intended regarding the applicability of the zero basis result to transactions outside of the scope of these proposed regulations.

If the conditions of these proposed regulations are satisfied, no gain or loss is recognized on the disposition of the stock of one corporation (the issuing corporation) by another corporation (the acquiring corporation). The proposed regulations apply if, pursuant to a plan to acquire money or other property, (1) the acquiring corporation acquires stock of the issuing corporation directly or indirectly from the issuing corporation in a transaction in which, but for this section, the basis of the stock of the issuing corporation in the hands of the acquiring corporation would be determined with respect to the issuing corporation's basis in the issuing corporation's stock under section 362(a); (2) the acquiring corporation immediately transfers the stock of the issuing corporation to acquire money or other property; and (3) no party receiving stock of the issuing corporation from the acquiring corporation receives a substituted basis in the stock of the issuing corporation within the meaning of section 7701(a)(42). For purposes of this section, ''property'' includes services. See § 1.1032–1.

Mechanics of Proposed Regulations

These proposed regulations adopt the cash purchase model used in § 1.1502–13(f)(6)(ii) to provide relief from gain.

In transactions to which the proposed regulations apply, immediately before the disposition of the issuing corporation's stock, the acquiring corporation is treated as purchasing the issuing corporation's stock from the issuing corporation for fair market value with cash contributed to the acquiring corporation by the issuing corporation (or, if necessary, through intermediate corporations).

As a result of this deemed cash purchase of stock, the acquiring corporation will have a fair market value basis in the issuing corporation's stock pursuant to section 1012, and the issuing corporation will increase its basis in the stock of the acquiring corporation (and, if necessary, the stock basis of intermediate corporations) by that amount. See, e.g., section 358.

No inference is intended regarding whether circular cash flows would be respected apart from this regulation. Similarly, no inference is intended with respect to other methods of avoiding gain on the acquiring corporation's use of the issuing corporation's stock.

A cross-reference in § 1.83–6(d) to the proposed regulations clarifies that the mechanics of the proposed regulations—rather than the mechanics of § 1.83–6(d)—apply to a corporate shareholder's transfer of its own stock to any person in consideration of services performed for another corporation where the conditions of these proposed regulations are satisfied.

The cash purchase model of these proposed regulations preserves the acquiring corporation's deduction under section 162 for the use of the issuing corporation's stock to compensate the acquiring corporation's employees. In addition, as in Rev. Rul. 80–76, the cash purchase model of these proposed regulations provides that the acquiring corporation will not recognize gain or loss on the transfer of the stock of the issuing corporation. The proposed regulations provide that the cash purchase model is applicable only when the acquiring corporation immediately transfers the stock of the issuing corporation to acquire money or other property. The IRS and the Treasury believe that these proposed regulations address the same issues as in Rev. Rul. 80–76 and, when issued in final form, will render Rev. Rul. 80–76 obsolete.

Stock Options

Section 1032(a), in conjunction with the rules governing the taxation of options, also operates to prevent selective loss recognition in the case where a corporation issues options to buy or sell its own stock. See Deficit Reduction Act of 1984, H.R. Rep. No. 432, 98th Cong., 2d. Sess. pt. 2 1196 (1984) (expanding section 1032(a) to provide that a corporation does not recognize gain or loss with respect to any lapse or acquisition of an option to buy or sell its stock, including treasury stock). As in the case of a subsidiary corporation's dealings in parent corporation stock, however, section 1032 may not always prevent selective loss recognition where a subsidiary corporation deals in options on parent corporation stock. Again, the zero basis result serves to limit such planning opportunities.

The Treasury and the IRS have determined that the concerns underlying section 1032 are not present where the issuing corporation transfers options on its own stock to the acquiring corporation pursuant to a plan by which the acquiring corporation immediately transfers those options to acquire money or other property. Accordingly, these proposed regulations

apply to an option issued by an issuing corporation to buy or sell its own stock in the same manner as they apply to stock of an issuing corporation.

Amendment to § 1.1032–2

The preamble to the final regulations under § 1.1032–2 states that the tax treatment of a disposition by the acquiring corporation (S) of stock options of the corporation (P) in control of S was beyond the scope of the project. (Preamble to Final Regulations under sections 358, 1032 and 1502 [TD 8648, 1996–1 C.B. 37, 39].) The IRS and the Treasury believe that the tax treatment of stock options of the issuing corporation in these triangular reorganizations also should be addressed under section 1032. Accordingly, these proposed regulations amend § 1.1032–2 to provide that § 1.1032–2 shall apply to an option to buy or sell P stock issued by P in the same manner as that section applies to the stock of P.

Proposed Effective Date

The regulations are proposed to be effective on the date that final regulations are published in the **Federal Register**.

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. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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.

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 copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, January 7, 1999 beginning at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must request to speak, and submit an outline of topics to be discussed and the time to be devoted to each topic by Thursday, December 17, 1998.

A period of ten minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Lee A. Dean of the Office of the Assistant Chief Counsel (Corporate), IRS. 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. Section 1.83–6 is amended by adding two sentences to the end of paragraph (d)(1) to read as follows:

§ 1.83–6 Deduction by employer.

* * * * *

(d)(1) * * * For special rules that may apply to a corporate shareholder's transfer of its own stock to any person in consideration of services performed for another corporation, see § 1.1032–3. The preceding sentence applies to transfers of stock occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 3. Section 1.1032–2 is amended by:

1. Revising paragraph (e);
2. Adding paragraph (f).

The addition and revision read as follows:

§ 1.1032–2 Disposition by a corporation of stock of a controlling corporation in certain triangular reorganizations.

* * * * *

(e) *Stock options.* The rules of this section shall apply to an option to buy or sell P stock issued by P in the same manner as the rules of this section apply to P stock.

(f) *Effective dates.* This section applies to triangular reorganizations occurring on or after December 23, 1994. Paragraph (e) applies to transfers of stock options occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 4. Section 1.1032–3 is added to read as follows:

§ 1.1032–3 Disposition of stock or stock options in certain transactions not qualifying under any other nonrecognition provision.

(a) *Scope.* This section provides rules for certain transactions in which one corporation (the acquiring corporation) acquires money or other property (as defined in § 1.1032–1) in exchange, in whole or in part, for stock of another corporation (the issuing corporation).

(b) *General rule.* In a transaction to which this section applies, no gain or loss is recognized on the disposition of the issuing corporation's stock by the acquiring corporation. The transaction is treated as if, immediately before the acquiring corporation disposes of the stock of the issuing corporation, the acquiring corporation purchased the issuing corporation's stock from the issuing corporation for fair market value with cash contributed to the acquiring corporation by the issuing corporation (or, if necessary, through intermediate corporations).

(c) *Applicability.* The rules of this section apply only if, pursuant to a plan to acquire money or other property—

(1) The acquiring corporation acquires stock of the issuing corporation directly or indirectly from the issuing corporation in a transaction in which, but for this section, the basis of the stock of the issuing corporation in the hands of the acquiring corporation would be determined with respect to the issuing corporation's basis in the issuing corporation's stock under section 362(a);

(2) The acquiring corporation immediately transfers the stock of the issuing corporation to acquire money or other property; and

(3) No party receiving stock of the issuing corporation from the acquiring corporation receives a substituted basis in the stock of the issuing corporation within the meaning of section 7701(a)(42).

(d) *Stock options.* The rules of this section shall apply to an option issued by a corporation to buy or sell its own stock in the same manner as the rules of this section apply to the stock of an issuing corporation.

(e) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) *X*, a corporation, owns all of the stock of *Y* corporation. *Y* reaches an agreement with *A*, an individual, to acquire a truck from *A* in exchange for 10 shares of *X* stock with a fair market value of $100. To effectuate *Y*'s agreement with *A*, *X* transfers to *Y* the *X* stock in a transaction in which, but for this section, the basis of the *X* stock in the hands of *Y* would be determined with respect to *X*'s basis in the *X* stock under section 362(a). *Y* immediately transfers the *X* stock to *A* to acquire the truck.

(ii) In this *Example 1*, no gain or loss is recognized on the disposition of the *X* stock by *Y*. Immediately before *Y*'s disposition of the *X* stock, *Y* is treated as purchasing the *X* stock from *X* for $100 of cash contributed to *Y* by *X*.

Example 2. (i) *A*ssume the same facts as *Example 1*, except that, rather than *X* stock, *X* transfers an option with a fair market value of $100 to buy *X* stock.

(ii) In this *Example 2*, no gain or loss is recognized on the disposition of the *X* stock option by *Y*. Immediately before *Y*'s disposition of the *X* stock option, *Y* is treated as purchasing the *X* stock option from *X* for $100 of cash contributed to *Y* by *X*.

Example 3. (i) *X*, a corporation, owns all of the outstanding stock of *Y* corporation. *A*, an individual, is an employee of *Y*. Pursuant to an agreement between *X* and *Y* to compensate *A* for services provided to *Y*, *X* transfers to *A* 10 shares of *X* stock with a fair market value of $100. Under § 1.83–6(d), but for this section, the transfer of *X* stock by *X* to *A* would be treated as a contribution of the *X* stock by *X* to the capital of *Y*, and immediately thereafter, a transfer of the *X* stock by *Y* to *A*. But for this section, the basis of the *X* stock in the hands of *Y* would be determined with respect to *X*'s basis in the *X* stock under section 362(a).

(ii) In this *Example 3*, no gain or loss is recognized on the deemed disposition of the *X* stock by *Y*. Immediately before *Y*'s deemed disposition of the *X* stock, *Y* is treated as purchasing the *X* stock from *X* for $100 of cash contributed to *Y* by *X*.

Example 4. (i) *X*, a corporation, issues 10 shares of *X* stock subject to a substantial risk of forfeiture to compensate *Y*'s employee, *A*, for services. *A* does not have an election under section 83(b) in effect with respect to the *X* stock. *X* retains a reversionary interest in the *X* stock in the event that *A* forfeits the right to the stock. *A*t the time the stock vests, the 10 shares of *X* stock have a fair market value of $100. Under § 1.83–6(d), but for this section, the transfer of the *X* stock by *X* to *A* would be treated, at the time the stock vests, as a contribution of the *X* stock by *X* to the capital of *Y*, and immediately thereafter, a disposition of the *X* stock by *Y* to *A*. The basis of the *X* stock in the hands of *Y*, but for this section, would be determined with respect to *X*'s basis in the *X* stock under section 362(a).

(ii) In this *Example 4*, no gain or loss is recognized on the deemed disposition of *X* stock by *Y* when the stock vests. mmediately before *Y*'s deemed disposition of the *X* stock, *Y* is treated as purchasing *X*'s stock from *X* for $100 of cash contributed to *Y* by *X*.

Example 5. (i) Assume the same facts as in *Example 4*, except that *Y* (rather than *X*) retains a reversionary interest in the *X* stock in the event that A forfeits the right to the stock. Several years after *X*'s transfer of the *X* shares, the stock vests.

(ii) This section does not apply to *Y*'s deemed disposition of the *X* shares. For the tax consequences to *Y* on the deemed disposition of the *X* stock, see § 1.83–6(b).

(f) *Effective date.* This section applies to transfers of stock or stock options of the issuing corporation occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–25342 Filed 9–22–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–209769–95]

RIN 1545–AT56

Exception From Supplemental Annuity Tax on Railroad Employers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance to employers covered by the Railroad Retirement Tax Act. The Railroad Retirement Tax Act imposes a supplemental tax on those employers, at a rate determined by the Railroad Retirement Board, to fund the Railroad Retirement Board's supplemental annuity benefit. These proposed regulations provide rules for applying the exception from the supplemental tax with respect to employees covered by a supplemental pension plan established pursuant to a collective bargaining agreement and for applying a related excise tax with respect to employees for whom the exception applies. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by December 22, 1998. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for January 20, 1999, must be received by December 30, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209769–95), 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–209769–95), 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. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, (202) 622–6030; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Employment Tax Regulations (26 CFR Part 31) under section 3221(d). These proposed regulations provide guidance regarding the section 3221(d) exception from the tax imposed under section 3221(c) with respect to employees covered by a supplemental pension plan of the employer established pursuant to an agreement reached through collective bargaining.

Under the Railroad Retirement Act of 1974, as amended (RRA), an employee of a railroad employer generally is entitled to receive a supplemental annuity paid by the Railroad Retirement Board (RRB) at retirement. An employee is entitled to receive a supplemental annuity only if the employee has performed at least 25 years of service with the railroad industry, including service with the railroad industry before October 1, 1981. The monthly amount of the supplemental annuity ranges from $23 to $43, based on the employee's number of years of service. See 45 U.S.C. 231b(e). Under section 2(h)(2) of the RRA, an employee's supplemental annuity is reduced by the amount of payments received by the employee from any plan determined by the RRB to be a supplemental pension plan of the employer, to the extent those payments are derived from employer contributions.

Section 3221(c) imposes a tax on each railroad employer to fund the supplemental annuity benefits payable by the Railroad Retirement Board. The tax imposed under section 3221(c) is

based on work-hours for which compensation is paid. The rate of tax under section 3221(c) is established by the RRB quarterly, and is calculated to generate sufficient tax revenue to fund the RRB's current supplemental annuity obligations.

Under section 3221(d), the tax imposed by section 3221(c) does not apply to an employer with respect to employees who are covered by a supplemental pension plan established pursuant to an agreement reached through collective bargaining between the employer and employees. However, if an employee for whom the employer is relieved of any tax under the section 3221(d) exception becomes entitled to a supplemental annuity from the RRB, the employer is subject to an excise tax equal to the amount of the supplemental annuity paid to the employee (plus a percentage determined by the RRB to be sufficient to cover administrative costs attributable to those supplemental annuity payments).

Section 3221(d) was enacted by Pub. L. 91–215, 84 Stat. 70, which amended the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act. The legislative history to Pub. L. 91–215 indicates that the exception under section 3221(d) from the tax imposed under section 3221(c) was ''directed primarily at the situation existing on certain short-line railroads which are owned by the steel companies. The employees of these lines are, for the most part, covered by other supplemental pension plans established pursuant to collective bargaining agreements between the steel companies and the unions representing the majority of their employees. * * * [T]hese railroads will no longer be required to pay a tax to finance the supplemental annuity fund, but will be required to reimburse the Railroad Retirement Board for any supplemental annuities that their employees may be paid upon retirement.'' S. Rep. 91–650, 91st Cong., 2d Sess. 6 (February 3, 1970).

Summary of Regulations

These proposed regulations provide rules for determining whether a plan is a supplemental pension plan established pursuant to an agreement reached through collective bargaining. Under these proposed regulations, a plan is a supplemental pension plan only if the plan is a pension plan within the meaning of § 1.401–1(b)(1)(i). Under this definition, a plan is a pension plan only if the plan is established and maintained primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. Thus, for example, a plan generally is not a supplemental pension plan if distributions from the plan that are attributable to employer contributions may be made prior to a participant's death, disability, or termination of employment. See Rev. Rul. 74–254 (1974–1 C.B. 90); Rev. Rul. 56–693 (1956–2 C.B. 282).

These proposed regulations also require that the RRB determine that a plan is a private pension under its regulations in order for the plan to be a supplemental pension plan under section 3221(d) and these proposed regulations. This requirement is included because the section 3221(d) exception to the section 3221(c) tax is based on the assumption that any participant for whom the exception applies will receive a reduced supplemental annuity because of the supplemental pension plan on account of which the section 3221(c) tax is eliminated.

The IRS requests comments regarding other appropriate requirements for a supplemental pension plan within the meaning of section 3221(d).

These proposed regulations also provide rules for determining whether a plan is established by collective bargaining agreement with respect to an employer. These rules generally follow the rules applicable to qualified plans for this purpose.

Section 3221(d) imposes an excise tax equal to the amount of the supplemental annuity paid to any employee with respect to whom the employer has been excepted from the section 3221(c) tax under the section 3221(d) exception. These proposed regulations include rules applying this excise tax under section 3221(d).

Proposed Effective Date

These proposed regulations are proposed to be effective October 1, 1998.

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. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described under the **ADDRESSES** caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 20, 1999, at 10 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments and an outline of topics to be discussed and the time to be devoted to each topic (in the manner described under the **ADDRESSES** caption of this preamble) by December 30, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.3221–4 is added under the undesignated centerheading ''Tax on Employers'' to read as follows:

§ 31.3221–4 Exception from supplemental tax.

(a) *General rule.* Section 3221(d) provides an exception from the excise tax imposed by section 3221(c). Under this exception, the excise tax imposed by section 3221(c) does not apply to an employer with respect to employees who are covered by a supplemental pension plan, as defined in paragraph (b) of this section, that is established pursuant to an agreement reached through collective bargaining between the employer and employees, within the meaning of paragraph (c) of this section.

(b) *Definition of supplemental pension plan*—(1) *In general.* A plan is a supplemental pension plan covered by the section 3221(d) exception described in paragraph (a) of this section only if it meets the requirements of paragraphs (b)(2) through (4) of this section.

(2) *Pension benefit requirement.* A plan is a supplemental pension plan within the meaning of this paragraph (b) only if the plan is a pension plan within the meaning of § 1.401–1(b)(1)(i) of this chapter. Thus, a plan is a supplemental pension plan only if the plan provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. A plan need not be funded through a qualified trust that meets the requirements of section 401(a) or an annuity contract that meets the requirements of section 403(a) in order to meet the requirements of this paragraph (b)(2). A plan that is a profit-sharing plan within the meaning of § 1.401–1(b)(1)(ii) of this chapter or a stock bonus plan within the meaning of § 1.401–1(b)(1)(iii) of this chapter is not a supplemental pension plan within the meaning of this paragraph (b).

(3) *Railroad Retirement Board determination with respect to the plan.* A plan is a supplemental pension plan within the meaning of this paragraph (b) with respect to an employee only during any period for which the Railroad Retirement Board has made a determination under 20 CFR 216.42(d) that the plan is a private pension, the payments from which will result in a reduction in the employee's supplemental annuity payable under 45 U.S.C. 231a(b). A plan is not a supplemental pension plan for any time period before the Railroad Retirement Board has made such a determination, or after that determination is no longer in force.

(4) *Other requirements.* [Reserved]

(c) *Collective bargaining agreement.* A plan is established pursuant to a collective bargaining agreement with respect to an employee only if, in accordance with the rules of § 1.410(b)–6(d)(2) of this chapter, the employee is included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, provided that there is evidence that retirement benefits were the subject of good faith bargaining between employee representatives and the employer or employers.

(d) *Substitute section 3221(d) excise tax.* Section 3221(d) imposes an excise tax on any employer who has been excepted from the excise tax imposed under section 3221(c) by the application of section 3221(d) and paragraph (a) of this section with respect to an employee. The excise tax is equal to the amount of the supplemental annuity paid to that employee under section 2(b) of the Railroad Retirement Act of 1974 (88 Stat. 1305), plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under section 2(b) of that Act.

(e) *Effective date.* This section is effective October 1, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–25341 Filed 9–22–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–96–049]

RIN 2115–AE47

Drawbridge Operation Regulation; Back Bay of Biloxi, MS

AGENCY: Coast Guard, DOT.

ACTION: Notice of supplemental proposed rulemaking.

SUMMARY: The Coast Guard proposes a change to the regulation governing the operation of the bascule span Popps Ferry Road Bridge across the Back Bay of Biloxi, mile 8.0, in Biloxi, Harrison County, Mississippi. This supplemental proposal is the result of comments on the notice of proposed rulemaking. The proposal would permit the draw to remain closed to navigation from 7:30 a.m. to 9 a.m., 11:30 a.m. to 1:30 p.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

DATES: Comments must be received on or before November 23, 1998.

ADDRESSES: You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the address given above, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–96–049) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger that 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard published a notice of proposed rulemaking on November 20, 1996 (61 FR 59047). The proposed rule would have permitted the draw to remain closed to navigation from 7:30 a.m. to 9 a.m., 11:30 a.m. to 1:30 p.m.

and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Comments received prompted the Coast Guard to reevaluate the proposal. Nine letters were received in response to the public notice. National Marine Fisheries stated in one letter that the proposal would not adversely affect fishery resources and offered neither support nor objection. One letter did not object to nor support the proposal, but suggested a change to the times in the proposed rule. Four letters were in opposition to the proposed rule for certain specific reasons as follows: one letter of objection stated that there is no safe area for a towboat and barges to wait for the opening; the second letter was from a paving company which stated that the regulation would severely restrict its raw material shipments, causing work delays and ultimately increasing costs; the third letter was from a construction company, stating that delays in shipments of materials would increase operating costs; the fourth letter from another construction company stated that costs of delays of towboats to construction sites would be significant.

Three other letters stated opposition to the proposal based on the previous poor condition of the bridge which restricted transits to daylight hours. Obsolete, worn-out components of the lift mechanism often limited operation of the bridge to one bascule span which significantly reduced the width of the waterway. During periods when only one bascule span was operable, vessel traffic was only able to transit the bridge during daylight hours for safety reasons. Thus, the proposed rule would have more severely limited the times that vessels could have passed through the bridge. Additionally, tugs with double-wide tows had to break down into single-wide tows to transit the restricted opening of the bridge. It is believed that this condition prompted a significant portion of objections from waterway users. The operating machinery of the bridge has recently been replaced and the bridge is now fully operational. Therefore, the bridge is operated 24 hours per day, and waterway users may now safely transit the bridge at night. The Coast Guard believes that interested parties should have another opportunity to comment on the proposed change before a decision is made.

Discussion of Proposed Rule

The Coast Guard is considering changing the regulation governing the operation of the Popps Ferry Road bridge across the Back Bay of Biloxi, mile 8.0, in Biloxi, Harrison County, Mississippi to permit the draw to remain closed to navigation from 7:30 a.m. to 9 a.m., 11:30 a.m. to 1:30 p.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. Presently, the draw of the bridge opens on signal. The proposed regulation would allow for the free flow of vehicular traffic, while still serving the reasonable needs of navigational interests.

The drawbridge is a double leaf bascule span structure. Vertical clearance of the bridge is 24 feet above mean high water in the closed-to-navigation position and unlimited to the open-to-navigational position. Horizontal clearance is 180 feet. Navigation on the waterway consists of tugs with tows, commercial fishing vessels and recreational craft. Vehicular traffic crossing the bridge during peak rush hour traffic periods has increased significantly during recent years. Additionally, since the City of Biloxi is bisected by the Popps Ferry Road Bridge, openings during rush hour traffic periods paralyze vehicular traffic movement. This is the only route available to mid-city commuters without taking a 15-mile detour via Interstate 10 East to Interstate 110 South, thence U.S. 90 west to Popps Ferry Road on the south side of the Back Bay of Biloxi.

Data provided by the Harrison County Board of Supervisors show that from May 1994 through May 1995, the number of vessels that passed the bridge during the proposed 7:30 a.m. to 9 a.m. closure period averaged 0.4 vessels daily, the number of vessels that passed the bridge during the proposed 11:30 a.m. to 1:30 p.m. closure period averaged 0.5 vessels daily and the number of vessels that passed the bridge during the proposed 4:30 p.m. to 6 p.m. closure period averaged 0.4 vessels daily. Vehicular traffic that crosses the bridge during the proposed closure period of 7:30 a.m. to 9 a.m. average approximately 268 daily; from 11:30 a.m. to 1:30 p.m., 860 daily and from 4:30 p.m. to 6 p.m. 540 daily. While vessel traffic through this bridge remains relatively constant, vehicular traffic is steadily increasing as development in the area occurs. This change in drawbridge operating regulations will provide relief for congested vehicular traffic during these periods while still providing for the reasonable needs of navigation.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the number of vessels impaired during the proposed closed-to-navigation periods is minimal. Commercial fishing vessels still have ample opportunity to transit this waterway before and after the peak vehicular traffic periods as is their customary practice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

The proposed rule considers the needs of local commercial fishing vessels, as the study of vessels passing the bridge included such commercial vessels. These local commercial fishing vessels will still have the ability to pass the bridge in the early morning, early afternoon and evening hours. Thus, the economic impact is expected to be minimal. Additionally, there is no indication that other waterway users would suffer any type of economic hardship if they are precluded from transiting the waterway during the hours that the draw is scheduled to remain in the closed-to-navigation position. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Add § 117.675(c) to read as follows:

§ 117.675 Back Bay of Biloxi.

* * * * *

(c) The draw of the Popps Ferry Road bridge, mile 8.0, at Biloxi, shall open on signal; except that, from 7:30 a.m. to 9 a.m., from 11:30 a.m. to 1:30 p.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress.

Dated: September 14, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 98–25463 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK10–1–7022b; FRL–6163–1]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Alaska for the purpose of revising the mobile source category of the 1990 base year inventory. The SIP revision was submitted by the State when an improved model for estimating mobile source emissions became available. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If the EPA receives 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. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 23, 1998.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist, Office of Air Quality (OAQ–107), at the EPA Regional Office listed below. Copies of the documents of the state submittal are available at the following addresses for inspection during normal business hours. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby, Room 105, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Joan Cabreza, Environmental Scientist, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–8505.

SUPPLEMENTARY INFORMATION: For additional information. See the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: September 4, 1998.

Randall F. Smith,

Acting Regional Administrator, Region 10.

[FR Doc. 98–25319 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 206–0095b; FRL–6164–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving a revision to the California State Implementation Plan (SIP) submitted by the California Air Resources Board (CARB). The revision consists of nine volatile organic compound (VOC) negative declarations from the San Diego County Air Pollution Control District (SDCAPCD). The intended effect of this action is to include these negative declarations in the SIP and to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives 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. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by October 23, 1998.

ADDRESSES: Comments must be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the negative declarations are available for public inspection at EPA's

Region IX office and at the following locations during normal business hours.

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123–1096.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns negative declarations for VOC source categories from the SDCAPCD. On February 25, 1998, the CARB submitted nine negative declarations for the SDCAPCD for the following VOC source categories: (1) synthetic organic chemical manufacturing (SOCMI)—distillation, (2) SOCMI—reactors, (3) wood furniture, (4) plastic parts coatings (business machines), (5) plastic parts coatings (other), (6) offset lithography, (7) industrial wastewater, (8) autobody refinishing, and (9) volatile organic liquid storage. These negative declarations confirm that the respective source categories are not present in the SDCAPCD. The negative declarations were adopted by the SDCAPCD on October 22, 1997 and submitted to EPA by CARB as revisions to the SIP on February 25, 1998.

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

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

Dated: September 8, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–25329 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 206–0096b; FRL–6164–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving a revision to the California State Implementation Plan (SIP) submitted by the California Air Resources Board (CARB). The revisions concern negative declarations from the Placer County Air Pollution Control District (PCAPCD) for seven source categories that emit volatile organic compounds (VOC) and five source categories that emit oxides of nitrogen (NO_X). The intended effect of this action is to include these negative declarations in the SIP and to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A rationale for this action is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives 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. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received by October 23, 1998.

ADDRESSES: Comments on this action should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the negative declarations are available for public inspection at EPA's Region IX office and at the following locations during normal business hours.

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 40l ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Placer County Air Pollution Control District, 11464 ''B'' Avenue, Auburn, CA 95603

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns negative declarations for seven VOC source categories from the PCAPCD: (1) aerospace coatings, (2) industrial waste water treatment, (3) plastic parts coatings (business machines), (4) plastic parts coatings (other), (5) shipbuilding and repair, (6) synthetic organic chemical manufacturing (SOCMI)-batch plants, and (7) SOCMI-reactors. This document also concerns negative declarations for five NO_x source categories from the PCAPCD: (1) Nitric and Adipic Acid Manufacturing Plants, (2) Utility Boilers, (3) Cement Manufacturing Plants, (4) Glass Manufacturing Plants, and (5) Iron and Steel Manufacturing Plants. These negative declarations certify that there are no major facilities for VOC or NO_x in the above source categories in the PCAPCD. They were adopted by the PCAPCD on October 9, 1997 and submitted to EPA on February 25, 1998 by the California Air Resources Board.

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

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

Dated: September 8, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–25331 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6163–8]

RIN 2060–A622

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposal.

SUMMARY: Today's action proposes to incorporate by reference into Performance Specification 1 (PS–1): Specifications and Test Procedures for

Opacity Continuous Emission Monitoring Systems in Stationary Sources (40 CFR part 60, Appendix B) the standard practice developed by American Society for Testing and Materials (ASTM) entitled ''Standard Practice for Continuous Opacity Monitoring Manufacturers to Certify Design Conformance and Monitor Calibration,'' Document number D6216. This proposal is a supplement to actions published in the **Federal Register** on November 25, 1994 (59 FR 60585). ASTM D6216 helps to ensure that continuous opacity monitoring systems (COMS) meet the most current minimum design and calibration requirements. This proposal also contains revision to Subpart A, §§ 60.13 and 60.17, as well as editorial corrections to PS–1 other than the incorporations by reference.

DATES: *Comments.* Comments must be received on or before November 23, 1998.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 14, 1998, a public hearing will be held on October 23, 1998 beginning at 10 a.m. Persons interested in attending the hearing should call the contact person mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony at the public hearing must contact EPA by October 6, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–91–07, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Center, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Mr. Solomon O. Ricks, Emission Measurement Center (MD–19), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5242.

Background Information. The background information for this proposal may be obtained from: Air Docket Section (MC–6102), Attention: Docket No. A–91–07, U.S. Environmental Protection Agency, Room M–1500, First Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The background information contains correspondence between EPA and ASTM during the development of the ASTM standard practice.

Docket. A docket, No. A–91–07, containing information relevant to this rulemaking, is available for public inspection between 8:30 a.m. and noon and 1:30 p.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Room M–1500, First Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying. A copy of the ASTM D6216 standard practice is included in the docket.

FOR FURTHER INFORMATION CONTACT: For information concerning the standard, contact Mr. Solomon Ricks at (919) 541–5242, Source Characterization Group A, Emissions, Monitoring, and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the supplemental proposal:

I. Introduction
II. Summary of Changes
A. Design Specifications Verification Procedures
B. Performance Specifications Verification Procedures
C. Other Revisions
III. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. Unfunded Mandates Act
F. Executive Order 12875
G. National Technology Transfer and Advancement Act
H. Executive Order 13045
I. Executive Order 13084

I. Introduction

PS–1, Specifications and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources (40 CFR Part 60, Appendix B) was first published in the **Federal Register** on October 6, 1975 (40 FR 64250). An amendment to PS–1 was published on March 30, 1983 (48 FR 13322).

Additional experience with the procedures of PS–1 led EPA to propose a second set of revisions proposed in the **Federal Register** (59 FR 60585) on November 25, 1994. These revisions were intended to (1) clarify owner and operator and monitor vendor obligations, (2) reaffirm and update COMS design and performance requirements, and (3) provide EPA and affected facilities with equipment assurances for carrying out effective monitoring. Today's proposal supplements the November 25, 1994 proposal and will further contribute to the goal of updating COMS design and performance requirements.

These revisions to subpart A and PS–1 will apply to all COMS installed or replaced after the date of promulgation for purposes of monitoring opacity, as required in the Code of Federal Regulations (CFR). These requirements may also apply to stationary sources located in a State, District, Reservation, or Territory that have adopted these requirements into their implementation plan. Following promulgation, a source owner, operator, or manufacturer will be subject to these requirements if installing a new COMS, relocating a COMS, replacing a COMS, recertifying a COMS that has undergone substantial refurbishing (in the opinion of the enforcing agency), or has been specifically required to recertify the COMS with these revisions.

II. Summary of Changes

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) aims to reduce costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry. To comply with NTTAA, which went into effect in March 1996, EPA must consider and use voluntary consensus standards (VCS's), if available and applicable, unless such use is inconsistent with law or otherwise impractical.

In compliance with NTTAA, this proposal incorporates by reference ASTM standard D6216. The ASTM D6216 will be referenced in 40 CFR part 60, § 60.17. The development of D6216 was undertaken as a result of discussions between representatives of ASTM and EPA during September 1996. The ASTM agreed to develop D6216 to assist EPA in overcoming technical issues with opacity monitors. The additional design and performance specifications and test procedures included in D6216 eliminate many of the performance problems that EPA encountered and contribute to ensuring the quality of opacity monitoring results without restricting future technological development. ASTM believes that purchasers of opacity monitoring equipment meeting all of the requirements of D6216 are assured that the opacity monitoring equipment meets all of the design requirements of PS–1 and additional design specifications that eliminate many of the operational problems that were encountered in the field. The standard will be incorporated as presented in the following sections A and B.

A. Design Specifications Verification Procedures

This proposal incorporates the design specification verification procedures from ASTM standard D6216 in their entirety. Included in ASTM D6216 are three new design specification verification procedures that will ensure the accuracy of opacity monitor data is not affected by fluctuations in supply voltage, ambient temperature, and ambient light. Therefore, EPA is proposing the addition of verification procedures for: (a) Insensitivity to supply voltage variations, (b) thermal stability, and (c) insensitivity to ambient light.

The proposed revisions would move the simulated zero and upscale calibration requirements from section 7 (Performance Specifications Verification Procedures) in November 25, 1994 proposal to section 6 (Design Specification Verification Procedures). ASTM standard D6216 provides procedures for calibration check devices, as well as automated mechanisms to determine simulated zero and upscale calibration drift. The Agency is requesting comments on these proposed revisions, and in particular on the use of ASTM standard D6216.

B. Performance Specifications Verification Procedures

In a reversal from the November 25, 1994 proposed revisions to PS–1 which placed the responsibility of some tests on the owner and operator, this proposal places the responsibility of performing the: (a) Calibration error test, (b) instrument response time test, and (c) optical alignment indicator test, on the manufacturer. Under this proposal, these tests and the equipment preparation would be performed prior to shipping the COMS to the owner or operator. ASTM explained to the EPA that the manufacturers would be conducting these tests on each monitor and also that the manufacturers were more adequately equipped with test stands for doing these tests than the owner and operator at the facility.

This proposal also incorporates by reference the procedures for these tests from ASTM standard D6216. The Agency requests comments on these proposed revisions, and in particular on the use of ASTM standard D6216.

C. Other Revisions

This proposal also contains some revisions to 40 CFR part 60, § 60.13(d)(1) and several revisions or corrections to PS–1. Those revisions and corrections are summarized below. The Agency requests comments on these proposed changes.

We propose the following two revisions to § 60.13(d)(1):

(1) Change the zero and span calibration levels to be based on the applicable opacity standard; therefore, proper operation of the monitor near the emission standard can be confirmed on a daily basis, and

(2) Revise the statement about calibration materials as defined in the applicable version of PS–1; EPA's intent is to have only one version of PS–1.

The Agency proposes the following revisions for section 2, Definitions, of PS–1:

(1) Replace section 2.3 Calibration Drift with Upscale Calibration Drift and being moved to section 2.23. This change causes the remaining definition subsection numbers to change.

(2) Modify several definitions to be consistent with ASTM D6216.

(3) Add definitions for the following three procedures to be consistent with ASTM D6216: External Adjustment, Intrinsic Adjustment, and Zero Compensation.

We propose the following modifications and corrections to section 4, Installation Specifications, of PS–1:

(1) Since a new design performance specification now requires that the opacity monitor exhibit no interference from ambient light, modify section 4.1 by removing 4.1(d).

(2) Reorganize section 4 because sections 4.1 and 4.2 were both titled Measurement Location.

We propose the following revisions to section 5, Design Specifications, of PS–1:

(1) Add design specifications criteria for,

(a) insensitivity to supply voltage variation,

(b) thermal stability, and

(c) insensitivity to ambient light.

(2) Revise the requirement to display and record changes to the pathlength correction factor (PLCF) such that the PLCF must not be changeable and an alarm must activate when the PLCF is changed.

(3) Update table 1–1 to reflect the revised and added design specifications.

We also propose to revise section 7 as follows:

(1) Revise table 1–3 in section 7 so that the opacity values used for the calibration error test ensure the accuracy of the opacity monitor near the opacity standard. The November 25, 1994 proposed revisions did not check the accuracy of the COMS at or near the applicable standard.

(2) Revise section 7.1.3.1.3 to reduce the calibration frequency of primary attenuators used for calibration of secondary attenuators. ASTM assured EPA that when primary attenuators are used only to calibrate secondary attenuators, and they are stored in a protective case, scratching or other degradation of their surface is virtually eliminated.

(3) Revise section 7.1.3.2 to reduce the calibration frequency of secondary attenuators. ASTM explained to EPA that unless a secondary filter was severely damaged, the calibration would not change over a six-month period.

(4) Revise section 7.3, operational test period, to clarify the sources operating status during the 336-hour test period. During the operational test period, the source should operate in its normal operating mode. Therefore, if normal operations contain routine source shutdowns, the source's down periods are included in the 336-hour operational test period. Also, the interval between when external zero and calibration adjustments can be made has been extended from 24 hours to 168 hours.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) [Clean Air Act Section 307(d)(7)(A)].

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 October 4, 1993), the EPA is required to judge whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because no additional cost will be incurred by such entities because of the changes specified by the rule. The requirements of the proposal reaffirm the existing requirements for demonstrating conformance with the COMS PS's. Small entities will be affected to the same degree that they are affected under existing requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), the EPA must prepare a budgetary impact statement to accompany any proposed rule, or any final rule for which a notice of proposed rulemaking was published, 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 in any one year. Under Section 205, if a budgetary impact statement is required under section 202, the EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law. 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. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

The EPA has determined that this proposed rule 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. The EPA has also determined that this proposed rule does not significantly or uniquely impact small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Executive Order 12875

Executive Order 12875 applies to the promulgation of any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government. Today's action does not impose any unfunded mandate upon any State, local, or tribal government; therefore, Executive Order 12875 does not apply to this rulemaking.

G. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Pub. L. 104–113, generally requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

To comply with NTTA, which went into effect in March 1996, EPA must consider and use voluntary consensus standards (VCS's) if available and applicable. Today's action proposes to incorporate a VCS developed and adopted by ASTM, standard D6216. ASTM agreed to develop D6216 to assist EPA in overcoming technical issues with opacity monitors.

H. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by E.O. 12866.

I. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's proper consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Continuous emission monitoring, Opacity, Particulate matter, Performance specification, Preparation, Transmissometer.

Dated: September 15, 1998.

Carol M. Browner,

Administrator.

BILLING CODE 6560–50–M

The EPA proposes that 40 CFR part 60 be amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, and 7602.

2. Section 60.13 is amended by revising paragraph (d)(1) as follows:

§ 60.13 Monitoring requirements.

* * * * *

(d)(1) Owners and operators of continuous emission monitoring systems (CEMS's) installed in accordance with the provisions of this part, shall automatically check the zero (or low level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts (CD's) at least once daily. For CEMS's used to measure opacity in accordance with the provisions of this part, owners and operators shall automatically, intrinsic to the continuous opacity monitoring system (COMS), check the zero and upscale calibration drifts at least once daily. For a COMS, the acceptable range of zero and upscale calibration values shall be as defined in PS–1 in appendix B of this part. Where an opacity standard of 10 percent or less, corrected to stack exit conditions, has been specified, a surrogate 10 percent opacity standard shall be used for determining the daily calibration values for the drift assessments required above. The zero and upscale value shall, as a minimum, be adjusted whenever either the 24-hour zero drift or the 24-hour span drift exceeds two times the limit of the applicable PS in appendix B of this part. The system must allow the amount of the excess zero and span drift to be recorded and quantified whenever specified. For COMS's, the optical surfaces, exposed to the effluent gases, shall be cleaned prior to performing the zero and span drift adjustments, except for systems using automatic zero adjustments. The optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

* * * * *

3. Section 60.17 is amended by adding (a)(64) as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(64) ASTM D6216–97 Standard Practice for Continuous Opacity Monitoring Manufacturers to Certify Design Conformance and Monitor Calibration, IBR approved _____ (date of publication of final rule in the **Federal Register**) for appendix B, PS–1.

* * * * *

3. Appendix B, Part 60, Performance Specification 1 is amended by revising sections 1. introductory text, 1.1, 1.1.2, 1.1.3, 2, 3 introductory text, 3.1 introductory text, 4, 5 introductory text, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.1.6, 5.1.7, 5.1.8, 5.1.9, 5.1.10, 5.1.11, 5.1.12, 5.1.13, 6.7 introductory text, 7.1, 7.1.1, 7.1.2, 7.1.3 introductory text, 7.1.3.1.3, 7.1.3.2, 7.1.4, 7.1.5, 7.1.6, 7.2 introductory text, 7.3, 7.3.1, 7.3.2, 7.3.3, 7.3.4 introductory text, 9 introductory text, 9.1 introductory text, 9.1.b., h. k & l, 9.2 introductory text, 9.2g, h., i, j, k, l, m, & n, 9.3 introductory text, 9.3a, c, e, & f, 9.4, 9.5, 9.5.1 introductory text, 9.5.1 (4), (5), (6), (7), 9.6, 10.6 & 10.7 to read as follows:

APPENDIX B—PERFORMANCE SPECIFICATIONS

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PERFORMANCE SPECIFICATION 1—Specifications and Test Procedures for Continuous Opacity Monitoring Systems in Stationary Sources

1. Applicability and Principle.

1.1 Applicability.

* * * * *

1.1.2 Performance Specification 1 (PS–1) applies to COMS's installed on or after _____ (30 days after the date of publication of the final rule in the **Federal Register**).

1.1.3 A COMS installed before _____ (30 days after the date of publication of the final rule in the **Federal Register**) need not be re-tested to demonstrate compliance with these PS's unless specifically required by regulatory action other than the promulgation of PS–1. If a COMS installed prior to _____ (30 days after the date of publication of the final rule in the **Federal Register**) is replaced or relocated, this PS–1 shall apply to the COMS replacement or as relocated.

* * * * *

2. Definitions.

In addition to the definitions listed below, this specification also includes the definitions found in ASTM standard D6216 (incorporated by reference—see 40 CFR 60.17)

2.1 Angle of Projection (AOP). The angle that contains all of the radiation projected from the light source of the analyzer at a level of greater than 2.5 percent of the peak illuminance.

2.2 Angle of View (AOV). The angle that contains all of the radiation detected by the photodetector assembly of the analyzer at a level greater than 2.5 percent of the peak detector response.

2.3 Calibration Error. The sum of the absolute value of the mean difference and confidence coefficient for the opacity values indicated by an opacity monitoring system as compared to the known values of three calibration attenuators under clear path conditions when the monitor is optically aligned.

2.4 Centroid Area. A concentric area that is geometrically similar to the stack or duct cross-section and is no greater than 1 percent of the stack or duct cross-sectional area.

2.5 Continuous Opacity Monitoring System. The total equipment required for continuous monitoring of effluent opacity, averaging of emission measurement data, and permanently recording monitor results. The system consists of the following major subsystems:

2.5.1 Opacity Monitor. The measurement instrument used for the continuous determination of the opacity of the effluent released to the atmosphere. An opacity monitor includes a transmissometer, a means to correct opacity measurements to equivalent single pass opacity values that would be observed at the emission outlet pathlength, and all other interface and peripheral equipment necessary for continuous operation.

2.5.2 Data Recorder. That portion of the installed COMS that provides a permanent record of the opacity monitor output in terms of opacity. The data recorder may include automatic data reduction capabilities.

2.6 Dust Compensation. A method or procedure for systematically adjusting the output of a transmissometer to account for reduction in transmitted light reaching the detector (apparent increase in opacity) that is specifically due to the accumulation of dust on the exposed optical surfaces of the transmissometer.

2.7 External Adjustment. Either a manual, physical adjustment made by the user (operator) to a component of the COMS that affects the COMS's response or performance, or an adjustment applied by the data acquisition system which is external to the opacity monitor.

2.8 External Audit Device. The inherent design, equipment, or accommodation of the opacity monitor allowing the independent assessment of the COMS's calibration and operation.

2.9 External Zeroing Device (Zero-Jig). An external, removable device for simulating or checking the across stack zero of the COMS.

2.10 Full Scale. The maximum data display output of the COMS. For purposes of recordkeeping and reporting, full scale shall be greater than 80 percent opacity.

2.11 Intrinsic Adjustment. An automatic and essential feature of an opacity monitor that provides for the internal control of specific components or adjustment of the monitor response in a manner consistent with the manufacturer's design of the instrument and its intended operation.

2.12 Mean Spectral Response. The mean response wavelength of the wavelength distribution for the effective spectral response curve of the transmissometer.

2.13 Opacity. The fraction of incident light that is attenuated, due to absorption, reflection, and scattering, by an optical medium. Opacity (Op) and transmittance (Tr) are related by: Op = 1-Tr.

2.14 Operational Test Period. A period of time (336 hours) during which the COMS is expected to operate within the established performance specifications without any unscheduled maintenance, repair, or adjustment.

2.15 Optical Density. A logarithmic measure of the amount of incident light attenuated. Optical Density (OD) is related to the transmittance and opacity as follows: $OD = -\log_{10}(1\text{-}Op)$.

2.16 Pathlength. The depth of effluent in the light beam between the receiver and the transmitter of a single-pass transmissometer, or the depth of effluent between the transceiver and reflector of a double-pass transmissometer. Three pathlengths are referenced by this specification as follows:

2.16.1 Emission Outlet Pathlength. The pathlength (depth of effluent) at the location where emissions are released to the atmosphere. For circular stacks, the emission outlet pathlength is the internal diameter at the stack exit. For noncircular outlets, the emission outlet pathlength is the hydraulic diameter. For square stacks: D = (2LW)/(L + W), where L is the length of the outlet and W is the width of the outlet. Note that this definition does not apply to positive pressure baghouse outlets with multiple stacks, side discharge vents, ridge roof monitors, etc.

2.16.2 Installation Pathlength. The installation flange-to-flange distance between the receiver and the transmitter of a single-pass transmissometer or between the transceiver and reflector of a double-pass transmissometer. The installation pathlength is to be used for the optical alignment, response, and calibration error tests of section 7.

2.16.3 Monitoring Pathlength. The effective depth of effluent (the distance over which the light beam is actually evaluating the stack effluent) measured by the COMS at the installation location. Monitoring pathlength is to be used for calculation of the pathlength correction factor (PLCF). The effective depth of effluent measured by the COMS must be equal to or greater than 90 percent of the distance between duct or stack walls.

2.17 Peak Spectral Response. The wavelength of maximum sensitivity of the transmissometer.

2.18 Primary Attenuators. Primary attenuators are those calibrated by the National Institute of Standards and Technology (NIST).

2.19 Response Time. The amount of time it takes the COMS to display on the data recorder 95 percent of a step change in opacity.

2.20 Secondary Attenuators. Secondary attenuators are those calibrated against primary attenuators according to procedures in section 7.1.3.

2.21 Transmissometer. An instrument used for the in-situ measurement of light transmittance in a particulate-laden gas stream. Single pass transmissometers consist of a light source and detector components mounted on opposite ends of the measurement path. Double pass instruments consist of a transceiver (including both light source and detector components) and a reflector mounted on opposite ends of the measurement path.

2.22 Transmittance. The fraction of incident light that is transmitted through an optical medium.

2.23 Upscale Calibration Drift (CD). The difference in the COMS output readings from the upscale calibration value after a stated period of normal continuous operation during which no unscheduled maintenance, repair, or adjustment took place.

2.24 Upscale Calibration Value. The opacity value at which a calibration check of the COMS is performed by simulating an upscale opacity condition as viewed by the detector. An opacity value (corrected for pathlength) that is 150 to 190 percent of the applicable opacity standard.

2.25 Zero Calibration Drift. The difference in the COMS output readings from the zero calibration value after a stated period of normal continuous operation during which no unscheduled maintenance, repair, or adjustment had taken place.

2.26 Zero Calibration Value. A value at which a calibration check of the COMS is performed by simulating a zero opacity condition as viewed by the detector. An opacity value (corrected for pathlength) that is 0 to 10 percent of the applicable opacity standard.

2.27 Zero and Upscale Calibration Value Attenuator System. An inherent system of the COMS that can be an automatic electro-mechanical and filter system used for simulating both a zero and upscale calibration value and providing an assessment and record on the calibration of the instrument. Optical filters or screens with neutral spectral characteristics, or other device that produces a zero or an upscale calibration value shall be used.

2.28 Zero Compensation. An automatic adjustment of the transmissometer to achieve the correct response to the zero calibration value.

3. Apparatus.

3.1 Continuous Opacity Monitoring System. A COMS includes an opacity monitor that meets the design and PS's of PS–1 and a suitable data recorder, such as an analog strip chart recorder or other suitable device (e.g., digital computer), with an input signal range compatible with the analyzer output.

* * * * *

4. Installation Specifications.

Install the COMS at a location where the opacity measurements are representative of the total emissions from the affected facility. This requirement can be met as follows:

4.1 Measurement Location. Select a measurement location that is (a) at least 4 duct diameters downstream from all particulate control equipment or flow disturbance, (b) at least 2 duct diameters upstream of a flow disturbance, (c) where condensed water vapor is not present, and (d) accessible in order to permit maintenance.

4.1.1 The primary concern in locating a COMS is determining a location of well-mixed stack gas. Two factors contribute to complete mixing of emission gases: turbulence and sufficient mixing time. The criteria listed below define conditions under which well-mixed emissions can be expected. Select a light beam path that passes through the centroidal area of the stack or duct. Additional requirements or modifications must be met for the following locations:

4.1.1.1 If the location is in a straight vertical section of stack or duct and is less than 4 equivalent diameters downstream from a bend, use a light beam path that is in the plane defined by the upstream bend (see figure 1–1).

4.1.1.2 If the location is in a straight vertical section of stack or duct and is less than 4 equivalent stack or duct diameters upstream from a bend, use a light beam path that is in the plane defined by the downstream bend (see figure 1–2).

4.1.1.3 If the location is in a straight vertical section of stack or duct and is less than 4 equivalent stack or duct diameters downstream and is also less than 1 diameter upstream from a bend, use a light beam path in the plane defined by the upstream bend (see figure 1–3).

4.1.1.4 If the location is in a horizontal section of stack or duct and is at least 4 equivalent stack or duct diameters downstream from a vertical bend, use a light beam path in the horizontal plane that is between ⅓ and ½ the distance up the vertical axis from the bottom of the duct (see figure 1–4).

4.1.1.5 If the location is in a horizontal section of duct and is less than 4 diameters downstream from a vertical bend, use a light beam path in the horizontal plane that is between ½ and ⅔ the distance up the vertical axis from the bottom of the duct for upward flow in the vertical section, and is between ⅓ and ½ the distance up the vertical axis from the bottom of the duct for downward flow (figure 1–5).

4.2 Alternative Locations and Light Beam Paths. Locations and light beam paths, other than those cited above, may be selected by demonstrating, to the Administrator or delegated agent, that the average opacity measured at the alternative location or path is equivalent to the opacity as measured at a location meeting the criteria of section 4.1. The opacity at the alternative location is considered equivalent if the average opacity value measured at the alternative location is within ±10 percent of the average opacity value measured at the location meeting the installation criteria in section 4.1, and the difference between any two average opacity values is less than 2 percent opacity (absolute). To conduct this demonstration, simultaneously measure the opacities at the two locations or paths for a minimum period of time (e.g., 180-minutes) covering the range of normal operating conditions and compare the results. The opacities of the two locations or paths may be measured at different times, but must represent the same process operating conditions. Alternative procedures for determining acceptable locations may be used if approved by the Administrator.

4.3 Slotted Tube. For COMS that uses a slotted tube, the slotted tube must be of sufficient size and orientation so as not to interfere with the free flow of effluent through the entire optical volume of the COMS photodetector. The manufacturer must also present information in the certificate of conformance that the slotted tube minimizes light reflections. As a minimum, this demonstration shall consist of laboratory operation of the COMS both with, and without the slotted tube in position. The slotted portion must meet the monitoring pathlength requirements of 2.16.3.

5. Design Specifications.

* * * * *

5.1.2 Angle of View. The total AOV shall be no greater than 4 degrees for all radiation above 2.5 percent of peak.

5.1.3 Angle of Projection. The total AOP shall be no greater than 4 degrees for all radiation above 2.5 percent of peak.

5.1.4 Optical Alignment Indicator. Each opacity monitor must provide some method for visually or electronically determining that each separate portion of the COMS, the transmitter or transceiver and detector or

reflector, is optically aligned with respect to the optical axis of the system. The method provided must be capable of clearly indicating that the unit is misaligned when an error of no greater than ±2 percent opacity occurs due to misalignment at the installation pathlength. Instruments that are capable of providing a clear path zero check while in operation on a stack or duct with effluent present, and while maintaining the same optical alignment during measurement and calibration, need not meet this requirement (e.g., some ''zero pipe'' units). The owner and operator shall insure that the COMS manufacturer's written procedures and the certificate of conformance depict the correct alignment and the misalignment corresponding to a ±2 percent opacity shift as viewed using the alignment sight.

5.1.5 Insensitivity to Supply Voltage Variation. The opacity monitor output shall not deviate more than ±1.0 percent single pass opacity for variations in the supply voltage over ±10 percent from nominal or the range specified by the manufacturer, whichever is greater. The zero and upscale calibration responses at the minimum and maximum supply voltages shall not vary by more than ±1.0 percent single pass opacity relative to the responses at the nominal supply voltage.

5.1.6 Thermal Stability. The opacity monitor output shall not deviate more than ±2.0 percent single pass opacity per 40°F change in ambient temperature over the range specified by the manufacturer. The zero and upscale calibration responses at the minimum and maximum temperatures shall not vary by more than ±2.0 percent single pass opacity per 40°F change in temperature relative to the responses at the initial temperature.

5.1.7 Insensitivity to Ambient Light. The opacity monitor output shall not deviate more than ±2.0 percent single pass opacity relative to the initial response for any six-minute period from sunrise to sunset.

5.1.8 Simulated Zero and Upscale Calibration System. Each analyzer must include a calibration system for simulating a zero and upscale calibration value. This calibration system must provide, as a minimum, a simultaneous system check of all of the active analyzer internal optics, all active electronic circuitry including the primary light source (lamp) and photodetector assembly, and electro-mechanical systems used during normal measurement operation.

5.1.9 Automated Zero and Upscale Value Compensation Recorder, Indicator, and Alarm. The COMS shall provide an automated means for determining and recording the actual amount of 24-hour zero compensation on a daily basis. The COMS also shall provide an alarm (visual or audible) when a ±4 percent opacity zero compensation has been exceeded. This indicator shall be at a location which can be seen or heard by the operator (e.g., process control room) and accessible to the operator (e.g., the data output terminal).

5.1.9.1 During the operational test period, the COMS also must provide a means for determining and automatically recording the actual amount of upscale calibration value compensation at specified 2-hour intervals so that the actual 2-hour upscale calibration value shift can be determined (see section 7.3.3).

5.1.9.2 The determination of dirt accumulation on all surfaces exposed to the effluent being measured shall include only those surfaces in the direct path of the measuring light beam under normal opacity measurement and with the zero calibration value in place or equivalent mechanism necessary for the dirt compensation measurement. The dust accumulation must actually be measured.

5.1.10 External Calibration Filter Access. The COMS must be designed to accommodate an independent assessment of the total systems response to external audit filters. An adequate design shall permit the use of external (i.e., not intrinsic to the instrument) neutral density filters to assess monitor operation during performance audits. The external audit filter access design shall ensure that the entire beam received by the detector will pass through the attenuator and that the attenuator is inserted in a manner which minimizes interference from the reflected light. This system may include an external audit zero-jig as identified in section 2.9.

5.1.11 Pathlength Correction Factor Recording and Indicating System. The COMS shall display and record all opacity values corrected to the emission outlet pathlength. Equations 1–7 or 1–8 may be used. The system shall be designed and constructed so that the PLCF cannot be changed by the end user, or is recorded during each calibration check cycle, or provides an alarm when the value is changed.

5.1.12 External Fault Indicator. The installed COMS must provide a means to automatically alert the owner or operator when a component or performance parameter has failed or been exceeded (e.g., projector lamp failure, zero or upscale calibration error, purge air blower failure, data recorder failure). Indicator lights or alarms must be visible or audible to the operator(s).

5.1.13 Data recorder resolution. The data recorder and data acquisition system shall record and display opacity values to 0.5 percent opacity.

TABLE 1–1.—COMS DESIGN SPECIFICATIONS

1. Peak and mean spectral response.
2. Angle of view.
3. Angle of projection.
4. Optical alignment indicator.
5. Insensitivity to supply voltage variation.
6. Thermal stability.
7. Insensitivity to ambient light.
8. Simulated zero and upscale calibration system.
9. Automated zero and upscale value compensation recorder, indicator, and alarm.
10. External calibration filter access.
11. Pathlength correction factor recording and indicating system.
12. External fault indicator.
13. Data recorder resolution.

6. Design Specifications Verification Procedures.

These procedures apply to all instruments installed for purposes of complying with opacity monitoring requirements (see section 1.1, Applicability). The source owner or operator is responsible for the overall COMS performance demonstration required by the applicable standards. As an alternative, the COMS manufacturer may conduct the COMS design verification procedures called for in this section and provide to the source owner or operator a Manufacturer's Certificate of Conformance (MCOC). These procedures will be conducted, detailed, and the results submitted in the MCOC (section 9.5) as an integral part of each COMS demonstration required by the applicable standards. In order to assure that the design and procedures to demonstrate conformance with this section coincide with the design procedures as stated in the MCOC, the manufacturer is encouraged to seek an evaluation by the Administrator of the manufacturer's conformance demonstration practices. The procedures to demonstrate conformance with this section may require modification to accommodate instrument designs. All procedural modifications required to demonstrate conformance with the specifications of this section must be approved, in writing, by the Administrator. The owner and operator or the manufacturer, as appropriate, will obtain any approvals of modifications to the specifications of this section before regulatory agency review and acceptance of the overall COMS performance evaluations.

6.1 Selection of Analyzer. A representative analyzer for each analyzer design will be selected for testing according to ASTM D6216 (incorporated by reference—see 40 CFR § 60.17), sections 6.1.1, 6.1.2, and 6.1.3.

6.2 Spectral Response. The spectral response test will be performed according to ASTM D6216 (incorporated by reference—see 40 CFR § 60.17), section 6.2.

6.3 Angle of View and Angle of Projection. The procedures for verifying the AOV and AOP will be performed according to ASTM D6216 (incorporated by reference—see 40 CFR § 60.17), section 6.3.

6.4 Insensitivity to Supply Voltage Variations. This design specification is to ensure that the accuracy of opacity monitoring data is not affected by supply voltage variations over the range specified by the manufacturer or ±10 percent from nominal, whichever is greater. The test will be performed according to ASTM D6216 (incorporated by reference—see 40 CFR § 60.17), section 6.4.

6.5 Thermal Stability. This design specification is to ensure that the accuracy of opacity monitoring data is not affected by ambient temperature variations over the range specified by the manufacturer. This test procedure will be performed according to ASTM D6216 (incorporated by reference—see 40 CFR § 60.17), section 6.5.

6.6 Insensitivity to Ambient Light. This design specification is to ensure that the accuracy of opacity monitoring data is not affected by ambient light. The test will be performed according to ASTM D6216 (incorporated by reference—see 40 CFR 60.17), section 6.6.

6.7 Calibration Check Devices. Tests of devices used to determine simulated zero and upscale calibration will be performed according to ASTM D6216 (incorporated by reference—see 40 CFR 60.17), section 6.9.

6.8 Unacceptable Findings. Whenever a manufacturer finds that a COMS model does not conform to any of the design specification requirements of sections 6.2 through 6.7, the manufacturer will institute corrective action in accordance with its quality assurance program and remedy the cause of the unacceptable performance. The manufacturer will then test all of the monitors in the group and verify conformance with the design specifications for each monitor before they are shipped to the end users. Additionally, the manufacturer will notify and provide the findings to all source owners or operators that have received or installed such nonconforming COMS models manufactured after the date of the previous successful conformance demonstration. The manufacturer will submit copies of the purchaser notifications to the U.S. Environmental Protection Agency, Director, Air Enforcement Division (AR 1119), 1200 Pennsylvania Avenue, NW., Washington, DC 20044.

7. Performance Specifications Verification Procedure.

The owner and operator shall ensure that the following procedures and tests are performed on each COMS that conforms to the design specifications (Table 1–1) to determine conformance with the specifications of Table 1–2. The tests described in sections 7.1.4, 7.1.5, and 7.1.6 shall be conducted at the manufacturer's facility.

TABLE 1–2.—PERFORMANCE SPECIFICATIONS

Parameter	Specifications
Calibration error [a]	≤3 percent opacity.
Response time	≤10 seconds.
Operational test period [b].	336 hours.
Zero drift (24-hour) [a] ..	≤2 percent opacity.
Calibration drift (24-hour).	≤2 percent opacity.
Zero drift (1-hour)	≤2 percent opacity.
Calibration drift (1-hour).	≤2 percent opacity.

[a] Expressed as the sum of the absolute value of the mean and the absolute value of the confidence coefficient.

[b] During the operational test period, the COMS must not require any corrective maintenance, repair, replacement, or adjustment other than that clearly specified as routine and required in the operation and maintenance manuals.

7.1 Preliminary Adjustments and Tests.

7.1.1 Equipment Preparation.

The equipment preparation shall be done according to ASTM D6216 (incorporated by reference—see 40 CFR 60.17), sections 7.2, 7.3, and 7.4.

7.1.2 Calibration Attenuator Selection.

7.1.2.1 Based on the applicable opacity standard, select a minimum of three calibration attenuators (low-, mid-, and high-level) based on the following opacity values presented in Table 1–3:

TABLE 1–3.—Required Calibration Opacity Values

For opacity standard of	10 to 19%	≤20%
Low Level	5–10	10–20
Mid Level	10–20	20–30
High Level	20–40	30–60

If the applicable opacity standard is less than 10 percent, the selection of calibration attenuators shall be based on 10 percent opacity.

7.1.2.2 Calculate the attenuator values required to obtain a system response equivalent to the applicable values in the ranges specified in table 1–3 using equation 1–1. Select attenuators having the values closest to those calculated by equation 1–1. A series of filters with actual opacity values relative to the values calculated are commercially available.

$$OP_2 = 1 - \left(1 - OP_1\right)^{\frac{L_2}{L_1}} \qquad \text{Eq. 1-1}$$

where:

OP_1=Nominal opacity value of required low-, mid-, or high-range calibration attenuators.

OP_2=Desired attenuator opacity value from Table 1–3 at the opacity standard required by the applicable subpart.

L_1=Monitoring pathlength.

L_2=Emission outlet pathlength.

7.1.3 Attenuator Calibration.

* * * * *

7.1.3.1.3 Recalibrate the primary attenuators used for the required calibration error test semi-annually. Recalibrate annually if the primary attenuators are used only for calibration of secondary attenuators.

7.1.3.2 Secondary Attenuators. Calibrate the secondary attenuators, if used to conduct COMS calibration error tests, semi-annually. The filter calibration may be conducted using a laboratory-based transmissometer calibrated as follows:

* * * * *

7.1.4 Calibration Error Test. The calibration error test shall be performed according to ASTM D6216 (incorporated by reference—see 40 CFR 60.17), section 7.8. Calculate the arithmetic mean difference, standard deviation, and confidence coefficient of the five tests at each attenuator value using equations 1–3, 1–4, and 1–5 (sections 8.1 to 8.3). Calculate the calibration error as the sum of the absolute value of the mean difference and the 95 percent confidence coefficient for each of the three test attenuators. Report the calibration error test results for each of the three attenuators.

7.1.5 Instrument Response Time Test. Instrument response time shall be determined according to ASTM D6216 (incorporated by reference—see 40 CFR 60.17), section 7.7.

7.1.6 Optical Alignment Indicator. The optical alignment indicator performance test shall be done in accordance with ASTM D6216 (incorporated by reference—see 40 CFR § 60.17), section 7.9 .

7.2 Preliminary Field Adjustments.

* * * * *

7.3 Operational Test Period. Prior to conducting the operational testing, the owner and operator, or the manufacturer as appropriate, should have successfully completed all prior testing of the COMS. After completing all preliminary field adjustments (section 7.2), operate the COMS for an initial 336-hour test period while the source is operating under normal operating conditions. Except during times of instrument zero and upscale calibration checks, the owner and operator must ensure that they analyze the effluent gas for opacity and produce a permanent record of the COMS output. During this period, the owner and operator may not perform unscheduled maintenance, repair, or adjustment to the COMS. The owner or operator may perform zero and calibration adjustments (i.e., external adjustments) only at 168-hour intervals. Perform exposed optical and other CEMS surface cleaning, and optical realignment only at 24-hour intervals. Automatic zero and calibration adjustments (i.e., intrinsic adjustments), made by the COMS without operator intervention or initiation, are allowable at any time. During the operational test period, record all adjustments, realignments, and exposed surface cleaning. At the end of the operational test period, verify and record that the COMS optical alignment is correct. If the operational test period is interrupted because of source breakdown or regularly scheduled source maintenance, continue the 336-hour period following resumption of source operation. If the test period is interrupted because of COMS failure, record the time when the failure occurred. After the failure is corrected, the 336-hour period and tests are restarted from the beginning (0-hour). During the operational test period, perform the following test procedures:

7.3.1 Zero Calibration Drift Test. At the outset of the 336-hour operational test period and at each 24-hour period, record the initial (Reference A) zero calibration value and upscale calibration value (UC Value), see example format figure 1–8. These values are the initial 336-hour value established during the optical and zero alignment procedure (see section 7.2.1 or 7.2.2). After each 24-hour interval, check and record the COMS zero response reading before any cleaning, optical realignment, and intrinsic adjustment. Perform any external zero and upscale calibration adjustments only at 168-hour periods. Perform exposed optical and other instrument surface cleaning, and optical realignment only at 24-hour intervals (or at such shorter intervals as the manufacturer's written instructions specify). If shorter intervals of zero and upscale adjustment are conducted, record the drift adjustment. However, adjustments and cleaning must be performed when the accumulated zero calibration drift or upscale calibration drift exceeds the 24-hour drift specification (±2 percent opacity). From the initial zero calibration value and each 24-hour period zero readings, calculate the 24-hour zero calibration drift (CD). At the end of the 336-

hour period, calculate the arithmetic mean, standard deviation, and confidence coefficient of the 24-hour zero CD's using equations 1–3, 1–4, and 1–5. Calculate the sum of the absolute value of the mean and the absolute value of the confidence coefficient using equation 1–6, and report this value as the 24-hour zero CD error.

7.3.2 Upscale Calibration Drift Test. At each 24-hour interval, after the zero calibration value has been checked and any optional or required adjustments have been made, check and record the COMS response to the upscale calibration value. Compare the COMS response to the upscale calibration value established under the optical and zero alignment procedure of section 7.2.1 or 7.2.2 as the initial value. The upscale calibration established in section 7.2.1 shall be used each 24-hour period. From the initial upscale calibration value and each 24-hour period upscale readings, calculate the 24-hour upscale CD. At the end of the 336-hour period, calculate the arithmetic mean, standard deviation, and confidence coefficient of the 24-hour upscale CD using equations 1–3, 1–4, and 1–5. Calculate the sum of the absolute value of the mean and the absolute value of the confidence coefficient, and report this value as the 24-hour upscale CD error.

7.3.3 Calibration Stability Test. Immediately following or during, the operational test period, conduct a calibration stability test over a 24-hour period. During this period, there will be no unscheduled maintenance, repair, manual adjustment of the zero and calibration values, exposed optical and other instrument surface cleaning, or optical realignment performed. Record the initial zero and upscale calibration opacity values and operate the monitor in a normal manner. After each 2-hour period, record the automatically corrected zero and upscale opacity values. Subtract the initial zero and upscale calibration values from each 2-hour adjusted value and record the difference. None of these differences shall exceed ±2 percent opacity. Figure 1–8 may be used for the recording of the results of this test.

7.3.4 Retesting.

* * * * *

9. Reporting.

Report the following (summarize in tabular form where appropriate):

9.1 General Information.

* * * * *

b. Person(s) responsible for operational test period and affiliation.

* * * * *

h. System span value, percent opacity.

* * * * *

k. Upscale calibration value, percent opacity.

l. Calibrated attenuator values (low-, mid-, and high-range), percent opacity.

9.2 Design Specification Test Results.

* * * * *

g. Maximum deviation of opacity as a result of supply voltage variation.

h. Zero and upscale calibration responses at nominal voltage.

i. Zero and upscale calibration responses at minimum and maximum supply voltage.

j. Maximum deviation of opacity over ambient temperature range.

k. Zero and upscale calibration responses at initial temperature.

l. Zero and upscale calibration responses at minimum and maximum ambient temperature.

m. Maximum percent opacity deviation for any 6-minute period during the day of the ambient light sensitivity test.

n. Serial number, month/year of manufacturer for unit actually tested to show design conformance.

9.3 Performance Specification Test Results.

a. Results of optical alignment sight test. The manufacturer will, in the testing report, include diagrams indicating the operator's view through the optical alignment system as depicted during the alignment tests specified in section 7.2.1.

* * * * *

c. Calibration Error Test.

(1) Report the required upscale opacity range and indicated upscale opacity calibration value, as determined in section 6.7.

(2) Identify the low-, mid-, and high-level calibration opacities, as determined in section 7.1.2.2.

* * * * *

e. Zero and Upscale Calibration Drift (CD) Tests. In the format of figure 1–8:

i. Identify the 24-hour zero CD, percent opacity,

ii. Identify the 24-hour upscale CD, percent opacity,

iii. Identify any lens cleaning, clock time,

iv. Identify all optical alignment adjustments, clock time.

f. Calibration Stability Test. Present the data and results of the calibration stability test in the format of figure 1–8.

9.4 Statements. Provide a statement that the operational test period was completed according to the requirements of section 7.3. In this statement, include the time periods during which the operational test period was conducted.

9.5 Manufacturer's Certificate of Conformance (MCOC). The MCOC must include the results of each test performed for the COMS(s) sampled under section 6.1. The MCOC also shall specify the date of testing according to sections 6.2 through 6.7, the COMS monitor type, serial number, and the intended installation and purchaser of the tested COMS. Section 9.5.1 identifies the minimally acceptable information to be submitted by the manufacturer with the certification of conformance.

9.5.1 Outline of Certificate of Conformance.

* * * * *

(4) Insensitivity to Supply Voltage Variations. Include the results of testing, including the supply voltage range, all simulated zero and upscale calibration responses, and the maximum deviation of opacity from the external attenuator over the supply voltage range.

(5) Thermal Stability. Include the results of testing, including the manufacturers recommended ambient temperature range and tested range, all simulated zero and upscale calibration responses, and the maximum deviation of opacity from the external attenuator over the temperature range.

(6) Insensitivity to Ambient Light. Include the results of testing, including the test date, all simulated zero and upscale calibration responses, ambient temperature range during the test period, and the maximum 6-minute period percent opacity deviation from the external attenuator.

(7) Verification of Compliance with Additional Design Specifications. The owner and operator or manufacturer shall provide diagrams and operational descriptions of the instrument which demonstrate conformance with the requirements of sections 5.1.5, 5.1.7, 5.1.8, 5.1.9, and 5.1.10.

9.6 Appendix. Provide the data tabulations and calculations for any of the above demonstrations.

10. Bibliography

* * * * *

6. Technical Assistance Document: Performance Audit Procedures for Opacity Monitors. U.S. Environmental Protection Agency. Research Triangle Park, NC. EPA–450/4–92–010. April 1992.

7. ASTM D6216—Standard Practice for Continuous Opacity Monitoring Manufacturers to Certify Design Conformance and Monitor Calibration. American Society for Testing and Materials (ASTM).

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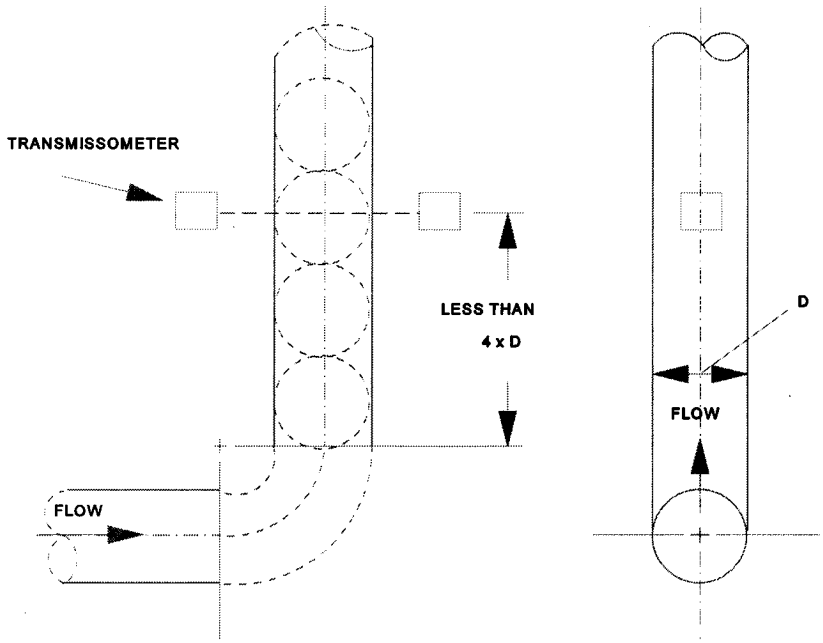

Figure 1-1. Transmissometer location downstream of a bend in a vertical stack.

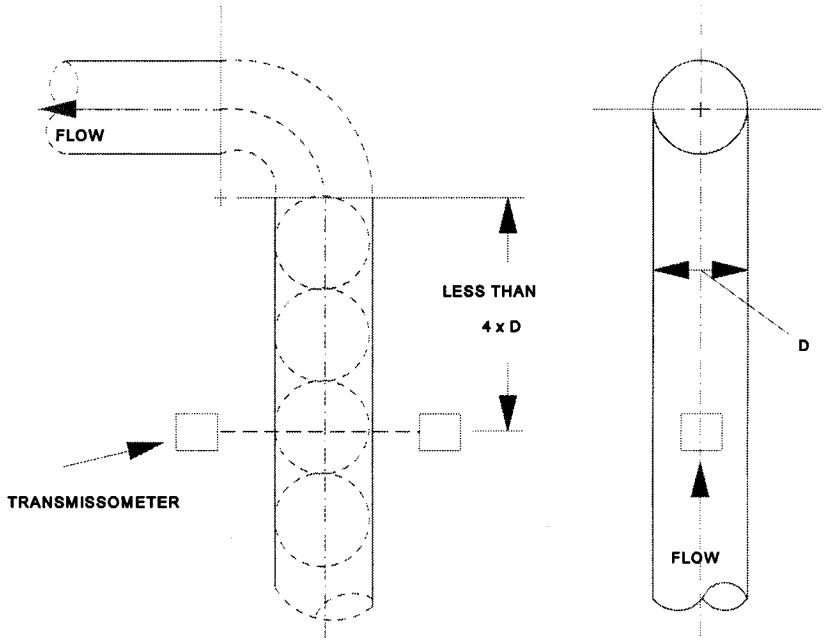

Figure 1-2. Transmissometer location upstream of a bend in a vertical stack.

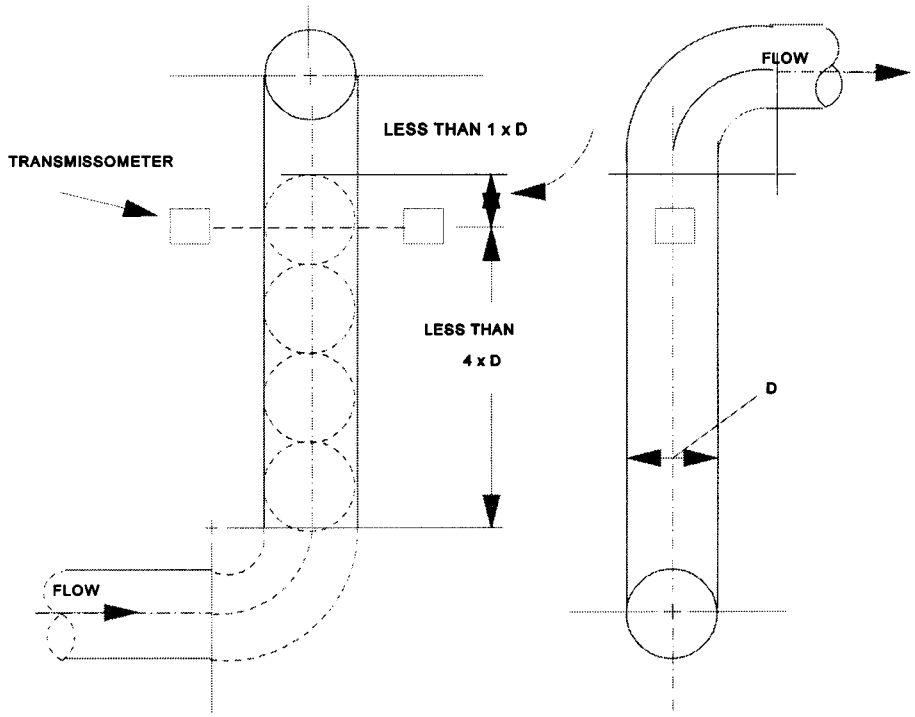

Figure 1-3. Transmissometer location between bends in a vertical stack.

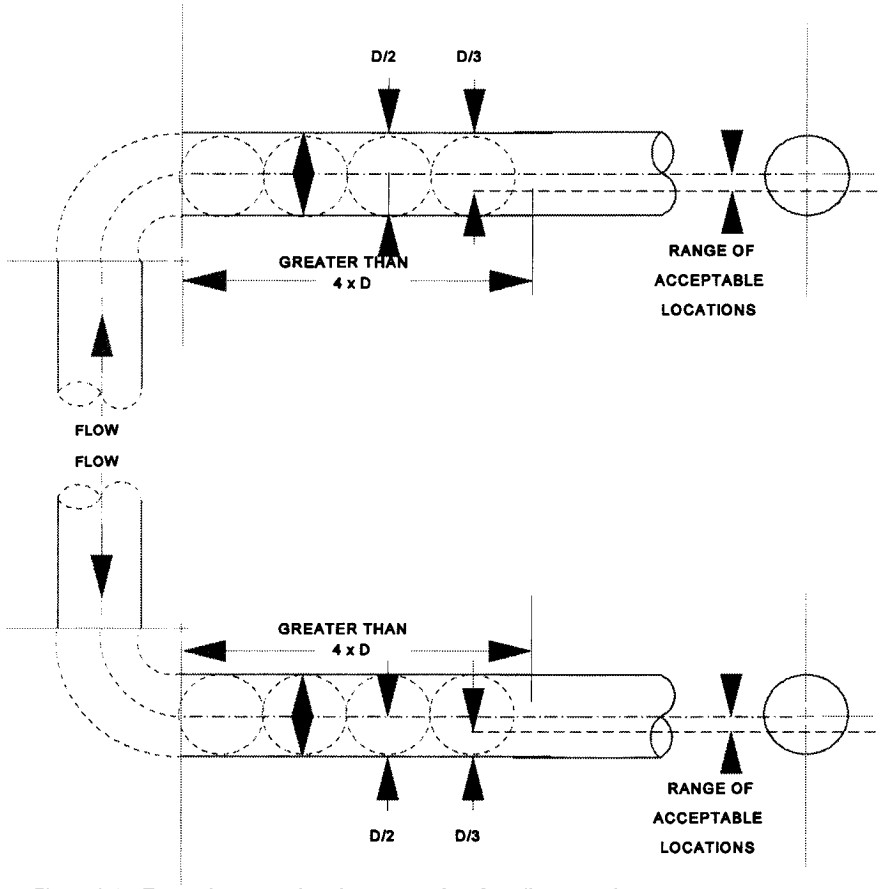

Figure 1-4. Transmissometer location greater than four diameters downstream of a vertical bend in a horizontal stack or duct.

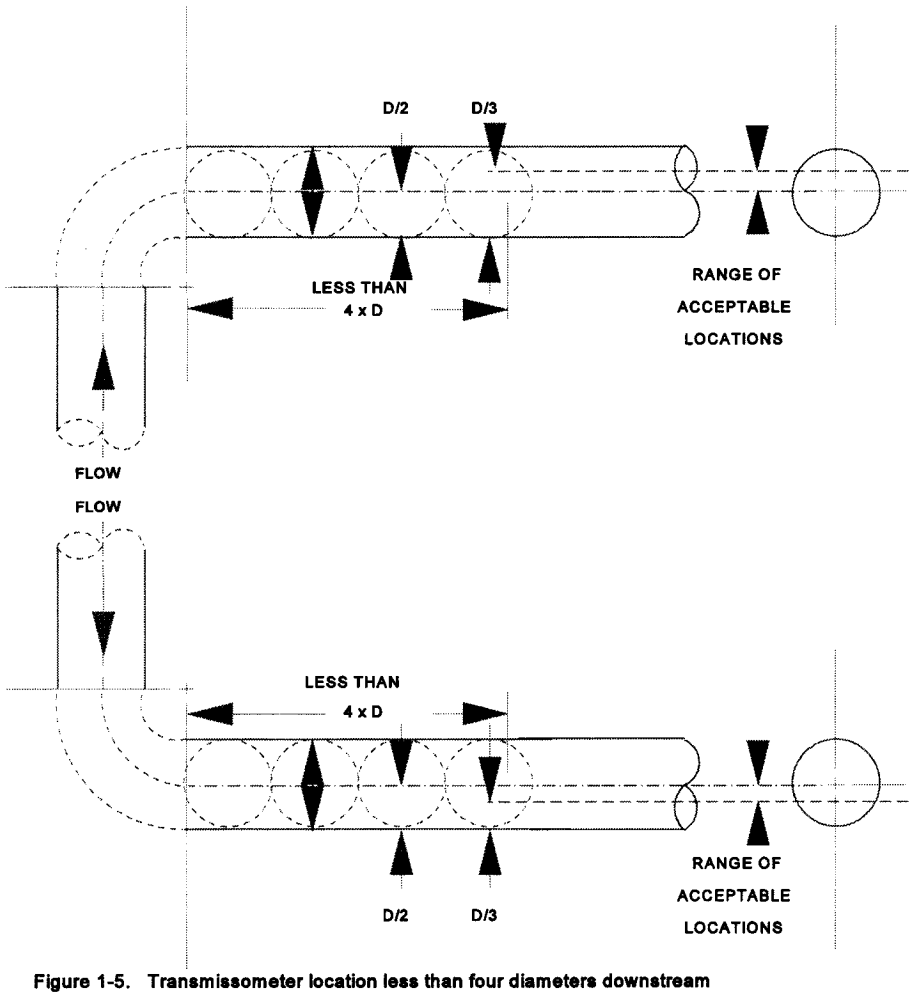

Figure 1-5. Transmissometer location less than four diameters downstream of a vertical bend in a horizontal stack or duct.

[FR Doc. 98–25453 Filed 9–22–98; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 284

RIN 0970–AB65

Methodology for Determining Whether an Increase in a State's Child Poverty Rate Is the Result of the TANF Program

AGENCY: Administration for Children and Families, HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families is proposing a methodology to determine the child poverty rate in each State. If a State experiences an increase in its child poverty rate of 5 percent or more as a result of its Temporary Assistance for Needy Families (TANF) program, the State must submit and implement a corrective action plan. This requirement is a part of the new welfare reform block grant program enacted in 1996.

DATES: You must submit comments by November 23, 1998. We will not consider comments received after this date in developing the final rule.

ADDRESSES: You may mail or hand-deliver comments to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW, 7th Floor West, Washington, DC 20447. You may also transmit comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the ACF Welfare Reform Home Page at http://www.acf.dhhs.gov/news/welfare and follow the instructions provided.

We will make all comments available for public inspection at the Office of Planning, Research and Evaluation, 7th Floor West, 901 D Street, SW, Washington, DC 20024, from Monday through Friday between the hours of 9 a.m. and 4 p.m. (This is the street address as opposed to the mailing address above.)

We will only accept written comments. In addition, all your comments should:

- Be specific;
- Address only issues raised by the proposed rule;
- Where appropriate, propose alternatives;
- Explain reasons for any objections or recommended changes; and
- Reference the specific section of the proposed rule that you are addressing.

We will not acknowledge individual comments. However, we will review and consider all comments that are germane and received during the comment period.

FOR FURTHER INFORMATION, CONTACT: Dennis Poe at 202–401–4053.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

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I. The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed ''The Personal Responsibility and Work Opportunity Reconciliation Act of 1996''—or PRWORA—into law. The first title of this new law, ''Block Grants for Temporary Assistance for Needy Families,'' (section 103, Pub. L. 104–193) established a comprehensive welfare reform program designed to change dramatically the nation's welfare system. The new program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on time-limiting assistance and moving recipients into work.

PRWORA repealed the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repealed the related programs known as the Job Opportunities and Basic Skills Training (JOBS) program and Emergency Assistance (EA).

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date.

This landmark welfare reform legislation dramatically affects not only needy families, but also intergovernmental relationships. It challenges Federal, State, Tribal and local governments to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes.

This new legislation also gives States and Tribes the authority to use Federal welfare funds ''in any manner that is reasonably calculated to accomplish the purpose'' of the new program. It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate, and it offers States and Tribes an opportunity to try new, far-reaching ideas so they can respond more effectively to the needs of families within their own unique environments.

II. The Child Poverty Rate Provision

A. Legislative History

One of the concerns of Congress in passing PRWORA was potential harm to children that might result from the loss of Federal entitlement to benefits or the unsuccessful efforts of their caretakers to achieve self-sufficiency within the five-year time limit for receipt of federally-funded TANF assistance.

To address this concern, Congress amended the Social Security Act to add section 413(i) (42 USC 613(i)). This section requires each State to submit an annual statement of the child poverty rate in the State and a corrective action plan if the rate exceeds a certain threshold as a result of the State's TANF program.

Section 413(i)(5) directs the Secretary to issue regulations establishing a methodology for States to determine the child poverty rate and sets out a non-exclusive list of factors the methodology must take into account.

The Balanced Budget Act of 1997 amended section 413(i) to delay the due date for the initial report on a State's child poverty rate from 90 days after enactment to May 31, 1998. It also modified the factors to be used in the methodology by making the county-by-county estimates of children in poverty, as determined by the Census Bureau, subject to the availability of the data.

(Note: ACF issued a Program Instruction on May 29, 1998, clarifying that we, not the State, will send each State the Census Bureau estimate of the number of children in poverty and that the State need not submit a statement of its child poverty rate to us by May 31, 1998, as specified in the statute. We further explained that we would be publishing an NPRM to propose a methodology for determining whether an increase in the State's child poverty rate is the result of the TANF program in the near future. See TANF–ACF–PI–98–4.)

B. Summary of the Statutory Provisions

Section 413(i)(1) of the Social Security Act (the Act) requires the chief executive officer of each State to submit annually to the Secretary a statement of the child poverty rate in the State. The first statement, due May 31, 1998, must report on the child poverty rate at the time of enactment of PRWORA, or August 22, 1996.

Section 413(i)(2) specifies that, in subsequent years, if the child poverty rate in a State increases by 5 percent or more from the previous year as a result of the State's TANF program, the State shall prepare and submit a corrective action plan to the Secretary.

Section 413(i)(3) provides that the corrective action plan shall outline the manner in which the State will reduce the child poverty rate in the State and include a description of the actions to be taken by the State under the plan.

Section 413(i)(4) specifies that the State shall implement the corrective action plan until the State determines that the child poverty rate in the State is less than the lowest child poverty rate on the basis of which the State was required to submit the corrective action plan.

Section 413(i)(5) requires the Secretary to establish the methodology by which a State would determine the child poverty rate and specifies three factors that the Department must take into account in developing the methodology: the number of children who receive free or reduced-price lunches; the number of Food Stamp households; and, to the extent available, the county-by-county estimates of children in poverty as determined by the Census Bureau.

III. Regulatory Framework

A. External Consultation

In the spirit of both regulatory reform and PRWORA, we implemented a broad and far-reaching consultation strategy prior to publication of the NPRM for the TANF program. This proposed rule was published November 20, 1997 (62 FR 62124). We continued our commitment to external consultation in developing this NPRM.

We held two types of external consultations. First, we raised issues related to this provision in the general TANF consultation meetings with representatives of State and local government; non-profit, advocacy, and community organizations; foundations; and others. Second, we held consultations focused specifically on this provision with State groups and technical, statistical, and policy experts. We also spoke with representatives from the Federal statistical community, including the U.S. Bureau of the Census; the Office of Management and Budget; the U.S. Department of Agriculture for the Food Stamp program; and numerous representatives from advocacy, public interest, and research organizations that focus on child economic well-being.

The purpose of these discussions was to gain a variety of informational perspectives about the potential benefits and pitfalls of alternative regulatory approaches. We solicited comments, and we worked to ensure that concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy makers.

These consultations were very useful in helping us identify key issues and evaluate policy options. However, we would like to emphasize that we are issuing these regulations as a proposed rule. Thus, all interested parties have the opportunity to voice their concerns and to react to specific policy proposals. We will review comments we receive during the comment period and will take them into consideration before issuing a final rule.

B. Related Regulations under Development

We published the NPRM to address the work, accountability, and data collection and reporting provisions of the new State TANF program in the **Federal Register** on November 20, 1997 (62 FR 62124).

On March 2, 1998, we published in the **Federal Register** (63 FR 10264) the NPRM to address the provision in PRWORA entitled Bonus to Reward Decrease in Illegitimacy which would reward decreases in out-of-wedlock childbearing.

On July 22, 1998, we published an NPRM on the Tribal Work and TANF Programs (63 FR 39366). Over the next several months, we expect to issue an NPRM on high performance bonus awards and an interim final rule on Welfare To Work data collection.

C. Regulatory Reform

In its latest *Document Drafting Handbook* the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In drafting this proposed rule, we have paid close attention to this guidance. Individuals who are familiar with prior welfare regulations should notice that this package incorporates a distinctly different, more readable style.

IV. Discussion of the NPRM

A. Issues in the Development of the NPRM

The percentage of children in poverty in the United States is a frequently used indicator of child well-being and many, both within Congress and without, are concerned about the impact of the TANF program on children. The child poverty rate in the United States is among the highest in the developed world.

The best source of data on child poverty is the Census Bureau. Historically, the Census Bureau has been tracking family and individual poverty rates in the United States for approximately three decades. In 1963–64, Mollie Orshansky of the Social Security Administration developed a set of poverty thresholds for families of different sizes based on the economy food plan (a minimum-cost diet developed by the Department of Agriculture.) Orshansky's thresholds were adopted as a quasi-official Federal definition of poverty in 1965 and as the Federal Government's official statistical definition of poverty in 1969. (Since 1969, the thresholds have been updated for price changes, using the Consumer Price Index.)

The most reliable source of data for calculating State level child poverty is the Decennial Census. The Bureau of the Census produces an annual series of national and State poverty rates during the intercensus years based upon data from the March Current Population Survey. Unfortunately, the small sample sizes for individual States result in significant uncertainty in these estimates, making them unsatisfactory for State reporting of child poverty.

The Census Bureau has a program to develop more reliable intercensus estimates of child poverty at the State and local level. This effort was given further impetus with the passage of the Improving America's Schools Act of 1994, which required the Department of Education to work with the National Academy of Sciences and the Bureau of the Census to develop State and local estimates of children in poverty, ages 5 through 17. With funding from DHHS, this work has been expanded to include estimates for children in poverty, ages 0 through 4.

Based on our analysis of the statute and information on Census Bureau data, Food Stamp data, and school lunch data, we identified several general, data, and methodological issues. These issues are discussed in greater detail below. Our consultations with external groups were particularly helpful in clarifying

data issues and evaluating alternative approaches and options.

The general issues we identified included:

- How should we use the three factors identified in the law in developing State child poverty rates?
- What additional factors, if any, should we use?
- How should these factors be weighted?
- What flexibility and options should a State have in determining the child poverty rate for its State?

Some of the data and methodological issues included:

- How should we account for limitations in Census Bureau data, e.g., until recently, measuring only children ages 5–17 and excluding certain sources of income such as taxes and in-kind transfers?
- What factors should we propose in order to identify the effect of the TANF program on any increases in child poverty?
- Other than Census Bureau data, what are the alternative sources of data related to child poverty and how might they be used?
- Given that some of the potential data sources have confidence intervals around their estimates, what confidence interval would be appropriate for each State's child poverty rate?

We discuss specific issues as follows

1. Measurement of Child Poverty and the Census Bureau Data

The Census Bureau develops estimates of child poverty, by State, based on the Current Population Survey (CPS) and a sampling size of approximately 55,000 households. The Bureau considers these State estimates to be moderately reliable and releases three-year averages for States, along with standard error rates, to reduce the chances that these estimates will be misinterpreted. The most recent data available on State child poverty estimates are for calendar year 1996.

In response to demand for sub-state data, the Census Bureau recently launched a program called Small Area Income and Poverty Estimates. It is a new program that will provide estimates of income and poverty for States and counties between decennial censuses. In January, 1998, the Bureau made available county income and poverty estimates for 1993. It plans to provide estimates for years 1995 through 1998, and periodically thereafter. From a program perspective, county-level data will be available only every other year, and the available data will be at least two years old.

Many external consultants expressed concern about the limitations in the Census Bureau child poverty data and its reliance on the official definition of poverty, particularly the exclusion of important types of income and the failure to deduct certain types of expenses when determining family income. For example, in-kind assistance such as housing assistance and Food Stamp benefits are not counted as income even though such assistance is clearly available to meet basic needs. Similarly, expenses such as work expenses and child support paid are not available to meet such needs.

Initially, some external groups were also concerned about the lack of Census Bureau poverty data on children 0 through 4 years, as child poverty is more acute for children in this age group. Since DHHS is funding the Census Bureau estimates for children in poverty for this age group, this information will be incorporated into the child poverty estimates we get from the Census Bureau.

We considered these concerns carefully in our development of this NPRM. We believe that Congress, by including in the statute two non-exclusive factors beyond the Census Bureau poverty measure, intended that we develop a methodology that will take into account and adjust for some of the limitations in the Census Bureau data.

However, we approached the drafting of this regulation with a desire not to deviate too far from the official Census measure. The official measure is the most widely-used measure of poverty, and significant deviations from this measure could limit the credibility and acceptance of estimates of child poverty rates developed for this provision. As data collection capabilities improve, we believe it may be possible to amend our proposed methodology to take advantage of such improvements. We welcome public comments on these issues.

Also related to the Census Bureau measure of child poverty was the recommendation by some external groups that our methodology focus on more extreme poverty. That is, in addition to, or instead of, considering the percent of children in families with incomes at or below 100 percent of poverty, we should consider the percent of children in families with incomes at or below a lower threshold, such as 50 percent of poverty. Additional research and model development by the Census Bureau would be necessary, however, before we would be able to consider such an approach. The current Census Bureau model for estimating State level child poverty exploits the strengths of additional databases, such as IRS tax data and Food Stamp data, to supplement the Current Population data. The value of these additional data for estimating extreme poverty is unknown, but experts believe that it would be less than the current model of 100 percent of the poverty level. We welcome public comment about the desirability and feasibility of pursuing this alternative. More information on the Census methodology is available on the Internet at the Census Bureau's poverty page.

2. Use of County-by-County Estimates of Children in Poverty in the Methodology

The legislation requires us to use, to the extent available, county-by-county estimates of children in poverty as determined by the Census Bureau. However, section 413(i) requires States to report on child poverty at the State level, and State-level estimates are more relevant to the purpose of this provision. Furthermore, county-by-county estimates are only available biennially.

Most external consultants recommended that we use the State estimates of children in poverty as determined by the Census Bureau, rather than the specific county-by-county estimates. The State estimates represent the first step in calculating the county by county estimates and reflect the same data and factors as the county-by-county estimates; the data are also compatible because the Census Bureau reconciles its county-by-county and State estimates so that the total is the same for each State; *i.e.*, the county-by-county estimates are adjusted so that the total for all the counties in a State is the same as in the State estimates calculated in the first step. We believe this approach is consistent with Congressional expectations and represents the most prudent use of the Census Bureau county-by-county estimating procedure.

3. Use of Food Stamp Data in the Methodology

The legislation requires us to take into account the number of Food Stamp households. Nationally, trends in Food Stamp caseloads generally track closely with trends in poverty. Further, Food Stamp data are available on a more timely basis than estimates based on the Census methodology.

However, nearly 40 percent of Food Stamp households contain no children.

After considering the focus of the law in relation to child poverty and reflecting on the discussion with external consultants, we concluded that we should propose the use of data on

Food Stamp households with children rather than the total number of Food Stamp households.

4. Use of Free and Reduced-Price School Lunch Data in the Methodology

The third factor specified in the Act is ''the number of children receiving free or reduced-price lunches.'' Over the past several years both the proportion of lunches served free or at a reduced price and the proportion of student enrollment approved for free or reduced-price meals have risen steadily. During the same time period, poverty rates have fallen. There are several likely reasons that free and reduced-price school lunch trends have not tracked poverty rates. Free and reduced-price lunch benefits are available to children in families with incomes up to 185 percent of the poverty level. Income trends in this eligible population will not necessarily mirror trends in the poverty population. In addition, changes in policy and procedures in the school lunch program during the past several years have likely influenced the rates at which children are certified for and/or participate in the program.

Given the lack of correspondence between school lunch data and poverty trends in recent years, these data received the least weight in our methodology. We have not required that States submit it, but we propose that States may provide it, at their option.

We are proposing that, if a State chooses to provide school lunch data, it must report the proportion of students certified for free and reduced-price meals. The Department of Agriculture indicates that changes in certification data primarily reflect changes in eligibility rates and in the propensity to apply for the program. Meal counts also reflect these two factors but are further affected by changes in the propensity to actually obtain a school meal on a given day such as school attendance rates or the number of serving days in a school year. Therefore, we believe that data on the proportion of students certified for free or reduced-price school lunches represent more useful data than the number of meals served.

5. Relative Importance of Various Factors in the Methodology

We did not give equal consideration to the three statutory factors. Rather, we give the greatest consideration to the Census Bureau methodology because it provides the most objective estimates of child poverty rates by States. However, given the limitations in the Census Bureau data, we propose that States provide supplemental information, in certain circumstances, that may adjust for these limitations, i.e., if the estimate of the State's child poverty rate increased five percent or more over the two year period.

6. Clarification of the Term ''Five Percent Increase''

The statute speaks to an increase in the child poverty rate of 5 percent. We want to clarify that a 5 percent increase does not mean a 5 percentage point increase in poverty. Rather, it means that the most recent child poverty rate is at least 5 percent higher than (i.e., 1.05 times) the previous year's rate. For example, an increase of 5 percent would mean an increase in the poverty rate of 20 percent to 21 percent.

We are taking this interpretation because it is the clearest reading of the statute and the one interpretation that will give the statute meaning; that is, it would be very unlikely that we would ever see an increase of 5 percentage points in a State's child poverty rate from one year to the next. In addition, we believe Congress would want to know about and have States take corrective action long before that occurred.

B. Summary of the Provisions of the Proposed Rule

Section 413(i) of the Act requires the Secretary to establish a methodology by which each State would determine the child poverty rate in the State. It specifies three factors that we must take into account in developing the methodology: The number of Food Stamp households; the number of children who receive free or reduced-price lunches; and, to the extent available, county-by-county estimates of children in poverty as determined by the Census Bureau.

Section 413(i) also specifies a deadline which requires the chief executive officer of each State to submit to DHHS by May 31, 1998, and annually thereafter, a statement of the State's child poverty rate. As noted earlier, we issued a Program Instruction to States explaining that we would provide to each State the Census Bureau's estimate of child poverty in each State as a first step in a proposed methodology and that no action by the State was required in relation to this deadline. (See TANF–ACF–PI–98–4.)

We are proposing a sequential methodology to implement the statute. There are five major steps in the proposed methodology. Not all States or Territories will need to participate in all steps. The methodology for the Territories is similar but includes some necessary modifications.

Step 1

- Annually, when we receive the data from the Census Bureau, we will provide each State with an estimate of the number and percentage of children living at or below 100 percent of the Federal poverty threshold within the State. This estimate will be for the calendar year that is two years prior to the current calendar year, e.g., in 1998, we will provide an estimate for calendar year 1996. The estimates we provide will be the Census Bureau estimates incorporating county level estimates of poverty.
- In 1999, and annually thereafter, we will determine for each State, at the 80 percent confidence level, the change in the percent of children in poverty for the most recent two year period for which the data are available, e.g., in 1999, we will provide data comparing calendar years 1996 and 1997; and provide this information to the State.

Step 2

- If the child poverty rate in a State did not increase by five percent or more, we will conclude that the State has met the requirements of section 413(i) of the Act, and the State will not be required to submit supplemental information.
- If the child poverty rate in a State increased by 5 percent or more, we propose to require that the State provide supplemental information to adjust, explain, or account for this increase. We propose that the State, within 60 days—

1—Must provide data on the average monthly number of households with children that receive Food Stamp benefits for each of the two most recent calendar years for which data are available. (We expect that the data submitted in 1999 will cover calendar years 1997 and 1998.);

2—Must provide data on any changes in legislation, policy, or program procedures that have had a substantial impact on the number of households with children receiving Food Stamp benefits during the same two year period, including data on sub-populations affected; and

3—May provide, at State option, other information such as the proportion of students certified for free or reduced-price school lunches or estimates of child poverty derived from an independent source. These data may cover any pertinent time period, *e.g.*, the two-year period for which the child poverty rate was determined or the most recent two year period for which data are available. An independent source may include studies by research or advocacy organizations, universities, or independent evaluation and analysis

offices associated with State executive branch agencies or State legislatures.

• If the Food Stamp data are based on population counts, States may simply report the average monthly number for each of the two calendar years and the simple difference between them. If the Food Stamp data are based on monthly samples, States must include the calculated standard errors of each annual estimate.

Note: Alternatively, if a State chooses to accept the increase in child poverty as indicated by the Census data, it may skip steps two and three and move directly to step four—the assessment of the impact of the State's TANF program on child poverty.

Step 3

• We will review the Food Stamp and other data provided by the State, including data on substantive legislative, policy, and program changes affecting the number of households with children receiving Food Stamp benefits. If we determine that these data indicate a subsequent improvement, commensurate with the poverty increase in the Census data, it would not be necessary for the State to proceed to Step 4 because the more recent data indicate child poverty is already improving.

Step 4

• If we determine that the Food Stamp and other data provided by the State do not indicate a subsequent commensurate decrease in child poverty as addressed in Step 3, we propose to notify the State that it must, within 60 days, provide an assessment (and the information and evidence on which the assessment was based) of the impact of the State's TANF program on the child poverty rate. In this instance, we propose to give the States and Territories broad latitude in the information they provide.

Step 5

• We will review the information provided by the State, along with other data available such as the State's TANF plan and eligibility criteria, other supportive services and assistance programs, and the State's economic circumstances. If we determine that the increase in the child poverty rate is the result of the State's TANF program, we will notify the State that it is required to submit a corrective action plan within 90 days.

• To the extent that data are available and the procedures applicable, the Territories are subject to the same methodology as described for the States. One modification, however, is necessary. Since the Census Bureau does not estimate a child poverty rate for the Territories, ACF will compute an estimate of the percentage of children in poverty and the estimated child poverty rate for the Territory, based on information submitted by the Territory. Subsequent procedural steps are the same as for States, i.e., as applicable, we will review supplemental data to determine whether the child poverty rate increased by 5 percent or more; review the Territory's assessment of whether the increase in the child poverty rate was a result of the TANF program; and require the development of a corrective action plan, as necessary.

Note: We call to the Territories' attention that this NPRM proposes to require the retention and availability of 1996 calendar year data on households with children that received Food Stamp benefits.

We believe this approach will begin with and use the most reliable, objective data on child poverty available for all States and Territories; help assure that the child poverty rate for each jurisdiction accurately reflects its economic and other circumstances; and require that States and Territories provide only those data necessary, readily available, and most appropriately provided by them. States have more timely access to Food Stamp and other data to supplement the Census Bureau estimates, and both States and Territories are in a better position to explain any relationship to the TANF program. We anticipate, however, that only a small number of States and Territories will need to provide these data and an even smaller number will be required to submit a corrective action plan.

C. Section-By-Section Discussion

What Does This Part Cover? (§ 284.10)

This section of the proposed rule provides a summary of 45 CFR part 284. Part 284 proposes a methodology for determining State child poverty rates, including a determination of whether the child poverty rate increased as a result of the TANF program. It also covers the content and duration of the corrective action plan.

In § 284.10(b), we indicate that any Territory that has never operated a TANF program would not be subject to these rules. We included this provision to address American Samoa's situation. American Samoa did not operate an AFDC program, and it has not yet elected to operate a TANF program. Unless its status changes, we would exempt American Samoa from the requirements of this part.

What Definitions Apply to This Part? (§ 284.11)

This section proposes definitions of the terms used in part 284. It includes key technical terms used in the methodology for clarity.

The statute requires States to submit a ''statement of the child poverty rate'' using various factors, including ''county-by-county estimates of children in poverty as determined by the Census Bureau.'' These two references to the term ''poverty'' need further clarification. We refer to estimates provided by the Census Bureau of the percentage of children in a State in families with incomes below 100% of the poverty threshold as ''children in poverty.'' The term ''Census methodology'' means the methods developed by the Census Bureau for estimating the number and percentage of children in poverty in each State.

We use the term ''child poverty rate'' when referring to the sequential methodology proposed in this part for determining whether a State will be required to submit a corrective action plan.

We propose to define ''date of enactment'' to mean calendar year 1996. Although the statute requires the State to provide to DHHS a statement of the child poverty rate in the State as of the date of enactment of PRWORA (August 22 1996), these data are available only on a calendar year basis. We believe that using the available calendar year data is the most feasible way to determine child poverty rates and consider the impact of the TANF program on these rates.

Although section 419(5) of the Act, as amended, defines ''State'' as the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam and American Samoa, we have proposed, for this part, to define ''Territory'' in a separate definition to mean the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

We have done this for clarity as some data limitations and some procedural steps in the proposed methodology do not apply to the Territories. We have outlined the steps for determining the child poverty rate for States in §§ 284.20 through 284.30 and specified how the process differs for Territories in § 284.35.

You will note that we use the term ''we'' throughout the regulation and preamble. We have defined ''We (and any other first person plural pronouns)'' to mean the Secretary of the Department of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human

Services, and the Administration for Children and Families.

Who Must Submit Information to ACF to Carry out the Requirements of this Part? (§ 285.15)

Section 413(i)(1) of the Act specifies that the chief executive officer of the State (or Territory) shall submit to the Secretary the annual statement of the State's (Territory's) child poverty rate. Other subsections require action by the ''State.''

Given the widespread concern for the needs and circumstances of children, we believe it is appropriate that the chief executive officer of a State (Territory) carry out these responsibilities. We have proposed in § 284.15 that the chief executive officer, or his or her designee, submit the information required by this part. For editorial simplicity, however, we have used the term ''State'' or ''Territory'' throughout part 284 rather than the more cumbersome term ''chief executive officer of the State.''

What information will we provide to each State to estimate the number of children in poverty? (§ 284.20)

Annually, we propose to provide each State with an estimate of the number and percentage of children in poverty within the State. The estimates we provide will be those determined by the Census Bureau and will incorporate calculations by the Census Bureau using the methodology it has developed for small-area (e.g., county-level) estimates of poverty.

The first annual estimate will be an estimate of the number and percentage of children in poverty for calendar year 1996. Subsequent year estimates will also be for the calendar year two years preceding, e.g., the second annual estimate will be for calendar year 1997. The two-year time differential reflects the amount of time it takes for the Census Bureau to collect and analyze the data sources used in its model.

Although the law states that ''the chief executive officer of each State shall submit to the Secretary a statement of the child poverty rate in the State* * *,'' we are proposing to provide this information to the States in order to reduce burden on States and others. Because the Census Bureau data are collected at the Federal level, we are in a position to obtain and distribute these data more efficiently to States. (It did not seem reasonable to require each State to contact the Census Bureau for child poverty information and forward it back to us.)

We have not referenced or incorporated the May 31st date specified in the statute in this NPRM. We will, however, send to the States the annual child poverty estimates as soon as they are available from the Census Bureau.

In § 284.20(b), we propose that annually we will determine for each State, at the 80 percent confidence level, the change in the percentage of children in poverty for the applicable two year period and provide each State with its percentage of change. (The 1999 percentage change will cover the change between calendar years 1996 and 1997.)

We are proposing the use of the 80 percent confidence level because, while the Census methodology will provide us a point estimate of the poverty rate, there is a high probability that the actual poverty rate will not be exactly the same as the point estimate. Rather, the actual poverty rate likely will lie somewhere near the estimate. Statistical procedures will allow us to determine the range around which the actual estimate lies, with varying degrees of confidence.

This range is important because year-to-year changes in State-level child poverty rates may simply reflect points within the confidence interval. The estimate may indicate that the child poverty rate has changed when in fact it has not.

We will require a particular level of statistical certainty in determining a State's poverty rate in order to avoid erroneously concluding that a State's poverty rate has increased by 5 percent or more.

We propose to require States to submit additional data only when we conclude, with 80 percent confidence, that the rate has increased by 5 percent or more. While an 80 percent confidence level is not considered to be a high level of confidence in a scientific context of hypothesis testing, a four-fifths likelihood is certainly high enough in a practical context to justify concern that the child poverty rate may have in fact increased sufficiently to warrant attention.

More importantly, we believe the 80 percent confidence level offers greater protection to children. We have proposed the 80 percent confidence level (instead of the commonly used 95 percent confidence level) in order to ascertain more sensitively any percentage change in the child poverty rate. The choice of a particular confidence level affects the quality of statistical information.

For example, the risk of choosing a narrower confidence band is that it may provide a false indication of change in the poverty rate when no significant change has occurred. However, the consequences of choosing a higher percent confidence level are far more serious, in a programmatic sense, as they may lead us to conclude that the child poverty rate has not changed significantly when, in fact, it has.

In determining the 80 percent confidence interval, we will use a one-tailed (rather than two-tailed) statistical test because we want to ensure that we have determined the point estimate of any increase in the child poverty rate with 80 percent certainty. We would use a two-tailed statistical test only if we wanted to determine the point estimates of both increases and decreases in the child poverty rate with 80 percent probability. Therefore, the one-tailed test is the appropriate test to use to ensure that the real increase is at least 5 percent. (A test is one-tailed when the alternative hypothesis states a direction such as the mean (average) increase in the child poverty rate for a given year is GREATER THAN zero.)

The Census Bureau may update the assumptions and features of its methodology occasionally. Further, estimates may need to be refined after initial publication. Should the Census Bureau alter its methodology or subsequently update previously published estimates, we will base the estimates of change in poverty on the most updated methods and estimates. If, for example, the Census Bureau changes a model assumption from one reporting period to the next, we will re-estimate the number of children in poverty for that year. This re-estimate will be solely for the purpose of calculating the change; it will help ensure that any estimated changes do not result from changes in the methodology.

What Information Must the State Provide if the Estimate of a State's Child Poverty Rate Has Increased Five Percent or More Over the Two Year Period? (§ 284.25)

If we have determined, with 80 percent confidence, that the child poverty rate in a State did increase by 5 percent or more, we propose in paragraph (b) to require that the State must submit data within 60 days on Food Stamp participation. The State may also submit other information.

We propose, in paragraph (c), to require that the State provide data on the average monthly number of households with children receiving Food Stamp benefits for each of the two most recent calendar years for which data are available. For example, we expect that the Food Stamp data submitted in 1999 will cover calendar years 1997 and 1998.

We also propose that the State, at its option, may submit other information in

relation to the child poverty rate for the same most recent two year period. This information could include changes in the proportion of students certified for free or reduced-price school lunches or estimates of child poverty derived from an independent source. As noted earlier, studies of child poverty are being conducted by a variety of entities including, research and advocacy organizations, universities, and evaluation and analysis offices associated with State executive branch agencies or State legislatures.

We propose, in paragraphs (c)(1) and (c)(2) that States submitting the average monthly number of Food Stamp households with children under age 18 may elect to calculate such number based upon either:

- Population counts (e.g., from its administrative data system); or
- Monthly samples of Food Stamp recipient households based on generally accepted scientific sampling methods, i.e., each recipient household has a known, non-zero probability of being drawn into the sample.

A State submitting the average monthly number of Food Stamp recipient households with children under 18 based upon population data for each month would then calculate the simple difference between yearly averages.

If a State chooses to use monthly samples of its Food Stamp recipient caseload for each of the twelve months to develop an estimate of the average monthly number of Food Stamp households with children under 18, such State would be required to submit:

- The estimated average monthly number of households; and
- Estimated sampling errors (standard errors).

We expect that a State using the sampling method will have its sampling plan available for review and submission as needed. A State using its Food Stamp Quality Control sampling plan will not be asked to submit its plan.

In paragraph (c)(3), we propose that the State must submit information on any changes in legislation, policy, or program procedures that have had, during the same period for which Food Stamp data are provided, a substantial impact on the number of households with children receiving Food Stamp benefits. Specifically, the State must submit data relative to determining how such changes affected the Food Stamp population as a whole or any sub-population.

We will review the Food Stamp information provided by the State under paragraph (c). The purpose of our review will be to determine whether the average monthly number of households with children receiving Food Stamps indicates a subsequent improvement commensurate with the poverty increase in the Census data, taking into account any additional information provided by the State.

If we determine that the number of households with children receiving Food Stamp benefits did not indicate an improvement commensurate with the poverty increase in the Census data, we will review any additional data the State has provided. Unless we determine that this additional data provides sufficient documentation that either child poverty did not go up in the State or that there was a subsequent improvement, commensurate with the poverty increase in the Census data, we will notify the State that information on the impact of TANF on the child poverty rate must be submitted.

How Will We Determine the Impact of TANF on the Increase in the State Child Poverty Rate? (§ 284.30)

Section 413(i) of the Act requires States to submit corrective action plans only if the State's child poverty rate has increased by 5 percent or more as a result of TANF.

In § 284.30, we propose that those States identified, based on the determination made in § 284.25, must make an assessment of the impact of the TANF program on its child poverty rate. The State's assessment, and the information on which the assessment was based, must be provided to us within 60 days.

The State's assessment of the impact of the TANF program will be based on the same two-year time period used to determine State's child poverty rate. For example, the poverty rate for 1996–1997 will be compared to the TANF (or prior program) in effect for the same years.

Paragraph (a) of this section includes examples of information or evidence that a State may submit as a part of its assessment. States may identify and provide other pertinent information as well.

In assessing the impact of the TANF program, the State, for example, might review its TANF program and policies, the percentage of eligible persons receiving TANF, the TANF application disapproval rates, and numbers of cases sanctioned or closed; and the economic and other circumstances in the State, e.g., factory and base closings, rise in unemployment rates; and participation rates of other assistance programs. A State should review the evidence to form a broad picture of contributing circumstances and not consider factors in isolation. An increase in State unemployment, for example, cannot by itself be put forward to account for the increase in the child poverty rate if restrictive TANF eligibility policies are also in place.

During the consultation process, some experts expressed doubt that a single methodology could be used by all States to statistically attribute changes in child poverty rates. Many factors contribute to such changes in ways that may vary from State to State and from year to year.

It is the Department's responsibility to determine whether a State or Territory's child poverty rate has increased as a result of the TANF program in the State or Territory, and this is a responsibility we take seriously. We will thoroughly examine the assessment provided by the State as well as a range of other available information. At the same time, however, we propose to give States flexibility in reviewing their programs, policies, and economic and other circumstances; assessing the effect of the TANF program on child poverty rates; and providing evidence of alternative factors they believe may have contributed to the increase.

We expect that a State or Territory will also take this responsibility seriously and will provide an assessment in sufficient detail to enable us to make our determination. However, if a State submits only a conclusory statement—with no information, evidence, or assessment—we will conclude that a corrective action plan is required.

Paragraph (b) of this section proposes that we will review the information provided by the State, in addition to other available information (such as the State's TANF plan and eligibility criteria, other supportive service or assistance plans, and a State's economic circumstances); make a determination; and notify the State if a corrective action plan is required.

How Will the Methodology for the Territories Differ? (§ 284.35)

Not all of the steps proposed for States in the previous sections are applicable to Territories. For example, ''estimates of children in poverty as determined by the Census Bureau'' are calculated only for the 50 States and the District of Columbia, but not for the Territories. Further, the Food Stamp Program does not operate in the Commonwealth of Puerto Rico and American Samoa.

Therefore, we are proposing a modified but similar process for the Territories. In § 284.35, we propose that, in the absence of Census Bureau

estimates, ACF will compute the estimated percentage of children in poverty for each Territory. We will base our computations on the information submitted by the Territory as specified in paragraph (b) or (c) of this section. This information must include Food Stamp data, if available. If the Territory does not have a Food Stamp program, it must provide other information such as the proportion of students certified for free or reduced-price school lunches or other estimates of child poverty derived from independent sources.

For example, in 1998, we will compute the estimated percentage of children in poverty for each Territory for calendar year 1996. In 1999, we will compute the estimated percentage of children in poverty for calendar year 1997. We will also determine, at the 80 percent confidence level (if the data are sample data), the percentage change between calendar years 1996 and 1997. We will perform these computations annually for the applicable two year period, based on the annual information submitted by the Territory.

If the child poverty rate in the Territory did not increase between one year and the next, we will conclude that the Territory has met the requirements of section 413(i) and notify it that no further information from or action by the Territory is required for that two year period.

If the estimate of the child poverty rate increased by 5 percent or more from one year to the next, we propose in paragraph (g) to require that the Territory submit data for calendar year 1998. This data would be the Food Stamp data, if available, as specified in paragraph (b) or other data as specified in paragraph (c).

This proposed action parallels the proposed action required from States in § 284.25(c). We believe that these more recent data will help illustrate, for both States and Territories, any positive trends and show the current effect of a State or Territory's program and policies.

Based on the data submitted in paragraph (g), we will determine whether the child poverty rate has increased 5 percent or more. If it has, we will notify the Territory that it must submit an assessment (and the information and evidence on which the assessment was based) of whether the child poverty rate increased as a result of the Territory's TANF program. We reference the examples of information and evidence described in § 284.30(a).

We will review the assessment submitted by the Territory, along with other available information; make a determination whether the increase in the child poverty rate is a result of the Territory's TANF program; and notify the Territory whether it is or is not required to submit a corrective action plan as specified in §§ 284.40 and 284.45.

When is a Corrective Action Plan Required? (§ 284.40)

This section proposes that only those States and Territories for which we have concluded that the child poverty rate has increased by 5 percent or more as a result of TANF are required to submit corrective action plans. The State and the Territory must submit the plan within 90 days of the date we notify it of our determination under §§ 284.30 or 284.35.

What is the Content and Duration of the Corrective Action Plan? (§ 284.45)

The Act does not provide express authority for us to prescribe regulations regarding the content and duration of corrective action plans. Therefore, this section restates the statutory provisions.

However, we want to provide additional explanation of the statutory language on the duration of the corrective action plan. Paragraph (b) of this section re-states section 413(i)(4) of the Act. This section requires that the State implement the corrective action plan ''until the State determines that the child poverty rate in the State is less than the lowest child poverty rate on the basis of which the State was required to submit the corrective action plan.''

The ''lowest child poverty rate'' means the five percent threshold above the first year in the two year comparison period. For example, a State with a 20 percent child poverty rate in the first year of the two year comparison period would have a five percent threshold of 21 percent and would be required to implement its corrective action plan until its child poverty rate dropped below 21 percent.

V . Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. This proposed rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with State and local officials, their representative organizations, and a broad range of technical and interest group representatives.

We discuss the input received during the consultation process in previous sections of the preamble. To a considerable degree, this NPRM reflects the information provided by, and the recommendations of, the groups with whom we consulted.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 603, 605) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Regulatory Flexibility Act to include small businesses, small non-profit organizations, and small governmental agencies. This rule will affect only States, the District of Columbia, and certain Territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

In developing this proposed rule, we had very little discretion with respect to the kinds of data States and Territories must report to the Secretary. Thus, the burden of reporting data on the Food Stamp program is mandated by the statute. We have estimated the burden in this section and do not view it as significant. We have exercised discretion by developing an approach that will help States and Territories meet the statutory requirements with the least burden.

We will send to the States the Census Bureau data on the number and percentage of children reported to have fallen below the poverty level and will compute for the Territories the percentage of children in poverty based on the information provided by the Territory. Only those States and Territories whose child poverty rate increased 5 percent or more will be required to submit further information. This approach is designed to lessen the burden on these jurisdictions. However, we invite comments on this approach and the possible impact it may have on States and Territories.

To the extent possible, this proposed rule relies on existing data sources. The Census methodology is based on available data from the Bureau of the Census, the U.S. Department of Agriculture, and the U.S. Department of the Treasury. Sample or universe data on the number of households with children that receive Food Stamp benefits are reported by the States to the

U.S. Department of Agriculture (USDA) and are available from the States or the USDA. Also, States report to USDA data on the number of students certified to receive free and reduced-price school lunches.

However, this proposed rule does contain information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). Under the PRA, no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the PRA, we have submitted the proposed data collection requirements to OMB for review and approval. We are using this NPRM as a vehicle for seeking comment from the public on these information collection activities.

There are four circumstances in the proposed rule that will create a reporting burden:

- A Territory provides data to us on which we will base our computation of an estimate of the percentage of children in poverty and the change in the percentage (§ 284.35);
- A State or Territory provides evidence that the estimated increase in poverty was less than 5 percent (§ 284.25(c) and § 284.35(g));
- A State or Territory provides evidence that the increase in the child poverty rate was not the result of the TANF program (§ 284.30 and § 284.35(h)); and
- A State or Territory submits a corrective action plan (§ 284.40 and § 284.45).

The annual burden estimates include any time involved compiling and abstracting information, assembling any other material necessary to provide the requested information, and transmitting the information.

Prior to the development of this estimate, we researched the burden estimates for similar OMB-approved data collections in our inventory, and those pending OMB approval, and consulted with knowledgeable Federal officials.

All 50 States, the District of Columbia, and the Territories of Guam, Puerto Rico, and the United States Virgin Islands are potential respondents to all of the proposed data collections. The annual burden estimates for these data collections are:

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Submission of Data by Territory for Computation of an Estimate of the Percentage of Children in Poverty and the Change in the Percentage (§ 284.35)	3	1	40	120
Submission of Food Stamp Data and/or Alternative Evidence That Child Poverty Level Did Not Increase by 5% or More (§ 284.25(c) and § 284.35(g))	54	1	40	2,160
Documentation for Relationship of TANF to the Increase in Child Poverty Level (§ 284.30 and § 284.35(h))	54	1	80	4,320
Corrective Action Plan (§ 284.40 and § 284.45)	54	1	160	8,640

Estimated Total Annual Burden Hours: 15,240.

We have over-estimated the burden hours for part 284 for ease of discussion and public review of the burden. We expect that only a few States will experience an increase of 5 percent or more in their child poverty rate and will need to provide Food Stamp or additional data; even fewer will need to submit information in relation to the TANF program; and a very few will be required to submit a corrective action plan.

We encourage States, organizations, individuals, and other parties to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, 725 17th Street, Washington, DC 20503, ATTN: Desk Officer for ACF.

To ensure that public comments have maximum effect in developing the final regulations and the data collection requirements, we urge that each comment clearly identify the specific section or sections of the proposed rule that the comment addresses and follow the same order as the regulations.

We will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- Evaluating the accuracy of our estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed rules between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is assured of having its full effect if OMB receives it within 30 days of publication. This OMB review schedule does not affect the deadline for the public to comment to ACF on the proposed rules.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 205 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this proposed rule would not impose a mandate that will result in the

expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

E. Congressional Review

This proposed rule is not a ''major'' rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 284

Grant programs—Social programs, Public Assistance programs; Reporting and recordkeeping requirements; Poverty.

(Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—State Family Assistance Grants, Assistance grants to Territories, Matching grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.595 Welfare Reform Research, Evaluations and National Studies.)

Dated: May 13, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: June 9, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR Ch. II by adding part 284 to read as follows:

PART 284—CHILD POVERTY RATES

Sec.
284.10 What does this part cover?
284.11 What definitions apply to this part?
284.15 Who must submit information to ACF to carry out the requirements of this part?
284.20 What information will we provide to each State to estimate the number of children in poverty?
284.25 What information must the State provide if the estimate of a State's child poverty rate has increased by five percent or more over the two year period?
284.30 What information must the State provide to explain the impact of TANF on the increase in child poverty?
284.35 How will the methodology for the Territories differ?
284.40 When is a corrective action plan due?
284.45 What is the content and duration of a corrective action plan?

Authority: 42 U.S.C. 613(i)

§ 284.10 What does this part cover?

(a) This part describes the methodology to be used to determine State child poverty rates, as required by section 413(i) of the Social Security Act, including determining whether the child poverty rate increased by 5 percent or more as a result of TANF. It also describes the content and duration of the corrective action plan.

(b) The requirements of this part do not apply to any Territory that has never operated a TANF program.

§ 284.11 What definitions apply to this part?

The definitions that apply to this part are:

ACF means the Administration for Children and Families.

Act means the Social Security Act, unless otherwise specified.

Census methodology means the methods developed by the Census Bureau for estimating the number and percentage of children in poverty in each State.

Child poverty rate means the result of the methodology described in this part to determine the percentage of children in poverty in each State and Territory. The State child poverty rate will be based on the Census methodology and may also include the number of households with children receiving Food Stamp benefits and additional data submitted by a State. The child poverty rate for a Territory will be computed by ACF based on data submitted by the Territory.

Children in poverty means estimates resulting from the Census methodology of the percentage of children in a State that live in families with income below 100 percent of the federal poverty level.

Date of enactment means calendar year 1996.

State means each of the 50 States of the United States and the District of Columbia.

TANF means the Temporary Assistance for Needy Families program, as enacted by section 103 of Pub. L. 104–193 (42 U.S.C. 601–619).

Territories means American Samoa, Guam, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals and organizations acting in an official capacity on the Secretary's behalf: The Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

§ 284.15 Who must submit information to ACF to carry out the requirements of this part?

The chief executive officer of the State or Territory, or his or her designee, is responsible for submitting the information required by this part to us.

§ 284.20 What information will we provide to each State to estimate the number of children in poverty?

(a) Annually, we will provide each State with an estimate of the number and percentage of children in poverty within the State, as determined by the Census Bureau using the Census methodology. The annual estimate will be for the calendar year two years previous. (The first annual estimate in 1998 will be an estimate of children in poverty for calendar year 1996.)

(b) In 1999, and annually thereafter, we will determine for each State, at the 80 percent confidence level, the change in the percentage of children in poverty for the applicable two calendar year period based on the Census Bureau data, and provide each State with its percentage of change. (The first determination of percentage change will cover the change between calendar years 1996 and 1997.)

§ 284.25 What information must the State provide if the estimate of a State's child poverty rate has increased five percent or more over the two year period?

(a) If the estimate of a State's child poverty rate did not increase by 5 percent or more, at an 80 percent confidence interval, from one year to the next, we will conclude that a State has satisfied the statutory requirements of section 413(i) of the Act, and notify the State that no further information from or action by the State is required for the applicable two calendar year period.

(b) If the estimate of a State's child poverty rate increased by 5 percent or more from one year to the next, we will notify the State that it has 60 days to submit the data required in paragraph (c) of this section.

(c) If required under paragraph (b) of this section, the State must submit data on the average monthly number of households with children that received Food Stamp benefits for each of the two most recent years for which data are available. (We expect that the data submitted in 1999 will cover calendar years 1997 and 1998.) The State may also submit other evidence covering any pertinent time-period, including the proportion of students certified for free or reduced-price school lunches or estimates of child poverty that were derived from an independent source.

(1) If a State reports Food Stamp data based on population counts, it must

report the average monthly number for each of the two calendar years and the difference between them.

(2) If a State reports Food Stamp data based on monthly samples, it must include the calculated standard errors of each annual estimate.

(3) If there has been a change in legislation, policy, or program procedures that have had a substantial impact on the number of households with children receiving Food Stamps during the period for which we are requesting Food Stamp data, the State must submit data relevant to determining how that change(s) affected the number of Food Stamp households with children, including data on sub-populations affected by the change.

(d) Based on the information submitted by the State under paragraph (c) of this section, if the average monthly number of households with children receiving Food Stamp benefits within the State indicates a subsequent improvement, commensurate with the poverty increase in the Census data, we will conclude that the State has satisfied the statutory requirements of section 413(i) of the Act, and that no further information from or action by the State is required.

(e) If the average monthly number of households with children receiving Food Stamp benefits within the State did not indicate a subsequent decrease in child poverty commensurate with the increase shown by the Census data, we will review any additional data the State has provided. Unless this additional data provides sufficient documentation that either child poverty did not go up in the State or there was a subsequent commensurate decline, we will notify the State that it must provide the information described in § 284.30.

§ 284.30 What information must the State provide to explain the impact of TANF on the increase in child poverty?

(a) If we have determined under § 284.25, that the State must submit its assessment (and the information and evidence on which the assessment is based) of whether the child poverty rate has increased as a result of the State's TANF program, the State's assessment, and the information on which the assessment is based, must cover the two year period for which the child poverty rate is determined, and must be submitted to us within 60 days. Examples of such information may include—

(1) Evidence that TANF program rules did not economically disadvantage children from one calendar year to the next to the extent that such policies could account for a 5 percent or more increase in the child poverty rate. For example, if TANF income eligibility rules did not limit program participation and program cash benefits did not decrease substantially, a State could assert that increases in the child poverty rate occurred independently of TANF. A State could also provide other TANF program evidence, such as the percentage of eligible individuals receiving TANF, the number of applicants disapproved, sanction rates, numbers of cases terminated as a result of time limits, and numbers of cases terminated as a result of failing to meet work requirements;

(2) Evidence that other factors account for the increase in the child poverty rate, such as changes in economic or social conditions, *e.g.*, an increase in the State's unemployment rate. For example, a State that met the definition of a ''needy State'' under section 403(b)(6) of the Act for an extended period of time within the applicable two year period could assert that increases in the child poverty rate resulted from non-TANF factors; or

(3) An alternate justification that demonstrates that changes in the child poverty rate within the State did not result from TANF. For example, a State could submit data from other assistance programs that provide evidence that increases in the child poverty rate did not result from TANF.

(b) We will review the State's assessment, along with other available information such as the State's TANF plan and eligibility criteria, other supportive services and assistance programs, and the State's economic circumstances; make a determination whether the child poverty rate has or has not increased by 5 percent or more as a result of the State's TANF program; and notify the State whether it must submit a corrective action plan as described in §§ 284.40 and 284.45.

(c) If we determine that the child poverty rate has not increased by 5 percent or more as a result of the State's TANF program, we will conclude that the State has met the requirements of section 413(i) and notify the State that no further information from or action by the State is required for the applicable two calendar year period.

§ 284.35 How will the methodology for the Territories differ?

(a) To the extent that data are available and the procedures applicable, the Territories are subject to the same methodology used to determine the child poverty rate in the 50 States and the District of Columbia.

(b) Since the Census Bureau methodology does not estimate a child poverty rate for the Territories, each Territory must, beginning in 1998, and annually thereafter, submit to ACF the Food Stamp data described in § 284.25(c).

(c) If the Food Stamp data are not available for a Territory because it did not operate a Food Stamp program for the applicable year, it must, beginning in 1998, and annually thereafter, submit other information on which the child poverty rate may be determined, such as the proportion of students certified for free or reduced-price school lunches or estimates of child poverty derived from independent sources. (In 1998, the Territory must submit data for calendar year 1996; in 1999, the Territory must submit data for calendar year 1997.)

(d) Based on the data specified in paragraph (b) or (c) of this section submitted for calendar year 1996, we will compute an estimate of the percentage of children in poverty for the Territory for calendar 1996.

(e) Based on the data specified in paragraph (b) or (c) submitted for calendar year 1997, we will compute an estimate of the percentage of children in poverty for calendar year 1997. We will also determine, at the 80 percent confidence level (if the data are sample data), the change in the percentage of children in poverty between calendar years 1996 and 1997. We will do this annually thereafter for the applicable two year period.

(f) If the estimate of the child poverty rate in the Territory did not increase by 5 percent of more, at an 80 percent confidence level, we will conclude that the Territory has satisfied the requirements of section 413(i) of the Act. We will notify the Territory that no further information from or action by the Territory is required for the applicable two year period.

(g) If the estimate of the child poverty rate in the Territory increased by 5 percent or more from one year to the next, the Territory must submit the information in paragraph (b) or (c) of this section for the subsequent calendar year. For example, if the child poverty rate increased between calendar years 1996 and 1997, the Territory must submit data for calendar year 1998. We will review these data and determine whether the child poverty rate has or has not increased by 5 percent or more.

(h) If we determine that the child poverty rate has increased 5 percent or more, we will notify the Territory that it must submit an assessment (and the information and evidence on which the assessment was based) of whether the child poverty rate increased as a result of the TANF program in the Territory.

Examples of such information and evidence are found in § 284.30(a).

(i) We will review the assessment provided by the Territory, along with other available data on the Territory's TANF plan and eligibility criteria, other supportive services and assistance plans, and economic circumstances; make a determination whether the increase in the child poverty rate is due to the Territory's TANF program; and notify the Territory whether a corrective action plan is required as specified in § 284.40 and § 284.45.

§ 284.40 When is a corrective action plan due?

Each State and Territory must submit a corrective action plan to ACF within 90 days of the date we notify it that, as a result of TANF, its child poverty rate increased by 5 percent or more for the applicable two calendar year period.

§ 284.45 What is the content and duration of the corrective action plan?

(a) The corrective action plan must outline the manner in which the State or Territory will reduce the child poverty rate in the State and include a description of the actions to be taken by the State or the Territory under such a plan.

(b) A State or Territory shall implement the corrective action plan until the State or Territory determines that the child poverty rate in the State is less than the lowest child poverty rate on the basis of which the State was required to submit the corrective action plan.

[FR Doc. 98–25384 Filed 9–22–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 286 and 287

RIN 0970–AB78

Tribal Temporary Assistance for Needy Families Program (Tribal TANF) and Native Employment Works (NEW) Program

AGENCY: Administration for Children and Families.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 22, 1998, the Administration for Children and Families (ACF) published a Notice of Proposed Rule Making (NPRM) for the Tribal Temporary Assistance for Needy Families Program (Tribal TANF) and the Native Employment Works (NEW) Program with a comment period of 60 days, ending September 21, 1998. We are now extending the comment period for an additional 60 days for the purpose of allowing Tribes and other interested parties sufficient time for review and to formulate comments on the NPRM.

DATES: You must submit comments by COB November 20, 1998.

ADDRESSES: You may mail or hand-deliver comments to the Administration for Children and Families, Office of Community Services, Division of Tribal Services, 5th Floor, 370 L'Enfant Promenade, SW, Washington, DC 20447. You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the ACF Welfare Reform Home Page at http:/www.acf.dhhs.gov/news/welfare and follow any instructions provided.

We will make all comments available for public inspection on the 5th Floor, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m. Eastern time, except for holidays.

FOR FURTHER INFORMATION CONTACT: John Bushman, Director, Division of Tribal Services, Office of Community Services, ACF, at 202–401–2418; Raymond Apodaca, Tribal TANF Team Leader at 202–401–5020; or Ja-Na Oliver, (NEW) Team Leader at 202–401–5713.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 from Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The NPRM was published July 22, 1998, in the **Federal Register** [63 FR 39366–39429] with a 60 day comment period. Based on information received from the Tribes and other interested parties, it has been determined that additional time is needed to review the NPRM.

Comment Procedures

We will not consider comments received beyond the 120 day comment period in developing the final rule. Because of the large volume of comments we anticipate, we will accept written comments only. In addition, your comments should:

- Be specific;
- Address issues raised by the proposed rule;
- Where appropriate, propose alternatives;
- Explain reasons for any objections or recommended changes; and
- Reference the specific section of the proposed rule that you are addressing.

We will not acknowledge the comments we receive. However, we will review and consider all comments that are germane and that are received during the comment period.

(Catalog of Federal Domestic Assistance Programs: 93.558, TANF programs—Tribal Family Assistance Grants; 93.559—Loan Fund; 93.594—Native Employment Works Program; 93.959—Welfare Reform Research, Evaluations and National Studies)

Dated: September 17, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–25390 Filed 9–18–98; 1:57 pm]

BILLING CODE 4184–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 197

[USCG–1998–3786]

RIN 2115–AF64

Commercial Diving Operations

AGENCY: Coast Guard, DOT.

ACTION: Advanced notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to public requests, the Coast Guard is extending the period for public comment on its Advance Notice of Proposed Rulemaking (ANPRM), Commercial Diving Operations, published in the **Federal Register** on June 26, 1998. The comment period will be extended for 45 days.

DATES: Comments must reach the Docket Management Facility on or before November 9, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility (USCG–1998–3786), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL–401

on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the advance notice of proposed rulemaking (ANPRM) provisions, contact LT Diane Kalina, Project Manager, Vessel and Facility Operating Standards Division, Coast Guard, telephone 202–267–1181. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (USCG–1998–3786) and the specific section of the ANPRM to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change the proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Docket Management Facility at the address under **ADDRESSES**. The request must identify this docket [USCG–1998–3786] and should include the reasons why a public meeting would be helpful to this rulemaking. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The existing commercial diving operations regulations are over 20 years old and do not include current safety and technology standards and industry practices. The Coast Guard needs current information on these subject areas to help us identify necessary regulatory revisions.

In response to several public requests, the Coast Guard is extending the period for public comment on its Advance Notice of Proposed Rulemaking (ANPRM), Commercial Diving Operations, published in the **Federal Register** on June 26, 1998 (63 FR 34840). The comments stated that more time was needed to collect data, and the diving industry is typically very busy during the summer months and divers need more time to develop comments to the ANPRM. Based on these requests and on the small number of comments received so far, the Coast Guard has decided to extend the comment period for an additional 45 days.

Dated: September 17, 1998.

Howard L. Hime,

Acting, Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–25464 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 249

[MARAD 98–4395]

RIN No. 2133–AB 36

Approval of Underwriters for Marine Hull Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance Notice Of Proposed Rulemaking; request for comments.

SUMMARY: The Maritime Administration (MARAD) is soliciting comments from interested persons concerning the need to amend the existing regulations governing the placement of marine hull insurance on subsidized and Title XI program vessels. The existing regulations were promulgated in 1988 and provided, among other things, the criteria and procedures for certain foreign underwriters to participate in the writing of hull insurance on MARAD program vessels.

DATES: Comments are requested by October 23, 1998.

COMMENTS: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th Street SW, Room 7210, Washington, DC 20590. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:\dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, Maritime Administration, Washington, DC 20590. Telephone 202/366–2400.

SUPPLEMENTARY INFORMATION: The 1988 explanation of the final rulemaking (53 FR 23119) provided in part that:

> Members of the Institute of London Underwriters (ILU) would remain eligible subject to prescribed trust fund and limitation on risk requirements. On the basis of a comment by one American carrier, the final rule specifically reserves MARAD's right to review this eligibility at any time.

It has come to MARAD's attention that the ILU and another London based insurance organization, the London International Insurance and Reinsurance Market Association (LIRMA) have voted to merge their two organizations in the near future. The new organization will be called the International Underwriters Association (IUA) of London. MARAD's Director, Office of Marine Insurance had discussions with the incoming chairman of the IUA and the chairman indicated that the new organization will not have the same eligibility criteria as the ILU or any internal oversight activities. In view of this, MARAD is seeking comments concerning how to deal with existing ILU member companies after the merger. Will it be necessary to qualify ILU member companies on an individual ''ad hoc'' basis after the merger is implemented? MARAD has a number of questions it would like to receive comment on:

(1) Should companies who were in the ILU and approved to write insurance on MARAD program vessels maintain their eligibility for some period, say a year after merger, while they are reviewed on an individual basis?

(2) Should ILU member companies (post merger) be subject to the same requirements of ''Other Foreign Underwriters'' under section 249.5(c) Eligibility criteria?

(3) If an ILU member company has been previously approved under 249.5(c), in the French or Scandinavian market for example, should that eligibility be governing?

(4) Should ILU member companies appearing on the Quarterly Listing of Alien Insurers compiled by the National Association of Insurance Commissioners be eligible for MARAD underwriting provided they remain in good standing and remain on this list?

(5) If an ILU member company is the subsidiary or affiliate of a company that is approved under Section 249.5(c), should it have the benefit of that

approval if a satisfactory parent company or similar guarantee is provided?

(6) Any other aspect of this issue.

By Order of the Maritime Administrator.

Dated: September 18, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–25408 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on 90-Day Finding and Commencement of Status Review for a Petition To List the Westslope Cutthroat Trout as Threatened; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: In document 98–21995 beginning on page 43901 in the issue of Monday, August 17, 1998, make the following corrections:

On page 43902, at the end of the first paragraph in the second column, insert the following sentence: ''However, in accordance with the current Service Listing Priority Guidance (63 FR 25502, May 8, 1998) the Service will require 9 months from the date of the finding (June 10, 1998) to complete a thorough biological status review and issue a 12-month finding.''

On page 43902, third column, in the third sentence of the first full paragraph, the word ''not'' should be changed to ''now.''

Dated: September 15, 1998.

Terry Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 98–25250 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD67

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Yacaré Caiman in South America From Endangered to Threatened, and the Listing of Two Other Caiman Species as Threatened by Reason of Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify the yacaré (*Caiman yacare* also known as *Caiman crocodilus yacare*) from its present endangered status to threatened status under the Endangered Species Act (Act) because the endangered listing does not correctly reflect the present status of this animal. The Service also proposes to list the common caiman (*Caiman crocodilus crocodilus*) and the brown caiman (*Caiman crocodilus fuscus*) as threatened by reason of similarity of appearance. The yacaŕ is native to Argentina, Brazil, Paraguay, and Bolivia, and the other two caiman occur in Mexico and Central and South America. These three taxa are listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Listing the two taxa as threatened by reason of similarity of appearance will assist in protecting the yacaré caiman from uncontrolled use.

A special rule is also proposed for these three species that would allow U.S. commerce in caiman skins, other parts and products from individual countries of origin and countries of re-export if certain pre-trade conditions are satisfied for those countries. The several conditions largely pertain to the implementation of a CITES resolution on the universal tagging of crocodilian skins (adopted at the ninth meeting of the Conference of the Parties) as well as conditions complementing the intent of this resolution and provisions to support the sufficiency of management of yacaŕ populations so that populations will be sustained through time.

In the case where tagged caiman skins and other parts are exported to a second country, usually for tanning and manufacturing purposes, and the processed skins and finished products are exported to the United States, the United States will prohibit imports of skins and products if it determines that either the country of export or the country or countries of re-export are engaging in practices that are detrimental to the conservation of caiman populations.

The purpose of the special proposed rule is twofold. One is to promote the conservation of the yacaré caiman by ensuring proper management of the commercially harvested caiman species in the range countries and through implementation of trade controls as described in the CITES tagging resolution to reduce commingling of caiman specimens. The rule is also intended to relieve the burden on U.S. law enforcement personnel who must screen difficult to distinguish caiman products to exclude products from endangered or improperly identified species from U.S. commerce.

DATES: Comments from all interested parties must be received by December 22, 1998. Public hearing requests must be received by November 9, 1998.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 750, Arlington Square; 4401 North Fairfax Drive; U.S. Fish and Wildlife Service, Arlington, Virginia 22203. Fax number (703) 358–2276. Comments and other information received will be available for public inspection, by appointment, from 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Arlington, Virginia, address.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, at the above address, by phone at (703) 358–1708, or by E-mail at: Susan__Lieberman@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) recognizes that substantial populations of crocodilians that are managed as a sustainable resource can be utilized for commercial purposes while not adversely affecting the survival of individual populations of the species. When certain positive conservation conditions have been met, the Service has acted to allow utilization and trade from managed populations of the American alligator (*Alligator mississippiensis*), and has allowed the importation of commercial shipments of Nile crocodile (*Crocodylus niloticus*) skins, other parts, and products from several southern and eastern African countries and similar shipments of saltwater crocodile (*Crocodylus porosus*) specimens from Australia (61 *FR* 32356; June 24, 1996).

Management activities were reviewed by the CITES Parties prior to transferring certain populations from CITES Appendix I to Appendix II (thereby allowing commercial trade) and included assessments of population status, determination of sustainable harvest quotas (or approval of ranching programs), and the control of the illegal harvest. Management regulations imposed after harvest included the tagging of skins and issuance of permits to satisfy the requirements for CITES Appendix II species.

The Service is also proposing a special rule with this proposed rule to ensure implementation of the CITES controls over trade in skins, parts, and products of certain populations of the genus *Caiman*. Populations of *Caiman* spp. are widespread in Mexico and Central and South America, and have high reproductive potential; indeed, the species have survived in spite of a past substantial legal and illegal harvests. The Service believes that commercial utilization of yacaŕ caiman should involve trade from controlled harvest only from well managed populations, and that trade controls need to be effective in order to protect threatened crocodilian populations. If this proposed rule and its accompanying special rule are finalized as proposed, the Service believes that this will only allow commerce in yacaŕ specimens and products into the United States that will facilitate sound management practices to regulate the legal harvest and control illegal trade in range countries, so that caiman populations are being sustained at biologically sound levels. Furthermore, the Service does not intend to allow imports of caiman specimens and products with those intermediary countries that do not properly control trade in crocodilian skins, other parts, and products, so as to ensure that illegal skins, other parts, and products are not exported to the United States.

This rule proposes to reclassify the yacaŕ (*Caiman yacare = C. crocodilus yacare*) from endangered to threatened status under the Act, and to list two additional taxa, the common caiman (*C. crocodilus crocodilus*) and the brown caiman (*C. crocodilus fuscus* including *C. crocodilus chiapasius*), as threatened by reason of similarity of appearance. When traded as skin pieces in products, the yacaré is similar in appearance to the common caiman and the brown caiman that are listed as CITES Appendix II species, but have no comparable status under the Act. Other caiman species will be retained as endangered under the Act, including the black caiman (*Melanosuchus niger*) and the broad-snouted caiman (*Caiman latirostris*). This proposed rule does not affect the endangered or threatened status, under the Act, of any other crocodilian species in the Western Hemisphere.

The original listing for the yacaŕ caiman (under the provisions of the Endangered Species Conservation Act of 1969) was *C. yacare,* which is the presently accepted taxonomic name for the species (King and Burke 1989) and the name used throughout this proposed rule. Some authors treat the taxon as a subspecies, *C. c. yacare,* and this is the taxonomic name presently included in the List of Endangered and Threatened Wildlife (50 CFR part 17.11). King believes (in litt.) that *C. yacare* should be considered biologically as a subspecies or at the end of a morphological cline, but indicates that nomenclaturally it is recognized as a full species.

A recent study, including an analysis of mitochondrial DNA variation, indicates that the *C. yacare* of Argentina, Bolivia, Brazil, and Paraguay comprise an taxonomic unit with substantial genetic, morphological, and zoogeographical similarities (Brazaitis et al. 1993). Those authors indicate that *C. yacare* populations are effectively separated from *C. c. crocodilus* populations by mountains and highlands that limit nesting habitat and the migration of individual animals between southern and northern river systems. *Caiman yacare, C. c. crocodilus* and *C. c. fuscus* are considered, on the basis of base changes in their DNA sequences, to be diagnostically distinct populations of a widespread and related taxa (Amato 1992) with *C. yacare,* apparently having greater genetic differences from *C. c. crocodilus* than *C. c. crocodilus* has in relationship to *C. c. fuscus* (Brazaitis et al. 1993). Additional analysis of DNA information by Brazaitis and others supports the interpretation that ''*Caiman yacare, C. c. crocodilus,* and *C. c. chiapasius* (probably *C. c. fuscus*) are each phylogenetic species, as per the criteria of Davis and Nixon (1992)'' (Brazaitis et al. 1997a, Brazaitis et al. 1997b). However, recent work (Busack and Pandya 1996) suggests that *C. c. crocodilus* and *C. c. fuscus* comprise a single genetic population at the subspecies level, while confirming that yacaŕ is a distinct subspecies, *C. c. yacare*. There is no biochemical evidence, at this time, that recognizable subgroups of *C. yacare* occur within the distributional limits of *C. yacare* in the river systems of Argentina, Bolivia, Brazil, or Paraguay (Brazaitis et al. 1993) and no such subgroups are recognized in this proposed rule.

Since the initial listing of the yacaré caiman, there has been controversy associated with defining the ranges of caiman species, especially that of *C. yacare* in southern South America. To assist in the clarification of the status of *C. yacaré,* the CITES Secretariat, in conjunction with the World Conservation Union/Species Survival Commission (IUCN/SSC) Crocodile Specialist Group (CSG), undertook a survey (starting in late 1986 and early 1987) and the development of a conservation program for the crocodilians of the genus *Caiman*. These surveys were conducted under the auspices of CITES and were carried out by the CSG, and the Governments of Brazil, Bolivia, and Paraguay. The available data from these studies (Brazaitis 1989A; Brazaitis et al. 1990; King and Vídez Roca 1989; and Scott et al. 1988 and 1990) on the distribution, ecology, and status of *C. yacare* indicate that this species is not endangered in its entirety and is not in danger of extinction in any significant portion of its range.

Caiman yacare is widely distributed throughout the lowland areas and river systems of northeastern Argentina, southeastern and northern Bolivia, Paraguay, and the western regions of the Brazilian States of Rondonia, Mato Grosso, and Mato Grosso du Sol (Brazaitis et al. 1990). The range includes: the entire Guapore River (= Itenes River) drainage, including its head waters in the Brazilian State of Mato Grosso, and its tributaries in northeastern Bolivia; eastern Bolivia and western Brazil throughout the drainage of the Paraguay River and the Pantanal of Brazil; Paraguay River and southern Pilcomayo River in Paraguay; and the lower Salado River, the Paraná River east to the Uruguay River, and south to the mouth of the Paraná River in Argentina (Brazaitis et al. 1993).

The common caiman, *C. c. crocodilus,* occurs in the drainage basins of the Amazon and Orinoco Rivers in French Guiana, Surinam, Guyana, Venezuela, eastern Ecuador, Colombia, Peru, and Brazil. A narrow zone of intergradation exists between *C. yacare* and *C. c. crocodilus* along the northern border of Bolivia and Brazil in the State of Acre in the Acre River and Abuna drainages, northward to approximately Humaita on the Madeira River in the Brazilian State of Amazonas (Brazaitis et al. 1990).

The brown caiman, *C. c. fuscus* (including *C. c. chiapasius*), occurs from Mexico through Central America to Colombia (west of the Andes), along the coastal and western regions of

Venezuela, and south through Ecuador to the northwestern border of Peru. The CITES Secretariat and several authors consider *C. c. chiapasius* a synonym of *C. c. fuscus* and it is so considered in this proposed rule.

The yacaré has been listed as endangered under the Act since 1970 and was placed in Appendix II of CITES on July 1, 1975. It has never been listed in CITES Appendix I. The endangered listing under the Act prohibited all commercial imports of the species into the United States. However, the Appendix II listing allowed for regulated commercial trade elsewhere in the world. A substantial U.S. law enforcement problem has occurred because of the different listing status under the Act and under CITES. All commercial imports of yacaré into the United States are prohibited under the Act, including shipments originating from countries of origin with valid CITES export documents. Commercial imports of products from the common and brown caiman are legal, with appropriate CITES documents. Products manufactured from the yacaré, common caiman, and the brown caiman are often indistinguishable as to species they are made from, and there is evidence that products from the prohibited yacaré have been commingled with products from non-prohibited taxa among commercial shipments into the United States. The unauthorized entry of prohibited yacaré products constitutes a violation of the Act, and if the yacaré is legally protected in individual range countries, then Lacey Act violations may also have occurred.

Argentina, Bolivia, Brazil, and Paraguay prohibited, until relatively recently, the export of caiman products (Brazaitis in comments on the October 29, 1990, **Federal Register** notice [55 FR 43389], see below). CITES Notification to the Parties No. 781, issued on March 10, 1994, indicated that Brazil's CITES Management Authority had registered 75 ranching operations for producing skins of *C. c. crocodilus* and *C. yacare*. These ranching operations were established under provisions of Article 6 B of Brazilian Wildlife Law No. 5.197, of November 3, 1967. Some of the ranching operations have begun the export of crocodilian products under CITES procedures including the use of security tags. *Caiman yacare* from Brazilian ranches is now legally traded in the international marketplace, except into the United States. Paraguay has also expressed an interest in the legal marketing of *C. yacare* skins, and a restricted legal hunt was held in 1994 (King et al. 1994).

The Service, on March 15, 1988, received a petition requesting the reclassification of the yacaré caiman (*C. c. yacaré*) from endangered to threatened status. The Service reviewed the petition and concluded that it did not present sufficient scientific or commercial information to indicate that a reclassification was warranted (55 FR 43387 published October 29, 1990). However, the Service, in the October 29, 1990, **Federal Register** notice, also solicited relevant data, comments, and publications dealing with the current status and distribution, biological information, and bioconservation measures pertaining to the yacaré caiman. The Service also requested comments about the advisability and necessity of treating the subspecies *C. c. crocodilus* and *C. c. fuscus* as endangered or threatened due to its similarity of appearance to the listed *C. c. yacaré*. The Service noted that while living yacaré caiman are usually distinguishable from the common and the brown caiman, portions of the skin and products manufactured from cut skins of any of these taxa may be difficult to distinguish as to taxon of origin.

Comments Received

Thirty-eight written comments, from 31 individuals and organizations, were received in response to the October 29, 1990, **Federal Register** notice, of which 24 were received during the formal comment period. Ten received during the formal comment period were from government officials or residents of South America (Argentina {3}, Brazil {4}, Colombia {1}, Peru {1}, and Paraguay {1}); 10 were from the scientific community, including 4 from the IUCN/SSC Crocodile Specialist Group (CSG); and one each was received from the trade industry, the CITES Secretariat, the German Scientific Authority, and TRAFFIC–USA. Some of the additional comments received outside the formal comment period are also cited herein because they are believed to provide important information relevant to this proposed listing determination. The spectrum of interest expressed in the comments received ranged from requests for the total removal of *C. c. yacaré* from the ''List of Endangered and Threatened Wildlife'' to listing the taxa as ''threatened or endangered.'' Many of the comments referred to the presence of yacaré caiman at various locations but did not provide any field data or information on population levels, trends or productivity. However, the Service acknowledges such anecdotal information as being useful to reinforce its information on the distribution of the species.

Dr. F. Wayne King, Deputy Chairman of the CSG, commented that the original 1970 endangered listing was unjustified in that data available at the time of listing indicated that *C. yacare* was under no greater threat than *C. c. crocodilus* or *C. c. fuscus*, which were not listed. In preparing his comments in response to the October 29, 1990, **Federal Register** notice, King relied upon the status reports prepared for the CITES Secretariat (Brazaitis 1989a; Brazaitis et al. 1990; King and Vídez Roca 1989; Scott et al. 1988 and 1990). He concluded that *C. yacaré* is neither endangered nor threatened and is not in danger of extinction in any significant portion of its range.

King further concluded that the ''endangered'' listing denies yacaré range countries an opportunity to profit from implementing successful management programs for the species. Mr. Juan Villalba-Macias, Vice Chairman for Latin America section of the CSG, agreed with King that this species should not be considered as endangered in the different range countries and that it is not appropriate to keep yacaré listed under the Act. He considered its inclusion in Appendix II of CITES the most appropriate listing.

Mr. Dennis David, North American Deputy Vice Chairman of the CSG, indicated that the species does not meet the criteria for listing as endangered or threatened, and that a downlisting action would greatly influence the ability of Latin American countries to pursue the establishment of sound management programs. According to Mr. David, many of these countries are actively seeking to establish regulated harvests that would provide economic incentives for the conservation of crocodilian species and their wetland habitats. The most destructive action, in his view, would be to maintain or establish obstacles to the development of regulated harvest programs in this region. He stated that the CITES Appendix II classification provided ample control over trade.

Dr. Valentine A. Lance, Vice Chairman for Science of the CSG, opposed any decision to list other caiman species as endangered under ''similarity of appearance'' because of his belief that none of the caiman species are endangered.

Dr. Obdulio Menghi, Scientific Coordinator of the CITES Secretariat, commented that after having reviewed the comments made by Latin American countries regarding the distribution of populations of the species and based upon his own experience in the region,

he believed that yacaré should be removed from the U.S. endangered species list. This, he wrote, would improve compliance with CITES by allowing legal trade. Dr. Menghi also opposed adding *C. c. crocodilus* and *C. c. fuscus* to the list of endangered and threatened species under the similarity of appearance provisions. Dr. Menghi noted that listing *C. c. crocodilus* and *C. c. fuscus* would discourage an entire region that has come a long and difficult way toward accomplishing the aims of CITES.

Dr. Dietrich Jelden, Deputy Head of the CITES Scientific Authority of Germany (currently Head of the Management Authority of Germany) commented that, based on the status of yacaré in its four range countries, virtually all populations had suffered severely from indiscriminate hunting. He recommended that any downlisting should be combined with improvements to the general management of the species. Furthermore, he believed that any downlisting should be combined with a commitment from the governments of Bolivia, Brazil, and Paraguay, to only ship tanned skins or flanks marked with self-locking tags, if they intend to start legally exporting yacaré skins.

Ms. Ginette Hemley of TRAFFIC–USA (now with World Wildlife Fund) commented that, in her view, the species does not qualify as endangered, and it is clearly not ''in danger of extinction throughout all or a significant portion of its range.'' The high value of *C. crocodilus* products and the relative abundance of the species, including *C. yacare*, has prompted many range countries to develop, or begin developing, sustained-use management programs. Whereas a policy of strict protection once appeared to be the best way to conserve the species, many range countries now see that the most appropriate means of protecting the species is through farming, ranching, or controlled harvest, and trade. She added that Service policy on conservation and trade of the species, including *C. yacare*, should take these developments into consideration, as they are fully consistent with the purposes of CITES and the Act. Ms. Hemley stated that *C. yacare* should, at a minimum, be downlisted from endangered to threatened under the Act, and that the Service should use every resource and legal tool available to combat and control the illegal trade.

Mr. Jorge Hernandez Camacho of the Institute for Natural Renewable Resources (INDERENA) and the CITES Scientific Authority for Colombia, commented that four subspecies of *C. crocodilus* (*apaporiensis, chiapasius, crocodilus,* and *fuscus*) occur in Colombia and that the Government has no interest in the commercialization of specimens or hides of *C. yacare*. Mr. Camacho wrote that the formal inclusion of *C. c. chiapasius, C. c. crocodilus,* and *C. c. fuscus* by similarity of appearance under the Act could have a drastic negative impact on the future of crocodilian management policies and practices in Colombia. He stated that there is no commercial hunting of any crocodilian species in Colombia and that management policy is oriented toward the establishment of captive breeding farms. Reportedly, INDERENA authorities allow the capture of animals from the wild for breeding purposes only. The control system for ranched specimens includes the marking of individuals and legally-produced hides.

Mr. Tomas Uribe, Director of the Colombian Government Trade Bureau, on behalf of the Government of Colombia, submitted two responses (letters of February 26, 1991, and March 8, 1991) to the Service's notice. He observed that although *C. yacare* does not exist in Colombia, a main concern was the prospective listing, as endangered or threatened by similarity of appearance, of species native to their country, particularly *C. c. crocodilus* and *C. c. fuscus*. Mr. Uribe wrote that Colombia has a comprehensive and scientifically oriented system of protection and conservation of its natural and wildlife resources. He affirmed that the Government of Colombia recognized the importance of the caiman trade and its contribution to regional welfare, and instituted a program to ensure the conservation of the species involved. All caiman skins exported must be accompanied by a CITES export permit issued by the Institute for Natural Renewable Resources (INDERENA), Ministry of Agriculture.

Three comments were received from scientists who work for the Brazilian governmental agency, Embresa Brasiliera de Pesquisa Agropecuaria/ Centro de Pesquisas Agropecuarias do Pantanal (EMBRAPA/CPAP), in the State of Mato Grosso do Sul. They contended that *C. yacare* remains common throughout its range despite extensive exploitation in the southern part of the Pantanal and in other regions. They stated that there is no reason to have the *C. yacare* listed as endangered, and that the Appendix II listing under CITES is sufficient for the United States to support any management decisions by the Brazilian Wildlife Management Authority (IBAMA). Mr. George Rebelo of the Instituto Nacional de Pesquisas de Amazonia (INPA) commented that *C. yacare* is common over all of its range in Brazil, but in many places there are visibly depleted populations. He stated that *C. yacare* should not be downlisted until a feasible management plan to harvest skins under a sustained-yield model is developed, and until illegal hunting is stopped or greatly reduced.

In Argentina, one governmental agency (Ministerio de Economia, Buenos Aires) favored listing *C. yacare* as threatened to bring it in line with the CITES listing; while two agencies (Ministerio de Agricultura, Ganaderia and Industria y Comercio—Provincia de Santa Fe and El Bagual Ecological Reserve—Formosa) opposed this listing until a recovery program has been developed.

Ms. Aida Luz Aquino-Shuster, Scientific Authority CITES-Paraguay, commented that *C. yacare* can still be found in large numbers in the Pantanal, but that they are less common in the lower Chaco region of Paraguay. Furthermore, in response to the October 1990 **Federal Register** notice, Ms. Aquino-Shuster observed that the control systems in all the range countries were very poor or non-existent at that time. She felt that a good strategy to enhance the survival of the species in the various range countries should be developed and implemented before the United States downlists *C. yacare*.

Ms. Ana Maria Trelancia of Lima, Peru, a member of the CSG, wrote that the 2-year survey on *C. yacare* conducted by competent researchers shows that this species can support sustainable use, and that the United States' prohibition on importation should be changed to bring it in line with CITES.

Dr. Marinus S. Hoogmoed of the National Museum of Natural History of Holland commented that the trade in products of caiman species should be allowed, provided the skins are legitimately taken and marked as such.

Three Zoological Institutions (Toledo Zoological Society, Riverbanks Zoological Park, and Zoo Atlanta) recommended that the Service list *C. c. crocodilus* and *C. c. fuscus* under the similarity of appearance provisions of the Act because small pieces of hides or finished products are difficult to distinguish from the listed species, *C. yacare*.

Extensive comments were received from Mr. Peter Brazaitis of the New York Zoological Society. Since 1985, Mr. Brazaitis has conducted field investigations on *Caiman* species in Brazil. His primary research focus has been the resolution of both taxonomic

issues and the determination of the status and distribution of caimans. In 1986, Mr. Brazaitis was Coordinator for the CITES Central/South America caiman survey in Brazil.

Mr. Brazaitis stated that the rampant illegal trade in crocodilians continued at an alarming rate. Due to the great similarity of appearance among the *Caiman* species, he noted that it is difficult to identify the species, especially when small pieces of skins and products, or even whole skins are involved. According to Mr. Brazaitis, the majority of skins involved in trade are *C. yacare,* and at the time of his writing there were no legal sources for these skins because each range country (Argentina, Bolivia, Brazil and Paraguay) had a ban on the export of all caimans. He further noted that while no legal sources existed for raw untanned skins, raw skins continually entered commercial trade and found their way into the United States.

Mr. Brazaitis commented that the lack of adequate trade controls and the lack of procedures for marking skins and products, compounded the problem of distinguishing the taxa yielding hides and products, because of the great similarity in appearance and morphology. He observed that the extensive trade in items made from *C. crocodilus* may include products made from the endangered species (*C. c. apaporiensis* and *C. c. yacare*) that pass unhalted into the United States due to similarity of appearance. According to King (pers. comm.), there have been no reports of *C. c. apaporiensis* still occurring in the wild over the last 20 years.

Mr. Brazaitis urged the Service to include listing *C. c. crocodilus, C. c. fuscus* and *C. latirostris* under the similarity of appearance provision of the Act. [Note that *C. latirostris* is already listed as endangered under the Act.] Apart from the similarity of appearance issue, Mr. Brazaitis wrote that sufficient grounds exist to elevate *C. c. crocodilus* in Brazil to endangered status.

A group of scientists (M. Watanabe, J. Mahony, W. Tramontano, and E. Odierna) from Manhattan College in New York have assayed heavy metal content in tissues taken from caimans (all species) in Brazil. These scientists report that populations surveyed by the field team in Brazil suggest very low numbers in many regions of the Amazon Basin, and surveys in northern Brazil found few adult animals.

Summary of Factors Affecting Caiman Yacare

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors and their applicability to populations of the yacaré caiman in South America are as follows.

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

The yacaré caiman may occur over 500,000 square kilometers (sq km) in Brazil of which 175,000 sq km is in the Pantanal, which is a primary habitat (Brazaitis et al. 1988). The Pantanal is a complex region which lies in the basin of the Paraguay River in the Brazilian States of Mato Grosso and Mato Grosso du Sol. The region is composed of permanent swamp, seasonal swamp, gallery forest, marginal scrub, savannah, and semi-deciduous forest. The yacaré is the only caiman in the Pantanal (Brazaitis 1989a). The yacaré, in the Pantanal and elsewhere, is found in a wide variety of habitats including those that are altered by humans. The species occurs in vegetated and non-vegetated large open rivers, secondary rivers and streams, flooded lowlands and forests, roadside ditches and canals, oxbows, large and small lakes and ponds, cattle ponds and streams (Brazaitis et al. 1988). The yacaré is found throughout the Bolivian Departments of Beni, Pando, and Santa Cruz, and the lowland portions of Chuquisaca, Cochabamba, La Paz, and Tarija (King and Videz Roca 1989). King and Videz Roca (1989) also indicate that the yacaré may occur in permanent wetland habitats that may total over 60,000 sq km in area and in seasonal wetland habitats that may total an additional 70,000 sq km in area. The yacaré occurs throughout the Chaco of western Paraguay wherever there are permanent water refuges during the dry season (Scott et al. 1990). The species inhabits the flat seasonally flooded lands west of the Paraguay River in the southern Chaco, marshes and oxbows along the isolated streams and river valleys in eastern Paraguay, and the extensive marshes at the confluence of the Paraguay and Parana rivers in southern Paraguay (Scott et al. 1990).

The expansion of cattle grazing and the concurrent construction of permanent water sources for cattle has increased the dry season freshwater habitats available to caiman in some areas, and has diminished habitat in other areas by increasing the salinity of waterways (King et al. 1994). Habitat destruction and deterioration has taken place and continues to occur throughout the range of the yacaré. Transportation improvements destroy relatively small amounts of habitat but increase the access of poachers to some yacaré habitats. Increasing human populations, the development of hydroelectric projects, the draining of wetlands, and deteriorating water quality due to siltation or the extensive dumping of pollutants has caused habitat degradation. However, yacaré habitat is very extensive and yacaré habitation is so widespread that it is very unlikely that the species is presently endangered or threatened because of the destruction, modification, or curtailment of its habitat or range.

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

The status of the yacaré has been of concern. Each of the four range countries has some populations that are adequate, and each has other populations that are reported to be depleted or extirpated (Groombridge 1982). Hunting for hides, both legal and illegal, has in the past been the major threat to the survival of populations of the species. The species is either provided protection by domestic legislation (Paraguay, Argentina, and Brazil) or the legal harvest is regulated by established hunting seasons and limits on the size of animals that can be legally killed for the commercial trade (Bolivia). Questions about the taxonomy, distribution, and population status of the species prompted the CITES Secretariat in conjunction with the CSG to undertake a survey (starting in late 1986 and early 1987) and to help develop a conservation program for the crocodilians of the genus *Caiman*. These surveys were conducted under the auspices of CITES and were carried out by the CSG, and the Governments of Brazil, Bolivia, and Paraguay. The available data from these studies (Brazaitis 1989a; Brazaitis et al. 1990; King and Vídez Roca 1989; and Scott et al. 1988 and 1990) on the distribution, ecology, and status of *C. yacaré* are reviewed below to assess Factor B under the Act.

In the past, large numbers of caiman per year, particularly those of *C. yacaré*, were taken from Brazil, in violation of Brazilian law (Brazaitis et al. 1988). Yacaré populations declined in many areas, although the species can be found, in varying population densities in most areas where suitable habitat remains. Yacaré found in some surveys almost a decade ago appeared small, extremely wary, and exhibited a high male sex ratio. It was suggested that females might be more heavily

harvested at a time when they might be very vulnerable while protecting their nests (Brazaitis 1989a). Brazilian yacaré have historically been illegally taken by Bolivian and Paraguayan traders. Local landowners in Bolivia and Paraguay, and the exotic foreign leather interests provided a basis for illegal hunting and a market for skins. The illegal harvest was the direct result of illegal hide buyers operating with the tacit approval of authorities in Bolivia and Paraguay (King and Videz Roca 1989), although there is reason to believe that situation, prevalent almost a decade ago, has improved recently. Habitats may be remote and inaccessible during the wet season but easily accessible during the dry season when most harvest occurs (Brazaitis 1989a).

The yacaré remain widely distributed in Bolivia (King and Videz Roca 1989), with management of populations improving in recent years. The average length of certain measured caiman was about 1.25m which suggests a disproportionately young age structure. Caiman populations in some rivers were extirpated, but caiman survive in Bolivia due to abundant habitat and their rapid growth to sexual maturity. Minimal size lengths and legal hunt seasons have been established. A sustainable harvest will occur, with effective enforcement of existing laws governing the yacaré. Almost a decade ago , it was reported that the long-term continuation of the status quo could lead to the endangerment of the species in Bolivia (King and Videz Roca 1989); it is believed that situation has improved, with new, more effective management in Bolivia.

The yacaré persists in good numbers throughout the Chaco region of Paraguay, wherever there are permanent water refuges during the dry season. The yacaré is subject to intense hunting pressures for both hides and meat in many locations, although populations may be dense where the species is protected. Some caiman populations, until recently, were heavily exploited. The fact that small residual populations exist in many areas suggest that the yacaré should be able to recover where they and their habitats are protected (Scott et al. 1990). King et al. (1994) reported that large populations of yacaré can still be found in suitable habitats. In some cases, however, populations consist of smaller animals suggesting that extensive hunting occurred in the recent past.

The CSG did not conduct a survey and assessment in Argentina. Fitch and Nadeau (1979) indicated that yacaré were relatively abundant in northern Argentina. Using a combination of census methods and interviews with hunters and hide dealers, they estimated that 1,400,000 animals remained in the swamps of western Argentina. This preliminary estimate was later revised downward to 200,000 (King in litt).

The Service believes there is sufficient cause to find, at this time, that some populations of the yacaré caiman still may be threatened by trade in portions of its extensive range. In some cases, harvest numbers could exceed the sustainable yield.

C. Disease or Predation

The eggs of *C. yacare* are eaten by a variety of predators, which in some localities include humans, and hatchlings are consumed by a variety of predators including crocodilians. However, there is no evidence, at this time, that disease or predation are significant factors affecting *C. yacare* populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The yacaré is protected in Argentina by a total ban on commercial hunting, and on the export of raw and tanned hides, and other products. Domestic laws ban the export of wildlife and wildlife products from Brazil, except from approved ranching programs. The yacaré is nominally protected in Paraguay by Presidential decree which prohibits hunting, commerce, and the import and export of all species of wildlife and their parts and products, although a restricted harvest was held in 1994 (King et al. 1994). Bolivia permits the hunting of yacaré from January 1 to June 30, and imposes a 1.5m size limit on all harvested caiman. The yacaré was listed as endangered by the Pan American Union in 1967 (Groombridge 1982). The yacaré was additionally listed as endangered under the U.S. Endangered Species Conservation Act of 1969 and was added to Appendix II of CITES in 1975.

The several pieces of domestic and international legislation and individual Presidential decrees were meant to restrict the harvest and commercial trade of yacaré to a sustainable harvest from wild populations of yacaré legally killed in Bolivia. Yacaré skins, other parts and products from this legal harvest, with proper CITES export permits from Bolivia, have been able to enter international trade with countries other than the United States. In some cases, existing legislation and decrees have been inadequately or unevenly enforced. The yacaré is apparently illegally killed in Argentina, Bolivia, Brazil, and Paraguay, and reportedly may be illegally exported with real or forged CITES export permits from some South American countries. Furthermore, some countries of manufacture, knowingly or unknowingly, apparently accepted illegally killed and illegally exported yacaré, used these materials in the production of leather goods, and shipped the resulting finished products to the United States. Although a live or whole yacaré caiman can be distinguished from other caiman species, the products from tanned or processed skins are often very difficult to distinguish caiman species. U.S. Fish and Wildlife Service Wildlife Inspectors, by clearing crocodilian products from these leather good manufacturing countries, could inadvertently have allowed the import of parts and products from illegally harvested yacaré. Such imports would constitute violation of the U.S. Lacey Act and the Endangered Species Act, and would be detrimental to the conservation of the yacaré, by not effectively promoting the management of the species.

The CITES Secretariat, in conjunction with the CSG, and with the permission and cooperation of the range countries, conducted a survey of the status of the yacaré and discovered, during the course of those surveys, major inadequacies associated with the existing regulatory mechanisms. All available information indicates that some of the regulations and laws have been improved since the survey.

The yacaré in Paraguay is subject to intensive hunting pressures for meat and hides (Scott et al. 1990). Until recently the level of exploitation of caimans was uncontrolled and many populations were over-exploited. The combination of increased difficulty in marketing hides, an increased awareness of conservation needs, reduced caiman populations, reduced prices, and increased action by government and international agencies may have relieved some of the pressure on the caiman resources (Scott et al. 1990). King et al. (1994) report that the traffic in yacaré skins was virtually nonexistent in Paraguay in 1993, and interest exists in developing sustainable harvest programs.

In the 1980s, the yacaré in Bolivia supported a legal export trade of 50,000–200,000 hides annually, and an illegal trade that brought total exports to about 400,000 hides annually (King and Videz Roca 1989). The yacaré was considered to be suffering from a lack of conservation management because of a lack of enforcement of existing wildlife laws. The establishment and implementation of an adequate bureaucracy to conduct wildlife

management and to enforce conservation laws was considered an imperative if wildlife resources were to survive and flourish.

A 1961 Presidential decree prohibited the hunting of yacaré less than 1.5 meters (m) in length, and additional decrees closed the caiman hunting seasons from July 1 to December 31. Unfortunately, there was no effective enforcement of either the hunting season restriction or of the minimum size limit restriction. About two-thirds of the hides inspected in warehouses were less than the 1.5 m legal length. In 1986 and 1987, Bolivia reputedly sold CITES export permits, in the amount equal to the annual CITES quotas, to skin exporters in Paraguay (King and Videz Roca 1989). This provided an outlet for poached skins through Paraguay which apparently enhanced the illegal kill and sanctioned and encouraged the trans-national movement of illegal wildlife products in violation of CITES. The Standing Committee of CITES recommended, in October 1986, that the Parties to the Convention no longer accept export permits from Bolivia, but further study would be required to determine if effective regulatory mechanisms may presently be in place in Bolivia.

Large numbers of caiman skins were illegally taken every year, largely from south central Brazil, despite Brazilian laws (Law No. 5.197, January 3, 1967) which prohibit the commercial hunting of all wildlife (Brazaitis et al. 1988). The illegal hunting of caiman in south-central Brazil was well organized, well funded, and widespread. The endemic crocodilians, in some areas, however, are beginning to be perceived as a valuable renewable natural resource and state governments and the private sector have begun some conservation initiatives. A Federal wildlife bureaucracy has been established, and regional and local offices have been established in states and major cities. Brazaitis et al. (1988) considered the Brazilian biologists and law enforcement personnel as competent, interested, and eager to participate in crocodilian wildlife conservation. These Brazilian personnel, however, were ill equipped to face poachers that were both better equipped and better armed. A further weakness has been that the judiciary has not supported the enforcement of wildlife regulations with appropriate penalties for violators. Presumably, the success and effectiveness of future conservation programs for crocodilians will depend on the cooperation and financial support of an interested private sector.

The Service believes there is sufficient cause to find that the yacaré is presently threatened by the inadequacy of the existing regulatory mechanisms. Sufficient laws and decrees may be published but they have been insufficiently enforced to successfully promote the conservation of the yacaré.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Wildlife, such as the yacaré caiman, can be advantageously utilized in commerce if management is sufficient to maintain satisfactory habitats, and harvest is at a level that allows maintenance of healthy and sustainable populations. The yacaré, under such conditions, can provide revenue to pay for its own management and to stimulate local economies. CITES works well to regulate exports under conditions where all parties share the same conservation goals and provide adequate resources to properly manage the species and control trade.

Currently, pressures exist to distort this ideal management model. In many areas, within the range of the yacaré, the goal has been to exploit rather than conserve the species. Within the range countries, there have been insufficient funds to protect, enhance, and manage wildlife resources, and there are tremendous demands for land and the products from that land to provide subsistence living to an increasing human population. CITES implementation is challenging when countries do not have the will or resources to prevent the over-exploitation of natural resources. The unfortunate reality is that over exploitation minimizes per item resource values in the short-term and may destroy long-term resource values.

International trade in certain crocodilians has presented significant problems for the CITES Parties; several resolutions have been adopted at previous meetings of the Parties in an effort to establish management regimes to benefit conservation of particular species. The United States, in conjunction with Australia, Germany, and Italy, submitted a resolution (Conf. 8.14) for consideration at the eighth meeting of the Conference of the Parties in Kyoto in 1992, which called for a universal tagging system for the identification of crocodilian skins in international trade. Additional controls were incorporated into a revised resolution prepared by the CITES Animals Committee and adopted by the CITES Parties at the ninth meeting of the Conference of the Parties held in Fort Lauderdale, Florida, in November 1994. Resolution Conf. 8.14 was repealed with the adoption of the new resolution Conf. 9.22 on the Universal Tagging of Crocodilians. Requirements of this new resolution are incorporated into this proposed rule and will also be incorporated into a future revision of 50 CFR part 23 on CITES implementation in the United States. Adherence to the new marking requirements should minimize the potential for substitution of illegal skins and reduce the trade control problems with the similarity in appearance of skins and products from different species of crocodilians.

The CITES resolution on the universal tagging system for the identification of crocodilian skins requires, in part: (1) the universal tagging of raw and processed crocodilian skins with non-reusable tags for all crocodilian skins entering trade or being reexported, unless they have been further processed and cut into smaller pieces; (2) the tagging of transparent containers of crocodilian parts; (3) that the non-reusable tags include as a minimum the International Organization for Standardization two-letter code for the country of origin, a unique serial identification number, a standard species code and the year of production or harvest, and further that such non-reusable tags be registered with the CITES Secretariat and have the required information applied by permanent stamping; (4) that the same information as is on the tags be given on the export permit, re-export certificate or other Convention document, or on a separate sheet which shall be considered an integral part of the permit, certificate or document and which should be validated by the same issuing authority; and (5) that re-exporting countries implement an administrative system for the effective matching of imports and re-exports and ensure that the original tags are intact upon re-export unless the pieces are further processed and cut into smaller pieces.

The Service has carefully assessed the best available biological and conservation status information regarding the past, present, and future threats faced by the yacaré in proposing this rule. Based on this evaluation, the proposed action is to reclassify yacaré caiman populations from endangered to threatened. The Service has concluded that an extensive but not yet completely adequately managed population of yacaré still exists over large and seasonally inaccessible areas within the four South American range countries. There seems to be solid and well-supported information documenting the extensiveness of the distribution of this species. The Service recognizes that

little quantified field work has been performed to assess the population trends over time, and this is due to the inaccessibility of the habitat, the high costs of performing field work in such locations, and physical risks to researchers in some areas. The best available information does indicate that this species is surviving despite unregulated harvests.

Criteria for reclassification of a threatened or endangered species, found in 50 CFR 424.11(d) include extinction, recovery of the species, or error in the original data for classification. The original listing did not encompass the survey information, such as Medem's 1973 work, which documented an extensive range for this species. Given the reproductive capabilities of crocodilians, this species should more properly be considered as not in danger of extinction throughout all or a significant portion of its vast range, but as threatened due to inadequately regulated harvest and commercialization. Therefore, if measures to better regulate its harvest and commercialization are successfully implemented, the yacaré caiman should be able to achieve stable and sustainable population levels.

Similarity of Appearance

In determining whether to treat a species as endangered or threatened due to similarity of appearance, the Director shall consider the criteria in section 4(e) of the Endangered Species Act. Section 4(e) of the Act and criteria of 50 CFR 17.50 set forth three criteria in determining whether to list a species for reasons of similarity of appearance. These criteria apply to populations of common caiman (*C. c. crocodilus*) in South America, and the brown caiman (*C. c. fuscus*) in Mexico and Central and South America.

The Service has intercepted numerous shipments of manufactured items with documents identifying them as a lawfully tradable Appendix II species (most often *C. c. crocodilus* and *C. c. fuscus*) and have determined that they are, in fact, made from yacaré caiman. There have also been instances when products from other endangered species, such as *M. niger*, have been declared as *C. c. fuscus*. One reason for this is that many vendors, buyers and traders in South and Central America have deliberately misidentified yacaré caiman by obtaining documents purporting to permit export of other Appendix II species. In addition, representatives of the manufacturing industry and others have indicated that it is a common practice in the trade to commingle skins at the tanning, cutting and assembly stages of the manufacturing process so that inadvertent commingling frequently occurs. While some affirmative yacaré identifications can be made in manufactured products, there are numerous instances when proper identifications are not made and significant quantities of yacaré are probably being imported unlawfully. This occurs because a positive yacaré identification depends upon whether certain indicator patterns are present on a piece of skin and a large proportion of commercially useful pieces of skins do not bear the key patterns.

In his comments submitted in response to the October 29, 1990, **Federal Register** notice, Mr. Brazaitis provided extensive information on the similarity of appearance amongst six caiman and crocodilian species or subspecies as they occur in manufactured products and some hides. He discussed in detail the indicator characteristics on live or whole, untanned animals for *C. yacaré*, *C. c. crocodilus*, *C. c. fuscus*, *C. c. apaporiensis*, *C. latirostris*, and *M. niger*, the characteristics remaining after tanning and cutting, and how frequently similar characteristics found on pieces of skin preclude affirmative identification.

The three criteria for listing of other caiman by similarity of appearance are discussed below:

(1) The degree of difficulty enforcement personnel would have in distinguishing the species, at the point in question, from an endangered or threatened species (including those cases where the criteria for recognition of a species are based on geographical boundaries). *Caiman yacaré*, *C. c. crocodilus* and *C. c. fuscus* superficially resemble each other and are difficult to distinguish, even for a trained herpetologist. They are distinguishable as live animals because of different markings and coloration in the head region, but manufactured products (shoes, purses, belts, or watchbands, etc.) are extremely difficult even for an expert to identify as to the species of origin (Brazaitis 1989b). Products from the three crocodilians cannot readily be distinguished by law enforcement personnel, which means that under present conditions commingled products from U.S. listed and unlisted species may occur in U.S. commerce.

(2) The additional threat posed to the endangered or threatened species by loss of control occasioned because of the similarity of appearance.

The inability to adequately control commerce in caiman products has likely allowed losses to occur to other endangered species like *C. latirostris* and *M. niger*. For example, the Service has records of leather goods manufactured from *M. niger* being included in product shipments declared as *C. c. fuscus*.

Another problem occurs when unlawfully harvested yacaré enter commerce in non-range South American countries and then are re-exported with documents describing the export as native caiman. Some non-yacaré countries have ineffective controls over their caiman exports. The Service has intercepted a number of shipments of yacaré from Colombia despite domestic laws that only permit the export of caiman produced through captive breeding programs, and despite the fact that the yacaré does not occur in Colombia. Other caiman countries have little control over their domestic caiman harvests, and have exported yacaré despite the fact that the species does not occur in their country. The proposed rule allows for cessation of commercial trade to the United States if CITES bans are imposed for failure to implement appropriate trade control measures.

A secondary effect of the proposed rule may be to enhance the management of the three caiman species, to facilitate commerce in products of caiman species that can tolerate a managed commercial harvest, and to more effectively protect the endangered species of caiman or of other taxa that cannot sustain a managed commercial harvest.

(3) The probability that so designating a similar species will substantially facilitate enforcement and further the purposes and policy of the Act.

The Division of Law Enforcement presently inspects caiman shipments to determine the validity of the proffered Appendix II CITES documents and consults herpetologists to evaluate specimens when warranted. Due to the problems of commingling and identification, a substantial number of seizures, forfeitures and penalty assessments have been contested. Judicial decisions have affirmed the validity of the Service's identifications, but the expenditure of funds and resources is disproportionate to that devoted to other species. An earlier judicial forfeiture action was concluded after 6 years, a full trial, and the employment, by both parties, of several expert witnesses. One of the purposes of this proposed rule is to shift the inquiry from one of evaluating a particular shipment, to one of supporting the effectiveness of the CITES crocodilian skin control system and the effectiveness of yacaré management programs in countries of origin and re-export, thereby enhancing the

management of the species while permitting other allocations of enforcement resources.

The improved management of trade should enhance the conservation status of each species, and the proposed listing action and the proposed special rule should help CITES Parties control the illegal trade in caiman skins, products, and parts.

Processing of this proposed rule conforms with the Service's Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists; processing new proposals to add species to the Lists; processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of the degree of endangerment, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed to be listed or listed as endangered or threatened and with respect to its proposed or designated critical habitat, if any is being designated. No critical habitat is being proposed for designation with this proposed rule.

With respect to *C. yacare,* no Federal activities, other than the issuance of CITES export permits, are known that would require conferral or consultation.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Sections 4(d) and 9 of the Act, and implementing regulations found at 50 CFR 17.31, (which incorporate certain provisions of 50 CFR 17.21), set forth a series of prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (within U.S. territory or on the high seas), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: scientific, enhancement of propagation or survival, economic hardship, zoological exhibition or educational purposes, incidental taking, or special purposes consistent with the Act. All such permits must also be consistent with the purposes and policy of the Act as required by section 10(d). Such a permit shall be governed by the provisions of section 17.32 unless a special rule applicable to the wildlife (appearing in sections 17.40 to 17.48) provides otherwise.

Threatened species are generally covered by all prohibitions applicable to endangered species, under section 4(d) of the Act. The Secretary, however, may propose special rules if deemed necessary and advisable to provide for the conservation of the species. The special rule proposed here for § 17.42 would allow commercial importation into the United States of certain farm-reared, ranch-reared, and wild-collected specimens of threatened caiman species (which are listed in CITES Appendix II). Importation could be restricted from a particular country of origin or re-export if that country is not complying with the CITES tagging resolution, or if that country has been singled out for a recommended suspension of trade by the CITES Standing Committee or Secretariat. Interstate commerce within the United States in caiman parts and reexport will utilize CITES Appendix II documents and will not require additional U.S. threatened species permits.

Effects of the Proposed Rule

This proposed rule, if finalized, would revise § 17.11(h) to reclassify the yacaré from endangered to threatened, so that the regulations specifically pertaining to threatened species (50 CFR 17.31, 17.32, 17.51 and 17.52) would apply to it. The Apaporis River caiman (*C. c. apaporiensis*), the black caiman (*M. niger*), and the broad-snouted caiman (*C. latirostris*) will retain their endangered status under the Act. *C. c. crocodilus* and *C. c. fuscus* including *C. c. chiapasius* would be listed as threatened by reason of similarity in appearance.

Consistent with the requirement of sections 3(3) and 4(d) of the Act, this proposed rule also contains a special rule that would amend 50 CFR 17.42 to allow for the commercial importation, under the certain conditions, of whole and partial skins, other parts and finished products thereof of populations of yacaré without a threatened species import permit otherwise required by 50 CFR part 17, if all requirements of the special rule are met and if proper CITES export permits or re-export certificates accompany the shipments.

The proposed reclassification to ''threatened'' and accompanying special rule that would allow commercial trade into the United States without endangered species import permits does not end protection for the yacaré, which will remain on Appendix II of CITES. Furthermore, the special rule is proposed to complement the CITES resolution on universal tagging of crocodilian skins by allowing imports only from those range countries properly managing this species and controlling exports, and only from those intermediary countries properly implementing the tagging resolution. This special rule is proposed because most yacaré would enter the United States as finished products that are largely indistinguishable from products from other caiman taxa; thus, measures to discourage commingling of illegal caiman specimens in the manufacturing process should be implemented in the countries of re-export and manufacture.

Effects of the Proposed Special Rule

The proposed special rule will only allow importation into the United States of caiman products from countries effectively implementing the

crocodilian tagging resolution of CITES, and only from countries that have not been singled out by the CITES Parties for inadequate implementation of the CITES Convention. The intent of this proposed special rule is to support those countries properly managing caimans and to provide encouragement through open markets to range countries to develop and maintain sufficient management so they can compete in the caiman market of the United States.

The degree of endangerment of the many crocodilian species varies by species and specific populations. Some caiman species are listed on Appendix I of CITES, and the remaining species and populations are included in Appendix II. Some species are listed as endangered on the U.S. List of Endangered and Threatened Wildlife, while other species are not included. In addition, actions have been taken by several countries to protect their wild populations but allow trade in specimens bred or raised in captivity under appropriate management programs.

Thus, trade in specimens from some properly managed populations is not detrimental to the wild population, and commercial trade is allowed under CITES with proper export permits from certain countries of origin and intermediary or re-exporting countries. The Service's concern has been that trade in non-endangered species has in the past provided the opportunity for specimens of the endangered or threatened species or populations to be commingled with legal trade, especially during the manufacturing process. Numerous U.S. law enforcement actions as well as past actions by the CITES Parties attest to this concern. The underlying premise behind this special rule is that the current management systems in some range countries of the yacaré are being sufficiently sustained or managed through ranching or captive breeding programs to support controlled commercial use. The key risk to these populations, as well as other similar-appearing crocodilians, is inadequate controls in countries of re-export, especially in those countries in which manufacturing occurs.

The CITES Parties have adopted and are implementing provisions of a universal tagging system for crocodilian skins, and the Service supports these efforts, including the most recent clarifications of the resolution resulting from the Animals Committee meeting held in September 1996. Furthermore, at the CITES meeting of the Conference of the Parties in Zimbabwe in 1997, the CITES Secretariat reported that to its knowledge all range countries were effectively implementing the universal tagging resolution. Adherence to the CITES tagging requirements should reduce the potential for substitution of illegal skins and reduce the trade control problems with the similarity of appearance of skins and products among different species of crocodilians. Further, this special rule contains other steps designed to restrict or prohibit trade from countries that are not effectively implementing the tagging resolution and thus to ensure that the United States does not become a market for illegal trade in crocodilian species and to encourage other nations to control illegal trade.

In summary, the proposed special rule allowing trade in yacaré specimens should provide incentives to maintain wild populations, as well as encourage all countries involved in commerce in crocodilian species to guard against illegal trade.

The United States will not allow the commercial import of skins, products, and parts of CITES Appendix I crocodilian taxa or of crocodilians listed as endangered under the Act, and will require appropriate CITES permits or permits under the Act for non-commercial imports of these species.

Allowing the commercial import of specimens from properly managed yacaré populations is expected to benefit the conservation of wild populations. Furthermore, the proposed special rule would complement the CITES tagging requirements and would help ensure that only legally taken specimens are traded, and thus benefiting the conservation of the species.

Description of the Proposed Special Rule

The intent of the proposed special rule is to enhance the conservation of the yacaré and the other endangered and threatened caiman species through support for properly designed and implemented programs for yacaré and for enforcement of tagging requirements in the countries of origin and re-export.

Furthermore, as discussed earlier in this rule, the Service is concerned about: (1) the illegal harvest and inadequate trade controls for those caiman species, including the yacaré, on Appendix II of CITES; (2) the commingling and misidentification of legal and illegal skins in intermediary trading, processing, and manufacturing countries; and (3) the sustainable management of the yacaré in those countries allowing a legal harvest.

The proposed special rule is intended to support proper implementation of the tagging resolution by restricting or prohibiting importation of caiman skins and products from countries that are not effectively implementing the CITES tagging resolution. Therefore, the United States will not allow the import of CITES Appendix II caiman if the countries of origin or the countries of manufacture or re-export are not effectively implementing the CITES tagging resolution including, but not limited to, the use of properly marked tamper-proof tags on all skins and both halves of chalecos and on transparent parts containers, with the same information that is on the tags also appearing on the permit, an effective administrative system for matching imports and re-exports; or have failed to designate Management Authority or Scientific Authorities; or have been identified by the Conference of the Parties to the Convention, the Convention's Standing Committee or in a Notification from the Secretariat as a country from which Parties should not accept permits.

The proposed special rule is intended to complement and strengthen the universal crocodilian tagging system in the CITES resolution adopted at the 1994 Fort Lauderdale meeting (COP9). Proper implementation of the CITES tagging system will represent a significant step towards eliminating misidentification of skins. Measures to reduce commingling within the countries of manufacture include effective inspection of shipments to determine if the CITES country-of-origin tag is intact for skin imports and exports and implementation of an effective administrative system for tracking skins and pieces through intermediary countries.

This special rule is proposed with the goal of ensuring adequate control in the manufacturing countries to deter intermingling of the protected species of caiman, as well as the endangered populations of other crocodilians, without imposing the overburdensome requirement of tracking each piece through the production process, and recording all incoming tag numbers of the re-exporting permit for products.

It is the Service's understanding that Brazil is allowing the export of yacaré specimens from ranches and that the egg harvest program is conservative and/or that periodic populations indices are obtained. If Brazil limits the exports of yacaré to those approved facilities and does not allow export of wild-harvested specimens, the United States will restrict import to those specimens from the approved facilities and will judge any intermediary country accepting unauthorized skins as a country not effectively implementing the tagging

resolution and will prohibit/restrict parts and products from that country.

Commerce with the United States in caiman products, if the proposed special rule is adopted as final at the conclusion of the regulatory process, will only be allowed with those exporting or re-exporting countries provided that the specimens are properly tagged and accompanied by proper CITES documents and the countries are effectively implementing the CITES tagging resolution and have designated CITES Management and Scientific Authorities, and the countries are not subject to a Schedule III Notice of Information. In a limited number of situations where the original tags from the country of export have been lost in processing the skins, whole skins, flanks, and chalecos will be allowed into the United States if CITES-approved re-export tags have been attached in the same manner as the original tags, and provided proper re-export certificates accompany the shipment. If a shipment contains more than 25 percent replacement tags the re-exporting country must consult with the U.S. Office of Management Authority prior to clearance of the shipment, and such shipments may be seized, if the Service cannot determine that the requirements of the tagging resolution have been observed.

In the case where tagged caiman skins are exported to a second country, for manufacturing purposes, and the finished products are re-exported to the United States, then neither the country of origin nor the country of re-export can be subject to Schedule III Notice of Information based on the criteria described in the special rule if imports are to be allowed. The Service will initially presume that intermediary countries are effectively implementing the tagging resolution, but the special rule has provisions to impose bans if convincing evidence to the contrary is presented.

The U.S. Management Authority will provide on request the list of those countries subject to a Schedule III Notice of Information to those manufacturers in the country of re-export and to importers so that they may be advised of restrictions on yacaré skins, products, and parts that can be utilized in products intended for U.S. commerce. The Management Authority of the country of manufacture should ensure that re-export certificates provided for manufactured goods, intended for the United States, are not for products and re-exports derived from countries subject to a Schedule III Notice of Information. Commerce in finished products from a re-export country, in compliance with these rules, would be allowed with only the required CITES documentation and without an endangered or threatened species permit for individual shipments otherwise required under 50 CFR part 17.

Many parts of the proposed rule are modeled after the special rule for the saltwater and Nile crocodiles published in the **Federal Register** (61 FR 32356; June 24, 1996), including provisions for implementation of the CITES universal tagging system. The special rule for the saltwater and Nile crocodiles may be merged with the special rule for the yacaré when the final special rule is promulgated.

This proposed special rule allows trade through intermediary countries. Countries are not considered as intermediary countries or countries of re-export if the specimens remain in Customs control while transiting or being transshipped through the country and provided those specimens have not entered into the commerce of that country. However, the tagging resolution presupposes a system for monitoring skins be implemented by the countries of re-export.

Furthermore, this special rule is written to allow the Service to respond quickly to changing situations that result in lessened protection to crocodilians. Thus, the criteria described in the special rule establish specific, non-discretionary bases for determining whether CITES provisions are being effectively implemented. Therefore, approval can be denied and imports into the United States can be prohibited from any country that fails to comply with the requirements of the special rule simply by the publication of such notice in the **Federal Register**. Denial for subjective and discretionary reasons may require proper notice and comment before implementing action can be taken.

In a separate rule-making proposal, amending 50 CFR part 23, the Service will propose implementation of the CITES tagging system for all crocodilians. The rule proposed here will adopt the CITES-approved tags as the required tag for all caiman skins, including chalecos and flanks, being imported into or exported from any re-exporting country if the skin is eventually imported into the United States. For the reasons noted above, the Service finds that the proposed special rule for caiman species, including the yacaré, includes all of the protection that is necessary and advisable to provide for the conservation of such species.

Public Comments Solicited

The Service intends that any action resulting from this proposal be as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning biological or commercial trade impacts on any caiman population, or other relevant data concerning any threat (or lack thereof) to the wild populations of caimans in Mexico and Central and South America. Comments are also solicited on the question of whether the listing of common caiman and brown caiman as threatened by reason of similarity of appearance and the provisions of the special rule will provide adequate protection to the yacaré. Also, the Service solicits comments as to whether the allowance of trade in yacaré will overstimulate the trade in other *Caiman* species thereby having a detrimental effect on caiman populations that may not be properly managed.

Final action on the proposed reclassification of the yacaré, the classification of the common and brown caiman, and the promulgation of the special rule will take into consideration the comments and any additional information received by the Service. Such communications may lead to adoption of final regulations that differ from those in the proposed rule.

National Environmental Policy Act

The 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 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).

Regulatory Determinations

The Service invites comments on the anticipated direct and indirect costs and benefits or cost savings associated with this proposed special rule, for yacaŕ caiman. In particular, we are interested in obtaining information on any significant economic impact of the proposed rule on small public and private entities. Once we have reviewed the available information, we will determine whether we need to prepare

an initial regulatory flexibility analysis for the special rule. We will make any such analysis or determination available for public review. Then, we will revise, as appropriate, and incorporate the information in the final rule preamble and in the record of compliance (ROC) certifying that the special rule complies with the various applicable statutory, Executive Order, and Departmental Manual requirements. Under the criteria in Executive Order 12866, neither the proposed downlisting from endangered to threatend nor the special rule are significant regulatory actions subject to review by the Office of Management and Budget.

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Authors

The primary author of this proposed rule is the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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 § 17.11(h) by revising the current entry for the yacaré caiman and by adding entries for the brown and the common caimans under ''Reptiles'' on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*		*
Caiman, brown	*Caiman crocodilus fuscus* (includes *Caiman crocodilus chiapasius*).	Mexico, Central America, Colombia, Ecuador, Venezuela, Peru.	Entire	T(S/A)	____	NA	17.42(g)
*	*	*	*	*	*		*
Caiman, common	*Caiman crocodilus crocodilus.*	Brazil, Colombia, Ecuador French Guiana, Guyana, Surinam, Venezuela, Bolivia, Peru.	Entire	T(S/A)	____	NA	17.42(g)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Caiman, yacaré	*Caiman yacare*	Argentina, Bolivia, Brazil, Paraguay.	Entire	T	3,____	N/A	17.42(g)
*	*	*	*	*	*		*

3. Section 17.42 is amended by adding a new paragraph (g) as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(g) *Threatened Caiman.* This paragraph applies to the following species: Yacaré caiman (*Caiman yacare*), the common caiman (*Caiman crocodilus crocodilus*), and the brown caiman (*Caiman crocodilus fuscus* including *Caiman crocodilus chiapasius*). These taxa will be collectively referred to as ''caiman.''

(1) *Definitions of terms for purposes of this paragraph (g).*

(i) *Caiman skin* means whole or partial skins, flanks, bellies or chalecos (whether salted, crusted, tanned or partially tanned or otherwise processed).

(ii) *Caiman product* means fully manufactured products (including curios), which are ready for retail sale without further processing or manufacture and which are composed, totally or in part, of yacaré caiman, brown caiman or common caiman.

(iii) *Caiman parts* means body parts with or without skin attached (including tails, throats, feet, and other parts, except skulls) and small cut skins pieces.

(iv) *Country of re-export* means those intermediary countries that import and re-export caiman skins, parts and/or products, except that those countries through which caiman skins, parts and/or products are transshipped while remaining under Customs control will not be considered to be a country of re-export.

(v) *Tagging resolution* means the CITES resolution entitled ''Universal Tagging System for the Identification of Crocodilian Skins'' and numbered Conf. 9.22 and any subsequent revisions.

(2) *Prohibitions.* The following prohibitions shall apply to yacaré caiman (*Caiman yacare*), the common caiman (*Caiman crocodilus crocodilus*) and the brown caiman (*Caiman crocodilus fuscus* including *Caiman crocodilus chiapasius*):

(i) *Import, export, and re-export.* Except as provided in paragraph (g)(3) of this section it is unlawful to import, export, re-export, or present for export or re-export any caiman or their skins, other parts or products, without valid permits required under 50 CFR parts 17 and 23.

(ii) *Commercial activity.* Except as provided in paragraph (g)(3) of this section, it is unlawful, in the course of a commercial activity, to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce any caiman, caiman skins or other parts or products.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (g)(2)(i)–(ii) of this section.

(3) *General exceptions.* The import, export, or re-export of, or interstate or foreign commerce in caiman skins, meat, skulls and other parts or products may be allowed without a threatened species permit issued pursuant to 50 CFR 17.32 when the provisions in 50 CFR parts 13, 14, and 23, and the requirements of the applicable paragraphs set out below have been met.

(i) *Import, export, or re-export of caiman skins and parts.* The import, export, or re-export into/from the United States of caiman skins and parts must meet the following conditions:

(A) All caiman parts must be in a transparent, sealed container, and each container imported into or presented for export or re-export from the United States:

(*1*) Must have a parts tag attached in such a way that opening of the container will preclude reuse of an undamaged tag;

(*2*) This parts tag must contain a description of the contents and total weight of the container and its contents; and

(*3*) This parts tag must reference the number of the CITES permit issued to allow the export or re-export of the container.

(B) Each caiman skin imported into or presented for export or re-export from the United States after the effective date of the final rule must bear: *either* an intact, uncut tag from the country of origin meeting all the requirements of the CITES tagging resolution, *or* an intact, uncut tag from the country of re-export where the original tags have been lost or removed from raw, tanned, and/or finished skins. The replacement tags must meet all the requirements of the CITES tagging resolution, except showing the country of re-export in place of the country of origin, provided those re-exporting countries have implemented an administrative system for the effective matching of imports and re-exports consistent with the tagging resolution. If a shipment contains more than 25 percent replacement tags, the re-exporting country must consult with the U.S. Office of Management Authority prior to clearance of the shipment, and such shipments may be seized if the Service determines that the requirements of the tagging resolution have not been observed;

(C) The same information that is on the tags must be given on the export permit for all skins or re-export certificate for whole skins including chalecos, which will be considered an integral part of the document, carry the same permit or certificate number, and be validated by the government authority designated by the CITES document-issuing authority;

(D) The Convention permit or certificate must contain the following information:

(*1*) The country of origin, its export permit number, and date of issuance;

(*2*) If re-export, the country of re-export, its certificate number, and date of issuance; and

(*3*) If applicable, the country of last re-export, its certificate number, and date of issuance;

(E) The country of origin and any intermediary country(s) must be effectively implementing the tagging resolution for this exception to apply. If the Service receives persuasive information from the CITES Secretariat or other reliable sources that the tagging resolution is not being effectively implemented by a specific country, the Service will prohibit or restrict imports from such country(s) as appropriate for the conservation of the species.

(F) At the time of import, for each shipment covered by this exception, the country of origin and each country of re-export involved in the trade of a

particular shipment must not be subject to a Schedule III Notice of Information pertaining to all wildlife or any members of the Order Crocodylia that may prohibit or restrict imports. A listing of all countries that are subject to such a Schedule III Notice of Information will be available by writing: The Office of Management Authority, U.S. Fish and Wildlife Service, ARLSQ Room 700, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

(ii) *Import, export, or re-export of caiman products.* Import, export, or re-export into or from the United States of caiman products will be allowed without permits required by 50 CFR 17 provided the following conditions are met:

(A) The Convention permit or certificate must contain the following information:

(*1*) The country of origin, its export permit number, and date of issuance;

(*2*) If re-export, the country of re-export, its certificate number, and date of issuance; and

(*3*) If applicable, the country of previous re-export, its certificate number, and date of issuance.

(B) The country of origin and any intermediary country(s) must be effectively implementing the tagging resolution for this exception to apply. If the Service receives persuasive information from the CITES Secretariat or other reliable sources that the tagging resolution is not being effectively implemented by a specific country, the Service will prohibit or restrict imports from such countries as appropriate for the conservation of the species.

(C) At the time of import, for each shipment covered by this exception, the country of origin and each country of re-export involved in the trade of a particular shipment must not be subject to a Schedule III Notice of Information pertaining to all wildlife or any member of the Order Crocodylia that may prohibit or restrict imports. A listing of all countries that are subject to such a Schedule III Notice of Information will be available by writing: The Office of Management Authority, ARLSQ Room 700, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

(iii) *Shipment of eggs, skulls, processed meat, and scientific specimens.* The import/re-export into/from the United States of eggs, skulls, processed meat, and scientific specimens of yacaré caiman, common caiman, and brown caiman will be allowed without permits otherwise required by 50 CFR 17, provided the requirements of 50 CFR part 23 are met.

(iv) *Noncommercial accompanying baggage.* The conditions of paragraphs (g)(3)(i) and (ii) for skins tagged in accordance with the tagging resolution, skulls, meat, other parts, and products made of specimens of yacaré caiman, common caiman and brown caiman do not apply to noncommercial accompanying personal baggage or household effects unless the country from which the specimens were taken requires export permits as per 50 CFR 23.13(d).

(4) *Notice of Information.* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue a Schedule III Notice of Information banning or restricting trade in specimens of caiman addressed in this paragraph (g) if any of the following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as lacking designated Management and Scientific Authorities that issue CITES documents or their equivalent.

(ii) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Convention's Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked to not accept shipments of specimens of any CITES-listed species from the country in question or of any crocodilian species listed in the CITES appendices.

(iii) The Service determines, based on information from the CITES Secretariat or other reliable sources, that the country is not effectively implementing the tagging resolution.

Dated: August 14, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife Parks.

[FR Doc. 98–25266 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 184
Wednesday, September 23, 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

Rural Housing Service

Farm Service Agency

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Request for Reinstatement of Information Collection

AGENCY: Rural Housing Service, Farm Service Agency, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to reinstate the information collection in support of the program for 7 CFR 1901–K.

DATES: Comments on this notice must be received by November 22, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Sandra Barnett, Rural Development, Budget Division, 1400 Independence Avenue, SW., STOP 0722, Washington, DC. 20250–0722; Telephone (202) 692–0143.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1901 K, subpart K, ''Certificates of Beneficial Ownership and Insured Notes.''

OMB Number: 0575–0064.

Type of Request: Reinstatement of an Information Collection.

Abstract: The mandate of Rural Development and the Farm Service Agency is to serve as a temporary lender to rural America. In doing so, Rural Development and the Farm Service Agency make three basic types of loans. They are farm ownership and farm operating loans, home ownership and repair loans and community facility and water system loans. These loans are funded through the Congressional appropriations process.

They were formerly funded through mechanisms such as the sale of Certificates of Beneficial Ownership (CBO) to private investors and the Federal Financing Bank (FFB). A CBO is a debt instrument that allows Rural Development and the Farm Service Agency to sell, to investors, CBO's secured by loan assets and receive cash from the purchaser. Rural Development and the Farm Service Agency agree to pay interest annually on the CBO and to buy back the CBO after a certain period, usually 5 to 20 years. Until 1974, Rural Development and the Farm Service Agency sold CBO's to the public and, the Federal Financing Bank (FFB). The FFB is part of the U.S. Treasury that was created to buy CBO's from government agencies. Today, Rural Development and the Farm Service Agency no longer sell CBO's to the public or to the FFB but rely instead on Federal appropriations. However, some of the CBO's are still outstanding.

The policy for servicing of outstanding CBO's and insured notes held by investors is found in the regulation, 7 CFR 1901–K. These investors who transfer, sell, or request replacement of their insured notes or CBO's are required to prepare or submit data to Rural Development and the Farm Service Agency so that the appropriate changes can be made in the applicable records. Rural Development and the Farm Service Agency should also be notified in the event of the death of a holder of an insured note or CBO.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.6 hours per response.

Respondents: Individuals or households, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 98.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 62 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0045.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agencies including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 11, 1998.

Jan E. Shadburn,

Administrator, Rural Housing Service.

Dated: August 7, 1998.

Richard O. Newman,

Acting Administrator, Farm Service Agency.

Dated: August 13, 1998.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

Dated: August 20, 1998.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 98–25367 Filed 9–22–98; 8:45 am]
BILLING CODE 3410–XT–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export

Administration (PECSEA) will be held October 7, 1998, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Update on Administration export control initiatives.

4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3886C, Bureau of Export Administration, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

A notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: September 17, 1998.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–25418 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed disposals of excess commodities currently held in the National Defense Stockpile under the Fiscal Year 2000 Annual Materials Plan (AMP) and revisions to commodities proposed for disposal under the FY 1999 AMP.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the potential market impact of proposed disposals of excess materials from the National Defense Stockpile as set forth in Attachment 1 to this notice.

DATES: Comments must be received by October 23, 1998.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; FAX (202) 501–0657.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h-1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile. . . .'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

The proposed FY 2000 AMP and revisions to the FY 1999 AMP have not been prepared in final form, as the Committee is now considering Defense's Stockpile material disposal levels as listed in Attachment 1. The AMP materials listed in bold in Attachment 1 cannot be sold until Congress has approved their disposal. The Committee is seeking public comment on the potential market impact of the sale of these materials in the event that Congress does grant such disposal authority.

The attached AMP listing includes the proposed maximum disposal quantity for each material. These quantities are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by October 23, 1998 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market

impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: September 18, 1998.

Brad I. Botwin,

Acting Director, Strategic Industries and Economic Security.

PROPOSED FY 2000 AND REVISED FY 1999 AMPS

[The materials in bold and italic are under Congressional consideration]

Material	Units	Current FY 1998 quantity	Revised FY 1999 quantity	Proposed FY 2000 quantity
Aluminum	ST	62,881	0	0
Aluminum Oxide, Abrasive	ST	6,000	6,000	6,000
Aluminum Oxide, Fused Crude	ST	30,000	65,000	65,000
Analgesics	AMA Lb	64,127	40,000	40,000
Antimony	ST	5,000	5,000	5,000
Asbestos (all types)	ST	20,000	20,000	20,000
Bauxite, Metallurgical (Jamaican)	LDT	1,200,000	2,000,000	2,000,000
Bauxite, Metallurgical (Surinam)	LDT	800,000	1,500,000	1,500,000
Bauxite, Refractory	LCT	80,000	0	0
Beryl Ore	ST	2,000	2,000	2,000
Beryllium Metal	***ST***	***0***	***40***	***40***
Beryllium Copper Master Alloy	ST	1,250	1,250	1,250
Cadmium	LB	1,200,000	1,200,000	1,200,000
Celestite	SDT	3,600	3,600	3,600
Chromite, Chemical	SDT	100,000	100,000	100,000
Chromite, Metallurgical	SDT	250,000	250,000	250,000
Chromite, Refractory	SDT	100,000	100,000	100,000
Chromium, Ferro	ST	50,000	150,000	150,000
Chromium, Metal	***ST***	***0***	***500***	***500***
Cobalt	LB Co	6,000,000	6,500,000	6,500,000
Columbium, Carbide Powder	***LB Cb***	***0***	***21,500***	***21,500***
Columbium Concentrates (Minerals)	***LB Cb***	***0***	***200,000***	***200,000***
Columbium, Ferro	LB Cb	200,000	400,000	400,000
Diamond, Bort	CT	1,000,000	65,000	65,000
Diamond Dies, Small	PC	25,473	25,473	25,473
Diamond Stone	CT	1,000,000	1,000,000	1,000,000
Fluorspar, Acid Grade	SDT	180,000	100,000	100,000
Fluorspar, Metallurgical	SDT	50,000	50,000	50,000
Germanium	KG	8,000	8,000	8,000
Graphite	ST	2,660	3,760	3,760
Indium	TR Oz	35,000	15,000	15,000
Iodine	LB	1,000,000	1,000,000	1,000,000
Jewel Bearings	PC	52,000,000	52,000,000	52,000,000
Kyanite	SDT	1,200	150	150
Lead	ST	60,000	60,000	60,000
Manganese, Battery Grade Natural	SDT	20,000	30,000	30,000
Manganese, Battery Grade Synthetic	SDT	3,011	3,011	3,011
Manganese, Chemical Grade	SDT	40,000	40,000	40,000
Manganese, Ferro	ST	50,000	50,000	50,000
Manganese, Metal Electrolytic	ST	2,000	2,000	2,000
Manganese, Metallurgical Grade	SDT	250,000	250,000	250,000
Mercury	FL	20,000	20,000	20,000
Mica (All Types)	LB	2,260,000	2,260,000	2,260,000
Nickel	ST	10,000	2,500	2,500
Palladium	TR Oz	0	200,000	200,000
Platinum	TR Oz	0	125,000	125,000
Quinidine	Av Oz	750,000	750,000	750,000
Quinine	Av Oz	750,000	750,000	750,000
Rubber	LT	0	70,000	70,000
Sebacic Acid	LB	400,000	400,000	400,000
Silicon Carbide	ST	9,000	5,000	5,000
Silver (for coinage)	Tr Oz	9,000,000	10,000,000	10,000,000

PROPOSED FY 2000 AND REVISED FY 1999 AMPS—Continued

[The materials in bold and italic are under Congressional consideration]

Material	Units	Current FY 1998 quantity	Revised FY 1999 quantity	Proposed FY 2000 quantity
Talc	ST	1,000	1,000	1,000
Tantalum Carbide Powder	LB Ta	2,000	4,000	4,000
Tantalum Metal Powder	***LB Ta***	***0***	***50,000***	***50,000***
Tantalum Minerals	LB Ta	100,000	200,000	200,000
Tantalum Oxide	LB Ta	0	20,000	20,000
Thorium	LB	1,000,000	1,000,000	1,000,000
Tin	MT	12,000	12,000	12,000
Titanium Sponge	ST	4,000	5,000	5,000
Tungsten, Carbide Powder	***LB W***	***0***	***1,000,000***	***1,000,000***
Tungsten, Ferro	***LB W***	***0***	***100,000***	***100,000***
Tungsten, Metal Powder	***LB W***	***0***	***150,000***	***150,000***
Tungsten Ores & Concentrates	***LB W***	***0***	***1,500,000***	***1,500,000***
Vegetable Tannin Extract, Chestnut	LT	7,500	3,000	3,000
Vegetable Tannin Extract, Quebrac.	LT	10,000	10,000	10,000
Vegetable Tannin Extract, Wattle	LT	10,000	7,500	7,500
Zinc	ST	50,000	50,000	50,000

[FR Doc. 98–25412 Filed 9–22–98; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 9, 1998, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above (''DRAMs'') from the Republic of Korea (''Korea''). The review covers two manufacturers/exporters of the subject merchandise to the United States and four third-country resellers from Singapore, Malaysia, Canada, and Hong Kong for the period May 1, 1996, through April 30, 1997. The two manufacturers/exporters are Hyundai Electronics Industries, Co. (''Hyundai''), and LG Semicon Co., Ltd. (''LG,'' formerly Goldstar Electronics Co., Ltd.). The third-country resellers are Techgrow Limited (Hong Kong) (''Techgrow''), Singapore Resources Pte. Ltd. (''Singapore''), NIE Electronics Sdn. Bhd. (Malaysia) (''NIE''), and Vitel Electronics Ottawa Office (Canada) (''Vitel''). With respect to the third-county resellers, Vitel did not respond, Singapore and NIE stated that they made no sales of the subject merchandise to the United States during the period of review (''POR''), and Techgrow did not respond fully.

As a result of our analysis of the comments received, we have changed the results from those presented in our preliminary results of review.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: John Conniff or Thomas Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1009 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, 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 references to the Department's regulations are to 19 CFR 353 (1997).

Background

On March 9, 1998, the Department published in the **Federal Register** (63 FR 11411) the preliminary results of its administrative review of the antidumping duty order on DRAMs from Korea. In our preliminary review results, we gave interested parties an opportunity to comment on our application of facts available to certain unreported sales by LG. On March 24, 1998, we received written comments from LG and petitioner, Micron Technology Inc. (''Micron''). With respect to the unreported sales, LG requested that the Department verify the accuracy of the information and declarations regarding these transactions that LG attached as exhibits to its March 24, 1998, submission. On May 6, 1998, Micron and LG submitted rebuttal comments.

On April 1, 1998, Multi Industry Tech, Inc. (''MIT''), and Multi Teck Computacion, S.A. de C.V. (''MTC'') (collectively ''MultiTech''), entered an appearance as an interested party under section 771(9)(A) of the Act and filed a request for an administrative protective order (''APO''). On April 3, 1998, LG submitted comments opposing the entry of appearance and MultiTech's request for an APO. On April 14, 1998, the Department granted MultiTech an APO as an interested party. *See* April 14, 1998, Memorandum from Ann Sebastian to Louis Apple, regarding ''Administrative Protective Order Application from Counsel for Multi Industry Tech, Inc. and Multi Teck Computacion, S.A. de C.V. in the Administrative Review of the Antidumping Duty Order on Dynamic Random Access Memory Semiconductors of One Megabit and Above from Korea (A–580–812) (5/1/96–4/30/97)'', contained in the official case file located in the Central Records Unit, Room B099 of the main Commerce Building (''CRU'').

We also gave interested parties an opportunity to comment on our

preliminary results. The petitioner, Hyundai, and LG submitted case briefs on April 28, 1998, and rebuttal briefs on May 6, 1998. MultiTech submitted a case brief on April 28, 1998.

On June 4–5, 1998, the Department held meetings at the headquarters of LG's U.S. subsidiary, LG Semicon America, Inc. (''LGSA''), in San Jose, California. At these meetings, the Department reviewed the declarations and other information from LG's March 24, 1998, submission. On July 17, 1998, we released our report on the June 4–5, 1998, meetings. We held both public and closed hearings on July 27, 1998. We have now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

Imports covered by the review are shipments of DRAMs of one megabit or above from Korea. Included in the scope are assembled and unassembled DRAMs of one megabit and above. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (''SIPs''), single in-line memory modules (''SIMMs''), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (''VGA'') boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (''VRAMS''), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit (''CPU''), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Partial Rescission of Review

Singapore and NIE stated that they made no sales of the subject merchandise to the United States during the POR. Since we have been able to confirm that neither company did, in fact, have shipments of the subject merchandise during the POR, we are rescinding this administrative review with regard to Singapore and NIE. In the preliminary results of review, the Department discussed the possible application of the All Others' duty deposit rate to these firms if future shipments were to take place. However, we can not predict the sales arrangements that these firms might make. The ''Final Review Results'' section of this notice outlines, depending on the facts, how the cash deposit decision will be made, should these firms start shipping.

Determination Not To Revoke

LG and Hyundai submitted requests for revocation from the order covering DRAMs from Korea pursuant to 19 CFR 353.25(a). Under the Department's regulations, the Department may revoke an order, in part, if the Secretary concludes that: (1) [o]ne or more producers or resellers covered by the order have sold the merchandise at not less than [normal] value for a period of at least three consecutive years; (2) [i]t is not likely that those persons will in the future sell the merchandise at less than normal value (''NV''); and (3) the producers or resellers agree in writing to the immediate reinstatement of the order, as long as any producer or reseller is subject to the order, if the Secretary concludes that the producer or reseller, subsequent to the revocation, sold the merchandise at less than NV. 19 CFR 353.25(a)(2). In this case, neither respondent meets the first criterion for revocation. The Department has found that both, LG and Hyundai, sold subject merchandise at not less than NV in the two prior reviews under this order, but they *did* sell at less than NV during the instant review period. Since neither respondent has met the first criterion for revocation, *i.e.*, zero or *de-minimis* margins for three consecutive reviews, the Department need not reach a conclusion with respect to the other criteria. Therefore, on this basis, we have determined not to revoke the Korean DRAM antidumping duty order in part with respect to Hyundai and LG. In light of this decision, interested party comments on revocation are moot and will not be addressed further in these final review results.

Fair Value Comparisons

Unless otherwise noted, to determine whether sales of subject merchandise from Korea to the United States were made at less than fair value, we compared the Constructed Export Price (''CEP'') to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of the preliminary results of review notice. *See Dynamic Random Access Memory Semiconductors (''DRAMs'') of One Megabit or Above from the Republic of Korea*, 63 FR 11411, March 9, 1998) (''Preliminary Results'').

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that if any interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in making its determination.

Based on information obtained from the Customs Service, we have determined that a number of sales that LG reported as third-country sales were actually sales to the United States. Moreover, the Department has determined that at the time LG made these sales, it knew, or should have known, that the DRAMs were destined for consumption in the United States. *See* the September 8, 1998 Memorandum from Thomas Futtner and John Conniff to Holly Kuga regarding ''Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit and Above from the Republic of Korea—Whether to Include Certain Unreported Sales in the Calculation of LG's Margin for the Final Results of the

96–97 Review'' (''LG Analysis Memo''). Thus, we have determined that LG withheld information we requested and significantly impeded the antidumping proceeding.

We have similarly determined that Techgrow, which submitted only a partial response to our questionnaire, and which failed to provide the information for sales by its affiliates, withheld information we requested and significantly impeded this proceeding. *See DOC Position* to *Techgrow-Specific Comment 1.*

Vitel, another respondent in this review, confirmed that it had received the questionnaire, but it failed to submit a response. Thus, Vitel failed to provide any information and thereby significantly impeded this review.

Because LG and Techgrow failed to respond in full to our questionnaire, and Vitel did not respond at all, pursuant to section 776(a) of the Act, we have applied facts otherwise available to calculate their dumping margins.

2. Selection of Adverse Facts Available

Section 776(b) of the Act provides that, in selecting from the facts available, adverse inferences may be used against a party that failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994).

Section 776(b) states further that an adverse inference may include reliance on information derived from the petition, the final determination, the final results of prior reviews, or any other information placed on the record. *See also Id.* at 868.

LG's decision to report as third-country sales a substantial number of U.S. sales that it knew, or should have known, were U.S. sales, indicates that LG failed to cooperate to the best of its ability. *See DOC Position* to *LG-Specific Comment 1.* Similarly, Techgrow's failure to provide information on sales by its affiliated party demonstrates that Techgrow has failed to cooperate to the best of its ability in this review. Finally, since Vitel provided no questionnaire response at all, we have determined that this respondent also failed to cooperate to the best of its ability in the instant review. Therefore, the Department has determined that an adverse inference is warranted in selecting among the facts otherwise available for LG, Techgrow, and Vitel, in accordance with section 776(b) of the Act. Consequently, we have based the margins for these three respondents on adverse facts available.

As adverse facts available for LG, we have calculated a dumping margin based on both LG's reported and unreported sales to the United States, the latter of which we were able to identify from U.S. Customs Service data. Regarding the adjustments to LG's unreported sales, we used as facts available the highest U.S. selling expenses from LG's reported transactions involving identical products. Where there were no reported transactions involving identical merchandise, we used the highest U.S. selling expenses from LG's reported transactions involving merchandise of the same density. With respect to fair value comparisons, when there were no contemporaneous sales of identical or similar merchandise sold in Korea, we compared these unreported sales to constructed value (''CV''). When there was no quarterly cost data reported during the same quarter as the date of sale of the unreported transactions, we used the highest CV available from the remaining quarters.

As adverse facts available for Techgrow and Vitel, we have assigned the highest company-specific margin calculated in the history of this proceeding, which is the rate calculated for LG in the instant review.

General Comments

Comment 1: Research and Development (''R&D'')

Hyundai argues that the Department overstated R&D expenses by allocating a portion of the R&D expenses associated with non-memory products to the CV of DRAMs. According to Hyundai, the antidumping statute precludes the Department from attributing expenses relating to non-subject merchandise (non-memory) to subject merchandise (memory, *i.e.*, DRAMs). In addition, Hyundai maintains that the preliminary results deviate from the Department's long-standing practice of calculating product-specific R&D. If the Department insists upon calculating R&D in this manner, Hyundai argues that the Department must justify its departure from prior practice, citing *Micron Technology, Inc.* v. *U.S.*, 893 F.Supp. 21 (CIT 1995) (''*Micron Tech*'').

Moreover, Hyundai disputes various statements made by the Department's semiconductor expert with respect to cross-fertilization issues and states that the record does not support the Department's preliminary results. Hyundai claims that the allocation methodology adopted by the Department in the preliminary results is mistakenly based on an assumption that R&D expenditures for non-memory products provide equal benefit to memory products. If any cross-fertilization of R&D between memory and non-memory products exists, Hyundai argues, the benefits flow from memory to non-memory and not in the other direction. Hyundai asserts that the Department's methodology has the effect of increasing its DRAM costs as Hyundai devotes more funds to non-memory R&D. Hyundai maintains that cross-fertilization of memory and non-memory R&D is extremely unlikely, given the fundamental differences in product design, marketing, and production of these semiconductors.

Hyundai contends further that its organizational structure and accounting records distinguish between R&D expenses for memory and non-memory products. According to Hyundai, its R&D laboratories responsible for memory and non-memory R&D have separate budgets, personnel, and locations. Moreover, respondent asserts its laboratories conduct no joint projects and compete for funding.

Hyundai argues further that the Department included production costs related to the manufacturing of non-subject merchandise, such as application-specific integrated circuits and other non-memory devices, in its allocation of semiconductor R&D. According to Hyundai, these chips are produced for specific customers in the company's ''system IC'' lab and are then sold to the same specific customers. As such, Hyundai claims that these are not R&D costs, but costs related to the commercial production of non-memory chips for sale to specific customers. It asserts that the Department must subtract these ''verified production costs'' from the total semiconductor R&D figure used in the R&D allocation.

LG requests that the Department revise its allocation for R&D on the basis of LG's verified, product-specific R&D expenses exclusive of non-DRAM R&D. LG argues that its ''product-specific'' R&D expenses have been properly quantified and verified by the Department. LG maintains that it distinguishes DRAM R&D expenses from other products it manufactures by tracking and segregating these R&D expenses into DRAM and non-DRAM categories. Furthermore, LG states that it distinguishes between product-development R&D (which includes R&D related to technological improvement of the functionality of the product) and product-line R&D (which includes R&D related to production-process improvement). LG argues that the Department has not produced any evidence supporting cross-fertilization between memory and non-memory R&D

as required by the Court in *Micron Tech*. LG notes that this methodology raises the R&D expenses for DRAMs, thereby overstating LG's DRAM cost of production (''COP'').

In response to LG's and Hyundai's assertions, the petitioner states that the Department allocated all semiconductor R&D properly over all semiconductor production. The petitioner argues that there is already sufficient evidence on the record to support the Department's determination that, in the semiconductor industry, R&D relating to any aspect of semiconductor production has a significant effect on the production and sale of all semiconductor products. The petitioner cites the three prior reviews under this order and the *Notice of Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From the Republic of Korea,* 63 FR 8945 (February 23, 1993) (''*SRAMs Final Determination*''), where the Department placed evidence in the record that cited examples of cross-fertilization and included statements by both the Department's and respondent's semiconductor experts.

Further, petitioner disputes Hyundai's contention that the Department should exclude from total R&D expense that part of the expense that the respondent contends represents commercial production of non-subject merchandise. According to the petitioner, the Department rejected this same contention in the *SRAMs Final Determination* by noting that Hyundai had categorized these costs as R&D expenses in its audited financial statements.

DOC Position. We disagree with Hyundai and LG and have allocated all semiconductor R&D expenses over the total semiconductor cost of goods sold. This allocation methodology is fully consistent with the antidumping statute and the R&D calculations we have used throughout the Korean DRAM and SRAM proceedings.

In the *SRAMs Final Determination,* we noted that, as a result of the forward-looking nature of R&D activities, we could not predict every instance where SRAM R&D may influence logic products or where logic R&D may influence SRAM products. As a result, we asked Dr. Murzy Jhabvala, a semiconductor device engineer at the National Aeronautics and Space Administration with twenty-four years of experience, to state his views regarding any potential overlap or cross-fertilization of R&D efforts in the semiconductor industry. In fact, Dr. Jhabvala had identified in another semiconductor proceeding before the Department areas where R&D from one type of semiconductor product influenced another semiconductor product. We have placed on the record of this review these statements by Dr. Jhabvala, including a statement pertaining to DRAMs dated July 14, 1995. In this memorandum, entitled ''Cross Fertilization of Research and Development Efforts in the Semiconductor Industry,'' Dr. Jhabvala stated that ''it is reasonable and realistic to contend that R&D from one area (*e.g.,* bipolar) applies and benefits R&D efforts in another area (*e.g.,* MOS memory). In a statement prepared for the *SRAMs Final Determination,* Dr. Jhabvala stated that:

> SRAMs represent along with DRAMs the culmination of semiconductor research and development. Both families of devices have benefitted from the advances in photo lithographic techniques to print the fine geometries (the state-of-the-art steppers) required for the high density of transistors . . . In addition to achieve higher access speeds bipolar (ECL or TTL) output amplifiers are incorporated directly on chip with the CMOS SRAM memory array, a process known as BiCMOS. Further efforts to improve speed have resulted in the combination of the bipolar ECL technology with CMOS technology with silicon on insulator (SOI) technology.
>
> Clearly, three distinct areas of semiconductor technology are converging to benefit the SRAM device performance. There are other instances where previous technology and the efforts expended to develop that technology occurs in the SRAM technology. Some examples of these are the use of thin film transistors (TFTs) in SRAMs, advanced metal interconnect systems, anisotropic etching and filling techniques for trenching and planarization (CMP) and implant technology for retrograde wells.

See September 8, 1997, Memorandum from Murzy Jhabvala to U.S. Department of Commerce/Office of Antidumping Compliance, Attn: Tom Futtner, regarding ''Cross Fertilization of Research and Development of Semiconductor Memory Devices (''September 1997 Jhabvala Memo''), on file in the CRU.

In accordance with the holding in the *Micron Tech* case, the Department requested that Dr. Jhabvala participate in the verification of Samsung's R&D expenses in the SRAMs case. After interviewing several of Samsung's R&D engineers, Dr. Jhabvala concluded that ''the most accurate and most consistent method to reflect the appropriate R&D expense for any semiconductor device is to obtain a ratio by dividing all semiconductor R&D by the cost to fabricate all semiconductors sold in a given period.'' *See* Public Version of December 19, 1997, Memorandum from Murzy Jhabvala to the File, regarding ''Examination of Research and Development Expenses and Samsung Electronic Corporation (SEC),'' on file in the CRU.

In the *SRAMs Final Determination,* we disagreed with Hyundai's contention that we must follow Hyundai's normal accounting records which categorize R&D expenses by project and product. We disagree with similar contentions from LG and Hyundai in this review. As we have said in the past, we are not bound by the way a company categorizes its costs, R&D projects, or laboratory facilities. Moreover, the mere fact that R&D projects for memory and non-memory products may be run in different laboratories, that process and product research for memory and non-memory products may be distinguished, and that each of the respondents may account for these R&D projects separately their respective books and records, does not address the core issue of cross-fertilization in semiconductor R&D. The existence of cross-fertilization in semiconductor R&D is the central theme of Dr. Jhabvala's many statements to the Department. Dr. Jhabvala offers various examples in those statements to illustrate that, regardless of the accounting or laboratory arrangements, the research results or developments in the processes and technologies used in the production and development of one semiconductor family can be (and are) used in the production and development of other semiconductor families. Dr. Jhabvala goes so far as to say that it would be ''unrealistic to expect researchers to work in complete technical isolation constantly reinventing technology that might already exist.'' *See* ''September 1997 Jhabvala Memo''. Given this fact, we do not believe that the reported expenses for DRAM R&D projects reasonably reflect the appropriate cost of producing the subject merchandise. As a result, we have continued to allocate all semiconductor R&D expenses over the total semiconductor cost of goods sold, a methodology which does not overstate costs, but which we believe more reasonably and accurately identifies the R&D expenses attributable to subject merchandise.

This is not a change in the Department's approach to this issue. It is the Department's long-standing practice where costs benefit more than one product to allocate those costs to all the products which they benefit. *See, e.g., SRAMs Final Determination.* We believe that this methodology results in the calculation of product-specific costs and that it is consistent with section 773(f)(1)(A) of the Act because we have

determined that DRAM-specific R&D account entries do not by themselves completely and reasonably reflect the costs associated with the production and sale of subject merchandise.

Finally, we disagree with Hyundai that we included production costs related to the manufacturing of non-subject merchandise in our allocation of semiconductor R&D. The Department used Hyundai's verified R&D expenses, which Hyundai itself provided to the Department. In addition, while Hyundai argues that these expenses are production costs, it has not provided any documentation or evidence to support this claim. We note that Hyundai has categorized these ''costs'' as R&D expenses in its audited financial statements. Furthermore, we note that the ''costs'' to which Hyundai refers are not categorized in a manner which would enable us to separate them from total project expenses. For these reasons and consistent with the position taken in the *SRAMs Final Determination*, we have made no adjustment for this claim in establishing Hyundai's R&D expenses.

Comment 2: Depreciation

Petitioner maintains that the Department adjusted Hyundai's and LG's depreciation expense correctly to account for special depreciation despite the fact that these companies no longer adjust for special depreciation in their internal accounting systems. However, petitioner claims that the Department incorrectly failed to adjust Hyundai's and LG's depreciation by not taking into account the changes respondents made to the average useful lives (''AULs'') of their assets. Petitioner argues that neither of these two changes in respondents' accounting practices are systematic, rational, or justified since nothing changed with respect to the equipment itself or its usage and that LG and Hyundai were motivated by the need to show net profits instead of losses. Petitioner contends that the Department did not explain why it only adjusted for special depreciation and not for the change in AULs. According to petitioner, there is no methodological or factual justification for treating the two changes differently. In conclusion, petitioner requests that the Department adjust the reported depreciation amounts fully by denying both types of reporting changes made by respondents.

LG states that the Department should not make any adjustments to its reported depreciation expense since the statute mandates the use of verified records if such records are kept in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country and if such expenses reasonably reflect the costs associated with the production and sale of subject merchandise. LG argues that an adjustment is not warranted in this case since the reported expenses reasonably reflect DRAM costs and were appropriately recorded in accordance with Korean GAAP in its audited financial statement. LG claims that it made a business decision not to take all available depreciation charges allowed by Korean law. Further, LG argues that its change in AUL and the decision not to take special depreciation constitute changes in accounting estimates only, not accounting principles.

Hyundai argues that the Department should not have adjusted the company's depreciation expense and methodology. According to Hyundai, the reported depreciation expense and methodology are fully consistent with Korean GAAP. Specifically, Hyundai maintains that the auditor's opinion attached to its financial statement demonstrates that all elements of the financial statement, including depreciation, were prepared in accordance with Korean GAAP. According to Hyundai, the reported depreciation expense reasonably reflects the cost of producing DRAMs.

Hyundai claims that, even though it took special depreciation during previous segments of this antidumping proceeding, neither the Department nor petitioner objected when Hyundai started to claim this depreciation expense during those periods. Moreover, Hyundai asserts, the Department verified and accepted those costs fully. Hyundai also claims that there is no requirement in U.S. antidumping law that companies take additional costs nor is there any requirement under Korean GAAP that a company continue to take a tax benefit that it claimed in a previous year. Hyundai argues that the depreciation expense as recorded in its books and records is fully consistent with the company's historical accounting methodology. Therefore, respondent states, the Department should use Hyundai's reported expenses for purposes of this antidumping review.

DOC Position. Section 773(f)(1)(A) of the Act states that costs ''shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the merchandise.'' Further, as explained in the SAA, ''[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs'' (SAA at 834). The issue in this review is whether respondents have demonstrated that their changes in depreciation accounting are reasonable and consistent with the depreciation methodologies that these companies have employed in the past.

With respect to special depreciation, both respondents elected to claim this expense during the previous three review periods in this proceeding. Respondents' decision not to claim special depreciation represents a change in accounting method. In effect, by claiming special depreciation over the last three years, respondents have been depreciating their assets on an accelerated basis. The decision to stop claiming the additional depreciation constitutes a decision to depreciate assets on a non-accelerated basis. While respondents may have a right under Korean law to forego this claim, they must explain, consistent with the SAA, how these changes are consistent with the cost methodologies and allocations the companies have utilized in the past. Furthermore, to justify this change and ensure that the Department receives systematic and rational product costing throughout an antidumping proceeding, the respondent must explain the underlying reasons for the change and provide information as to why this change in method better reflects the actual costs incurred in producing the merchandise under investigation or review. In this case, there is no information on the record to justify this change.

In contrast, the AUL assumption both respondents used reflects their historical experience in establishing the appropriate depreciation periods. It is common practice within the semiconductor industry to depreciate machinery and equipment using a three- to five-year useful-life assumption. Respondents' change in the AUL does not deviate from this three to five year band. In fact, for one respondent, we noted that certain machinery and equipment tested at verification were still in operation after five years. Furthermore, unlike respondents' decision not to claim special depreciation, the change in the AUL represents only a change in an accounting estimate. It does not constitute a change in depreciation methodology.

Therefore, we have accepted the AUL adjustment claimed by respondents, but

we have added special depreciation to respondents' reported COP.

Comment 3: Foreign-Exchange Loss

Petitioner argues that the Department properly included an amortized portion of foreign-exchange translation losses related to long-term debt as a component of financing costs in respondents' COP. Petitioner also contends that the newly adopted Korean GAAP for deferring foreign-exchange losses has not been applied on a consistent and historical basis and the Department's past practice has been to disregard Korea's local accounting standard that called for deferring current-period foreign-exchange losses on long-term debt. Further, petitioner maintains that foreign-exchange losses are closely tied to a company's operations and to the higher cost of financing, including the retirement of foreign-currency-denominated debt. According to petitioner, this is no more hypothetical than is depreciation of a capital asset or other costs for which the cash outlay may be made during a different accounting period.

LG contends that its reported financial expenses are consistent with Korean GAAP. LG argues that the Department's statutory mandate is to calculate a respondent's actual costs for subject merchandise based on the books and records of the company. LG maintains that the application of U.S. GAAP in LG's circumstances would be distortive because the company borrows mainly in foreign currencies, the loans are mostly long term, and Korean exchange rates fluctuate significantly.

Hyundai maintains similarly that its treatment of unrealized foreign-exchange translation losses is in accordance with Korean GAAP and reasonably reflects its COP. Hyundai argues that Korean GAAP provides for the recognition of such gains or losses when they are actually incurred. Hyundai also asserts that unrealized long-term foreign-currency translation losses do not represent an actual cost. Hyundai maintains further that the Department was incorrect to include the cost of unrealized foreign-exchange gains and losses in COP. If such unrealized gains and losses continue to be included in COP, Hyundai contends that the Department must apply the methodology it used in the preliminary results of amortizing the unrealized gains and losses over the average outstanding loan balances.

DOC Position. In this case, we have verified unrealized foreign-exchange translation gains and losses for both respondents. The translation gains and losses at issue are related to the cost of acquiring debt. As the record indicates, these loans represent the financing of new buildings and machinery. Consequently we consider these costs related to production. Including these gains and losses in the calculation of COP is, therefore, proper and consistent with our position in previous cases where we have found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign-currency-denominated loan balances. *See Fresh Cut Roses from Ecuador: Final Determination of Sales at Less than Fair Value,* 24 FR 7019, 7039 (Feb. 6, 1995). For these final results, therefore, and consistent with our practice in other cases, we amortized deferred foreign-exchange translation gains and losses over the average remaining life of the loans on a straight-line basis and included the amortized portion in the net interest expense portion of COP. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Determination of Sales at Less Than Fair Value,* 62 FR 9737, 9743 (March 4, 1997).

Comment 4: Level of Trade (''LOT'')/ CEP Offset

Petitioner disagrees with the Department's determination of LOT by comparing an unadjusted NV to an adjusted CEP. Petitioner maintains that, due to this improper comparison, the Department concluded erroneously in its preliminary analysis that different LOTs existed in both markets, resulting in a CEP-offset adjustment to NV for both respondents. According to petitioner, a recent ruling by the Court of International Trade (''CIT'') determined that the Department's CEP-offset methodology is not in accordance with the antidumping statute. In this ruling, petitioner asserts, the court stated that ''Commerce's limited adjustment to price before LOT analysis contravenes the purpose of the statute,'' citing *Borden, Inc. v. United States,* Slip Op. 98–36 (March 26, 1998) (''*Borden*''). Petitioner argues that, if the Department conducted the LOT analysis in accordance with *Borden,* it would not have made the adjustment to NV.

Hyundai contends that the Department should continue to determine LOT by comparing NV to an adjusted CEP and, thus, continue to make a CEP offset. Hyundai argues that the Department has rejected petitioner's argument in the second (94/95) and third (95/96) reviews of the order on Korean DRAMs and, most recently, in the *SRAMs Final Determination.* Additionally, Hyundai requests that the Department not apply the *Borden* case in this review since the decision was based on an incorrect interpretation of the law. According to Hyundai, the court in the *Borden* case misinterpreted the statute by ruling erroneously that adjustments must be disregarded when defining the LOT of the CEP sale for the purposes of the offset. Moreover, Hyundai also argues that the record clearly supports Hyundai's request for a CEP offset since its home market (''HM'') sales are made at a more advanced LOT and are not comparable to its U.S. sales. In fact, according to Hyundai, there is no LOT in the HM equal to the CEP level.

LG asserts that the Department made a CEP offset correctly. LG also maintains that the Department should not apply the *Borden* case to the instant review. According to LG, the court held mistakenly that the Department's adjustments to CEP starting prices (by removing certain expenses) are inconsistent with section 773(a)(7) of the Act. LG claims that the court believed that such adjustments distort the LOT analysis and that this ''pre-adjustment'' creates an automatic CEP offset in addition to any CEP-offset or LOT adjustment made after a comparison of adjusted CEP to HM price. LG contends that the Department's methodology does not create a ''pre-adjustment'' and removes correctly from the starting U.S. price only those expenses related to the resale transaction between the U.S. affiliate and the unaffiliated U.S. customer.

DOC Position. We disagree with petitioner. We note that the holding in the *Borden* case is not final and conclusive. Moreover, both the statute and the SAA clearly support analyzing the LOT of CEP sales at the CEP level—that is, after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has clearly stated this in previous cases. *See, e.g., SRAMs Final Determination.* As set forth in section 773(a)(1)(B)(i) of the Act and the SAA, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the U.S. sale. *See* SAA at 829. The SAA makes clear that there cannot be two different LOTs where the selling functions are the same. When the Department is unable to find sales in the comparison market at the same LOT as the U.S. sales, the Department may compare sales in the U.S. and foreign markets at different LOTs.

In accordance with section 773(a)(7)(A) of the Act, if we compare a U.S. sale at one LOT to NV sales at a different LOT, we will adjust the NV to account for the difference in LOT if the

differences affect price comparability as evidenced by a pattern of consistent price differences between sales at the different LOTs in the market in which NV is determined. If, for CEP sales, the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under the CEP-offset provision of the statute. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In order to determine whether a LOT adjustment or CEP offset was warranted for LG or Hyundai in this review, we compared their CEP sales to their HM sales in accordance with the principles discussed above. For purposes of our analyses, we examined information regarding the distribution systems in both the U.S. and Korean markets, including the selling functions, classes of customer, and selling expenses for each company. We found that respondents performed substantial selling functions in their HM transactions, ranging from inventory maintenance and warranty services to advertising and technical services. In contrast, the services offered to the U.S. importer tended to relate solely to the transfer of the merchandise from Korea to the U.S. subsidiary. *See* September 8, 1998, Memorandum from John Conniff to Tom Futtner, regarding ''Dynamic Random Access Memory Semiconductors (DRAMs) from the Republic of Korea (A–580–812)—Final Results of Review Level of Trade Analysis Memorandum—Hyundai Electronics, Co., Ltd'' and September 8, 1998, Memorandum from John Conniff to Tom Futtner, regarding ''Dynamic Random Access Memory Semiconductors (DRAMs) from the Republic of Korea (A–580–812)—Final Results of Review Level of Trade Analysis Memorandum—LG Semicon, Co., Ltd.''. Based on this analysis, we determined that both respondents sold the comparison merchandise during the period at a LOT in the HM which was different, and more advanced, than the LOT of the CEP sales of subject merchandise in the United States. As there is no HM LOT comparable to that of respondents' sales to the United States, we do not have the data necessary to make a LOT adjustment for either LG or Hyundai. Therefore, we have made a CEP-offset adjustment to NV in our calculations for each of these companies pursuant to section 773(a)(7)(B) of the Act.

Company-Specific Issues

A. Hyundai

Comment 1: Synchronous DRAMs (''SDRAMs'')

Petitioner alleges that Hyundai understated the cost of producing memory modules. According to petitioner, these module costs include placing the SDRAMs on the module and the cost of materials added to the module. In support of its allegation, petitioner claims that Hyundai is selling SDRAM modules at the same price as the price which it charges for the aggregate number of individual SDRAMs on the module.

Hyundai states that the Department verified module-building costs and found all costs were reported for this review period. Moreover, Hyundai claims that petitioner's allegations concerning SDRAMs are untimely and irrelevant. Hyundai argues that petitioner submitted two invoices as source documentation for its allegation after the deadline for the submission of factual information. Furthermore, these allegations, Hyundai asserts, are irrelevant since they are related to transactions which occurred after the POR.

DOC Position. We agree with Hyundai. Since the information on SDRAMs was first submitted in petitioner's case brief, we have treated the allegation as untimely within the meaning of 19 CFR 353.31(a)(2). Assuming, arguendo, that the allegation was timely, we also consider the claim irrelevant to this review since the two invoices that petitioner submitted in its brief covered transactions which took place outside the POR.

Comment 2: CV Profit on a Quarterly Basis

Hyundai notes that, for the purposes of the preliminary results, the Department recognized that prices during the POR declined significantly and used quarterly data in its sales-below-cost test. However, Hyundai asserts, the Department did not calculate profit for its CV calculations on a quarterly basis. Hyundai argues further that declining prices, in turn, affect the profit rates it earned on sales during the POR. Since antidumping comparisons are based on matching comparable products during a comparable period, Hyundai contends that the Department should also apply the appropriate quarterly profit rates in the calculation of CV.

Petitioner states that the Department calculated an annual average rate of profit properly based on Hyundai's full-year HM sales made in the ordinary course of trade. According to petitioner, the annual profit rate is appropriate since it reflects not only quarterly costs of manufacture (as reflected in the quarterly CV calculation), but also annual costs, such as General and administrative (''G&A'') expenses. Petitioner contends that these expenses are often non-recurring and must be calculated on an annual basis to ensure that all such costs are captured in calculating COP. Moreover, petitioner claims that Hyundai's arguments are inconsistent since they fail to address the Department's use of annual amounts for selling expenses as well as for G&A expenses.

DOC Position. We agree with the petitioner. The Department applies the average profit rate for the POR even when the cost calculation period is less than a year. *See, e.g., SRAMs Final Determination and Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53295 (Oct. 14, 1997). We disagree with Hyundai that the use of annual profit distorts the analysis. First, a difference between the quarterly profits and the annual average profit does not automatically mean that a distortion exists. In fact, there is no evidence on the record that indicates such a distortion. Second, profit is not solely based on prices, but is a function of the relationship between price and cost. Third, the use of annual profit mitigates fluctuations in profits and, therefore, represents a truer picture of profit. As petitioner states, the annual profit rate is appropriate since it reflects not only quarterly costs of manufacture, but also annual costs, such as G&A expenses, which are often non-recurring and must be calculated on an annual basis. Therefore, for the purposes of these final review results, we have continued to calculate the average profit rate on an annual basis.

Comment 3: Whether the NV of Further-Manufactured Models Should be Based on CV

Hyundai argues that the Department erred in comparing the prices of further-manufactured mixed modules to CV. For these mixed modules, Hyundai asserts that the Department must instead compare the U.S. price of the two DRAMs which were imported into the United States and then incorporated into the module to the HM price of the comparable DRAMs. As maintained by Hyundai, this preference for a price-to-price comparison has been most recently affirmed by the Court of Appeals for the Federal Circuit in

Cemex S.A. v. *United States*, 133 F.3d 897 (Fed.Cir.1998) (''*Cemex*''), which noted that, when HM sales of identical merchandise are unavailable, the statute requires that NV be based on non-identical, but similar merchandise, rather than CV.

DOC Position. We agree with Hyundai. The Act and the Department's regulations set forth a preference for basing NV on the price of the foreign like product and for making price-to-price comparisons, whenever possible. *See* section 773(a)(1)(A) of the Act and 19 CFR 353.46(a). Therefore, for further-manufactured mixed-memory modules, because there were HM sales of merchandise comparable to the merchandise imported into the United States, we agree with Hyundai in this review that, rather than resorting to CV, we should have compared the U.S. price of the imported product (*i.e.*, DRAMs) to the weighted-average price of the comparison product sold in the HM. We have made this correction in the final results. *See* September 8, 1998, Memorandum from John Conniff to Thomas F. Futtner regarding ''Dynamic Random Access Memory Semiconductors (DRAMS) from the Republic of Korea (A–580–812)—Final Results of Review Analysis Memorandum-Hyundai Electronics, Inc.'' (''Hyundai Analysis Memo'').

Comment 4: Incorrect Coding

Hyundai argues that the Department used incorrect coding in its computer program when segregating the HM sales data into quarterly data.

DOC position. We agree with Hyundai. We corrected the coding in the programming language that identifies the quarter for HM sales for these final review results to ensure that our calculations reflect Hyundai's information correctly.

Comment 5: Identifying All Comparable HM Sales Before Using CV

Hyundai argues that its concordance database does not implement the *Cemex* decision since it was submitted prior to the issuance of this decision. Hyundai submitted new concordance programming which, it argues, implements the *Cemex* decision. If the Department uses this database, Hyundai explains that the program will allow the Department to identify the appropriate product comparisons if the first-choice comparison fails the cost test.

Petitioner states that the Department implemented the *Cemex* case in the preliminary review results. If, however, the Department accepts Hyundai's changes, petitioner asserts that the Department should incorporate a difference-in-merchandise (''DIFMER'') adjustment in the foreign unit price (''FUPDOL'') statement for the comparisons of similar merchandise, since, according to petitioner, Hyundai did not include this adjustment in the program it used for the concordance database.

DOC position. We agree with Hyundai. As a result, we have incorporated Hyundai's concordance language in our calculations these final review results. We also adopted petitioner's corrections regarding the DIFMER adjustment in the foreign unit price statement for comparisons of similar merchandise.

Comment 6: Net Price Used in the Sales-Below-Cost Test

Hyundai claims the Department computed the net price that was used in the sales-below-cost test incorrectly. As an example, Hyundai asserts that the Department compared a price net of selling expenses and packing to a cost that included these expenses.

Petitioner agrees with Hyundai that prices net of selling expenses and packing were compared to costs that included these expenses.

DOC Position. We agree with Hyundai and petitioner. We have made the appropriate changes to our calculations for these final review results to ensure an apples-to-apples comparison of prices and costs.

Comment 7: Understated CEP Offset

Hyundai states that the Department made several errors in its calculations regarding the CEP offset for sales it compared to CV. According to Hyundai, the Department understated HM indirect selling expenses because (1) inventory carrying costs were not included in the pool of indirect expenses, and (2) the U.S. side of the offset was based on module expenses but HM indirect expenses were based on a single chip.

DOC Position. We agree with Hyundai. We have made the appropriate changes to our calculations to include inventory carrying costs in HM indirect selling expenses and to ensure that U.S. offset expenses are consistent with the HM indirect selling expenses that we used in our comparisons (*i.e.*, module-to-module, chip-to-chip).

Comment 8: Programming Code

Hyundai alleges that the Department's computer program included code from the previous review period that is not relevant to the current POR and requests that the Department delete the inappropriate language.

DOC Position. We agree with Hyundai and have deleted the inappropriate language.

Comment 9: CV Included Imputed Credit and Inventory Credit Carrying Costs for CEP and Further-Manufactured Sales

Hyundai argues that the Department included imputed credit (''CREDITCV'') and inventory carrying expenses (''INVCARCH'') incorrectly in the calculation of CV. These expenses should be replaced with the non-imputed selling expenses, DSELCV and ISELCV.

Petitioner agrees that DSELCV and ISELCV should be included in the CV calculation.

DOC position. We agree with both Hyundai and the petitioner. We have corrected our calculations by removing the imputed expenses, CREDITCV and INVCARCH, and adding the actual expenses, DSELCV and ISELCV.

Comment 10: CEP-Profit Calculation

Hyundai asserts that the Department made two mistakes in its calculation of CEP profit. First, it contends that the Department excluded below-cost sales in the HM in its calculation of HM profit. Second, it states that the Department mistakenly included expenses pertaining to economic activity in Korea in its calculation of CEP selling expenses used to calculate CEP profit.

Petitioner argues that the expenses in question, while incurred in Korea, were associated with economic activities in the United States. Therefore, petitioner contends, the Department must deduct these expenses from U.S. prices in the calculation of CEP profit.

DOC Position. We agree, in part, with both parties. The SAA states that ''under new section 772(d), CEP will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses, and profit, associated with economic activities occurring in the United States.'' *See* SAA at 823. The expenses in question, banking fees and other direct selling expenses, are associated with economic activities occurring in the United States and were reported as such in Hyundai's Section C questionnaire response. Therefore, we have deducted these expenses from CEP.

However, we agree with Hyundai that we excluded below-cost sales in the HM incorrectly from the calculation of the HM-profit portion of the CEP-profit calculation. Section 772(f) of the Act requires the Department to use ''total actual profit'' in calculating the CEP-

profit deduction. Since the calculation of both total actual profit and total expenses includes sales (whether above or below cost) that are made at a profit or at a loss, the calculation must include below-cost sales in order to reflect actual profit. We have corrected our calculations to account for this.

Comment 11: Net U.S. Price Calculation for Further-Manufactured Modules

Hyundai maintains that the Department erred in its calculation of net U.S. price for further-manufactured modules by deducting all selling expenses for chips in the module rather than deducting only the direct selling expenses associated with economic activities occurring in the United States.

DOC Position. We agree with Hyundai. In our calculation of net U.S. price for further-manufactured modules, we inadvertently deducted all selling expenses for chips in the module rather than eliminating only the direct selling expenses related to U.S. economic activity. We have made the appropriate changes to our calculations to accomplish the correct adjustment for these final review results.

Comment 12: Cost-Recovery Test

According to petitioner, the Department conducted the annual cost test using the unrevised figure for the total cost of manufacturing (TOTCOM). Petitioner argues that this figure did not include selling expenses, G&A expenses, and interest expenses, and it did not reflect the revisions the Department made to the cost data, in accordance with the February 27, 1998, Memorandum to the File from Justin Jee regarding ''COP and CV Adjustment Calculations.''

DOC Position. We agree and have made the appropriate changes to our calculations to ensure that we conducted the cost test properly.

B. LG

Comment 1: Application of Adverse Facts Available to LG ''Unreported Sales''

LG contends that the Department's decision to apply adverse facts available to its margin calculation based on the belief that LG did not report all its U.S. sales is not warranted by the facts or permissible under the law. According to LG, it had no involvement in, or knowledge of, the diversion of its shipments (*i.e.,* ''unreported sales'') into the United States. LG claims that it took numerous precautions to ensure that third-country sales did not enter the U.S. market. Also, LG states that it believed, at the time of the sale, that all shipments reached their appropriate destinations. As a result, LG maintains that the Department must exclude these sales from its U.S. sales database.

Citing a sale that LG refused because it was being shipped to the United States, LG argues that it was vigilant about ensuring that its sales to third-countries were not re-exported or diverted to the United States. With respect to the concerned third-country purchaser, LG asserts that it conditioned its agreement to conduct business with this party on the basis of the purchaser's explicit pledge not to sell LG's DRAMs in the United States. In addition, LGSA officials inspected the purchaser's third-country production facility to confirm that it would consume the LG's DRAMs being acquired and advised the purchaser that it would need to provide documentation that the DRAMs were delivered and consumed in the third country. The documentation LG ultimately required was contemporaneous and included the following: (1) trucking company receipts substantiating the third-country destination of every LG shipment; (2) certification that all DRAMs shipped to the purchaser would not be sold in the customs territory of the United States; and (3) third-country customs entry forms corroborating that all of LG's shipments actually reached the third-country. LG argues that, taken together, the facts show that LG believed reasonably that all of its DRAMs were being received in the third country by the purchaser and that LG was the unsuspecting victim of an elaborate scheme of Customs fraud, a scheme that LG says should be attributed to the third-country purchaser.

LG further argues that it would have been virtually impossible for it to have discovered that any diverted goods were entering the United States. LG notes that the very nature of DRAMs (*e.g.,* small in size, constantly in demand, and capable of being sold and resold quickly in large numbers) encourages diversion schemes. Moreover, LG claims that the DRAMs would have been sold to brokers/distributors. As this is a sizable market, LG observes that it is not surprising that LG did not become aware of the diversions. The company also claims that the Department found no discrepancies in LG's questionnaire response during verification.

LG further argues that, under the law, the Department had no justification for assigning facts available on the basis of the unreported sales since LG had no knowledge of the diversion of these sales. LG states that the Department and the courts under section 772(a) of the Act have held that a producer's sales to a customer outside the United States may be treated as U.S. sales by that producer, rather than as U.S. sales by the reseller, only if the producer had knowledge at the time of the purchase that the sales were for importation into the United States. LG compares the diverted sales in the instant review to the pirated sales the Department excluded from its analyses in *Certain Cut-to-Length Carbon Steel Plate from Ukraine; Final Determination of Sales at Less Than Fair Value,* 62 FR 61754 (November 19, 1997) (''Plate from Ukraine'').

In addition, LG argues that it became aware of the diversion scheme only when the Department informed LG of unreported sales after the preliminary results of review were issued. LG cites similar cases where the respondent gained knowledge of the final destination of the merchandise at the time the merchandise was shipped, not when it had been sold. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium from the Russian Federation,* 60 FR 16440 (March 30, 1995) (''Pure Magnesium from Russia''). The Department excluded these sales from respondent's database.

LG claims that the Department must find that it had actual knowledge that the ''unreported sales'' were for importation into the United States. If actual knowledge is absent, then the Department cannot treat such sales as U.S. sales of the supplier. LG also asserts that the circumstances surrounding these sales (*e.g.,* in-bond shipment outside the U.S. Customs territory) do not support the conclusion that it should have known that the sales were destined for importation into the United States. LG states that these circumstances are in direct contrast to those in the *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China,* 62 FR 27222 (May 19, 1997) (''Persulfates from China'').

Finally, LG argues that the Department may not apply adverse facts available against LG by considering LG to be the exporter of the ''diverted shipments'' just because the Department concludes that the documentation and testimony submitted by LG do not definitively resolve the circumstances surrounding these transactions and the question of liability for these shipments.

Petitioner strongly supports the Department's preliminary decision to use facts available for LG's unreported U.S. sales. Petitioner states that LG had knowledge, or should have had knowledge, that the unreported sales were destined for the United States.

According to petitioner, this is just one of many schemes that LG employed during the POR to produce zero dumping margins when the company actually was selling at less than NV.

Regarding these transactions, petitioner argues that LG sold DRAMs to a U.S. company, ostensibly for sale to a third-country facility. The U.S. parent company of the customer placed the orders, sent the purchase orders, and paid for the merchandise. In contrast to other customers where LG shipped the merchandise to third-country markets directly, this customer, through its broker, took control of LG's DRAMs in the United States. Petitioner notes that instead of requiring in-bond evidence that the merchandise was not imported into the United States for consumption, LG requested documentation to demonstrate that the merchandise had been delivered. Consequently, the last thing that LG knew was that it was shipping DRAMs to the United States. Citing *Persulfates from China,* petitioner asserts that the fact that the merchandise was exported later is immaterial. ''Where there is a direct sale to an unaffiliated purchaser in the United States, there is no issue of knowledge'' *See* 62 FR 27234. Thus, petitioner argues, under the Department's precedent, LG's sales to this purchaser constitute U.S. sales. Even if they are not deemed direct sales, petitioner maintains that LG knew, or should have known, that this merchandise was destined for the United States and that all such sales should be included in the Department's dumping analysis. Petitioner additionally notes that earlier sales made three months before the POR should also be included in the transactions the Department considers since the Department did not have knowledge of this diversion before the third review.

Petitioner further contends that LG's claims are inconsistent. Petitioner notes that LG was selling merchandise to a customer that could be expected to ship the vast majority of its merchandise back to the United States. Petitioner maintains that through its sales network, LG would have detected, or would have been alerted to, sales of its own merchandise in the U.S. market. According to petitioner, it is inexplicable that LG did not check further into this purchaser considering the fact that it was a relatively small company with limited credit making substantial purchases, in cash, before the goods were delivered. Moreover, petitioner argues that the claims that the DRAMs would be used to refurbish old computers are dubious. Petitioner further notes that LG's documentation requirements did not start until months after the sales in question had commenced. In addition, LG's denial of prior knowledge of the principal and other entities involved with these unreported sales does not correspond with the numerous links between LG and those parties. As a result, petitioner claims that LG's presentation of the facts contains too many internal contradictions to be accepted as plausible. Petitioner asserts that, taken together, the facts do not suggest reasonable efforts by a company to ensure that subject merchandise does not enter the United States for consumption, but point to LG as a ''knowing participant'' in these transactions.

Petitioner claims that this record is consistent with information supplied by one of petitioner's employees who described situations in which petitioner's customers have been approached by LG representatives directing them to purchase LG DRAMs in third-countries where LG can offer lower prices than in the U.S. market. Petitioner maintains that these statements make it clear that LG did not care what specific customers did with the merchandise. As a consequence, petitioner dismisses LG's contention that it directed its customers outside the Customs territory of the United States not to resell subject merchandise to the United States and argues that any imports of LG's DRAMs from certain third countries should be deemed to have been sold by LG with the knowledge that the merchandise was destined for the United States.

Regarding LG's verification, petitioner states that the Department simply verified the prices paid to LG. Petitioner notes that the Department's verification report limits the basis of its conclusions that it found no evidence of U.S. sales made through intermediaries to the specific documentation that LG made available to the Department at that time.

In responding to LG's comments, petitioner emphasizes that the Department and the courts have recognized that, absent an admission by the respondent, evidence of actual knowledge may be difficult to obtain. Citing to *INA Walzlager Schaeffler KG v. United States,* 957 F. Supp. 251 (CIT 1997) (''INA 1997''), petitioner states that the court acknowledged that even if respondent denies knowledge of the destination of its sales, the Department may rely on extrinsic sources to determine whether to impute such knowledge. Petitioner argues that, in contrast to LG's self-serving denials, there is substantial evidence on the record that LG knew, or had reason to know, that the sales in question were destined for the United States. Moreover, the claim that LG would not have noticed the large volume of ''diverted sales'' does not comport with market reality. Finally, petitioner notes that consistent with its allegations, the Department found the sales in question to be made at substantially dumped prices.

DOC Position. We agree with petitioner. A full discussion of our final conclusion, which requires references to proprietary information, is included in the LG Analysis Memorandum contained in the official file for this case. Generally, however, we have found that the record evidence concerning unreported sales supports the conclusion that LG knew, or should have known, that at the time it sold the subject DRAMs, the merchandise was destined for consumption in the United States.

With respect to knowledge, we do not agree with LG's contention that the Department may not assign a facts available rate on the basis of the unreported sales since LG had no *actual* knowledge of the diversion of these sales. Numerous court decisions, including those by the U.S. Court of Appeals for the Federal Circuit, have held that the appropriate standard for making this decision is ''knew or should have known at the time of the sale that the merchandise was being exported for the United States.'' *Yue Pak, Ltd. v. United States,* Slip Op. 96–65 at 9 (CIT), *aff'd.* 1997 U.S. App. LEXIS 5425 (Fed. Cir. 1997). *See also Peer Bearing Co. v. United States,* 800 F. Supp. 959, 964 (CIT 1992). These holdings confirm the correctness of the Department's consistent practice in this regard. *See, e.g., Certain Pasta From Italy: Termination of New Shipper Antidumping Duty Administrative Review,* 62 FR 66602 (1997); *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Sulfate From the People's Republic of China,* 60 FR 51255 (1995). While the statute does not indicate the degree of knowledge necessary to find that the producer knew the destination of the merchandise, the courts have stated that even if a respondent denies knowledge of the destination of its sales, the Department may review all facets of a transaction, and based on extrinsic source data, determine that it is appropriate to impute knowledge in a given case. *See INA 1997,* 957 F. Supp. *at* 265.

In the matter of these unreported sales, we note that LG essentially dealt with a U.S. company. When shipping

the merchandise, LG took no steps itself to ensure that when the merchandise was delivered to the United States, it was subsequently placed under Customs bond and transported to a third country, clearing Customs upon export from the United States. What the record shows is that LG sold an enormous amount of DRAMs to a very small company and turned the merchandise over to the customer in the United States. Consequently, in contrast to such cases as *Plate from Ukraine* and *Pure Magnesium from Russia*, LG only knew for certain that it was shipping DRAMs into the United States.

Moreover, this is not a situation where an exporter sells and ships a relatively small amount of subject merchandise to a third country and then, sometime much later, the customer reexports the merchandise to the United States. In this case, we are confronted with a staggering amount of merchandise that is being shipped by LG directly to the United States. The merchandise is subsequently being entered for consumption into the United States within days, if not hours, of it leaving the possession of LG.

The relative size and nature of the purchaser's operations and the quantity of acquisitions it made are germane to this case in several respects. The amount of purchases this customer made are not modest. In fact, the entered value of these transactions was quite large. However, based on LG's description of the purchaser's operations, it is clear that this party was not equipped to absorb such a vast amount of DRAMs. In particular, LG should have known that the purchaser was buying more DRAMs than it reasonably could consume in the manufacture of modules or the refurbishment of computers and printers. Furthermore, the amounts the customer purchased were so enormous they had to appear inconsistent with the size of the third-country DRAM markets in question. Moreover, as petitioner points out, this customer could be expected to sell the vast majority of its merchandise to the United States. Consequently, not only was it reasonable to assume that this firm would sell some or all the subject merchandise that it purchased, but that it would sell the merchandise to the United States.

In summary, based on the nature and characteristics of these transactions, we conclude that LG knew, or should have known, that the merchandise was destined for the United States. Considering the above, and as more fully described in the above-mentioned agency memorandum, the Department has decided to include the unreported sales during the POR in the analysis conducted of LG's sales for these final review results. *See* the Facts Available section of this notice for a discussion of the facts available that were applied in the case of LG.

Concerning the other evasion allegations that petitioner has made with respect to LG, we have determined that the information is not sufficient to warrant further action during this POR.

Comment 2: Identifying All Comparable HM Sales Before Using Constructed Value

LG argues that the Department did not implement the *Cemex* decision properly in its calculations for the preliminary review results. Therefore, LG submitted programming language that would allow the Department to use its concordance database in accordance with the *Cemex* decision.

Petitioner states that no programming changes are necessary.

DOC Position. We agree with LG and have corrected our calculations for these final review results so that we use the appropriate product comparisons if the first-choice comparison product fails the cost test.

Comment 3: HM Indirect Selling Expenses

LG contends that the Department did not take HM indirect selling expenses (''DINDIRSU'') into account for U.S. sales in the calculation of overall profit for the CEP-profit adjustment.

DOC Position. We agree and have corrected our calculations to include HM indirect selling expenses in the calculation of the CEP-profit adjustment for these final review results.

Comment 4: Credit Expenses and Inventory Carrying Costs

LG asserts that the Department added imputed credit expenses (''CREDITCV'') and inventory carrying costs (''INVCARCV'') erroneously in the calculation of CV, contending that these variables should be deducted from CV, rather than added to CV, to offset for imputed expenses that are deducted from the U.S. price to which CV is compared.

Petitioner says LG is mistaken when it argues that imputed selling expenses should not be included in revised total CV. Because the Department had already deducted these expenses, the petitioner contends that imputed expenses are no longer built into CV and, therefore, imputed expenses cannot be removed from CV when they were not originally included in CV.

DOC Position. We agree with LG and have corrected our calculations to eliminate the inclusion of imputed selling expenses in CV. We also agree with LG that we should continue to deduct these expenses from CV when comparing it to U.S. price to offset for imputed expenses that are deducted from the U.S. price to which CV is compared.

Comment 5: CEP-Offset Adjustment for CV Comparisons

LG maintains that, for CV comparisons, the Department inadvertently set the HM indirect selling expenses that are used in the CEP offset equal to zero. These expenses are represented by the variables ISELCV and INVCARCV.

Petitioner argues that the Department should not deduct INVCARCV from CV since they were not included in CV.

DOC Position. We agree with LG and have adjusted our calculations accordingly. *See also DOC Position* to *LG-Specific Comment 4* regarding the CV deductions.

Comment 6: Packing

LG states that the Department double counted U.S. packing cost in the calculation of CV. LG also argues that the Department used U.S. repacking cost twice in the margin calculation.

DOC Position. We agree with LG and have changed our calculations to account for the double-counting of packing and repacking.

Comment 7: CV Selling Expenses Based on Density

LG argues that the Department should calculate CV selling expenses based on density since higher-density products such as modules have a relatively higher sales value and should carry a proportionately higher share of selling expenses.

DOC Position. We do not agree with LG that we should have calculated selling expenses for CV based on density. The selling expenses in CV are not allocated on a model-, category-, or, in this case, density-specific basis. For this cost factor, it is the Department's practice to use the average selling expenses of the foreign like product sold in the selected comparison market. The foreign like product in this instance encompasses all DRAMs subject to the order, not specific densities of DRAMs. As we stated in the final results of the prior review, in this case we base the calculation of average selling expenses on the quantity of foreign like product sold. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of*

Korea: Final Results of Antidumping Duty Administrative Reviews and Notice of Intent Not to Revoke Order, 62 FR 39809 (July 24, 1997). Therefore, for these final review results, the Department has calculated the selling expenses for CV based on the number of units of subject merchandise sold in the HM.

Comment 8: CV-Profit Rate

Petitioner argues that the Department erred when it calculated CV profit on a different basis than that to which it applied CV profit. According to petitioner, the HM net prices the Department compared to COP to establish CV profit included all selling and packing expenses, but the Department applied this profit figure to costs which did not include selling and packing expenses.

LG disputes petitioner's allegation that the Department should apply the CV-profit rate to a COP that includes selling expenses and packing.

DOC Position. We agree with petitioner. For these final review results, we have corrected our calculations to ensure that we calculate and apply the CV-profit rate on a consistent basis.

Comment 9: Duty Drawback

Petitioner argues that, in calculating CEP profit, the Department should have subtracted duty drawback, not added it to, from movement expenses.

LG maintains that, with respect to the CEP-profit calculation, the Department should have added duty drawback to total revenue, not subtract it from movement expenses.

DOC Position. We agree with LG. Duty drawback is an adjustment to revenue, not an expense. Consequently, it is not relevant to the movement expenses. For the CEP-profit calculation in these final review results, we have added duty drawback to revenue.

Comment 10: Margin Calculation for the Diverted Third-country Sales

LG states that the Department should correct a number of errors it made in the third-country ''diverted'' sales margin calculation. First, LG argues that the Department should correct the following errors regarding invoices: (1) use price information from the altered invoices; (2) delete a duplicate invoice; (3) delete an invoice without a proper corresponding entry summary (*i.e.*, outside the POR); and (4) correct typographic errors in quantities and dates. Second, LG also argues that the Department did not assign proper control numbers based on the product code in its calculations. Third, LG argues that the Department's program failed to assign cost data to the diverted third-country sales. Fourth, LG asserts that the Department did not identify proper comparison products for the diverted third-country sales. Fifth, LG states that the Department should have assigned weighted-average selling expenses based on control numbers, not product-code numbers. Finally, LG claims that, if there are no CEP sales of the identical control number, then the Department must assign selling expenses and costs based on the next most similar product.

Petitioner argues that the Department should apply adverse facts available to the diverted third-country sales. Petitioner also argues that the U.S. sales of the non-responding company, Techgrow, should be included in the pool of LG's sales the Department uses to calculate the margin. If, however, the Department uses the same margin calculation methodology that it used in the preliminary review results, then petitioner urges the use of the average selling expenses for all reported sales to establish the selling expenses of the unreported sales when the sale of identical products have not been reported. Finally, petitioner argues that the Department should use the unit prices actually paid to LGSA and not the gross unit prices listed in the LGSA invoices attached to Customs entry summaries. Since the former represent the amount ultimately paid, the petitioner contends that they are best evidence of the actual sales price.

DOC Position. We agree with petitioner that we should use the unit prices actually paid to LGSA, not the gross unit prices listed in the LGSA invoices attached to the Customs entry summaries we received. The invoices attached to the Customs entry summaries do not reflect the total price adjustments that LG credited to the customers account for these unreported sales. We also agree, in part, with certain corrections that LG asked us to make. We deleted any duplicate invoices and any invoices that were dated outside the POR, and we corrected any typographical errors in the quantity and date fields of the unreported sales. We also assigned cost data to all unreported sales and made corrections to our calculations to ensure that we used proper comparison models for all unreported sales. However, regarding facts available, we did not assign weighted-average selling expenses to the unreported sales based on control number as LG suggested. Because some of the unreported sales involved product codes that had not been part of LG's questionnaire response, we did not have control numbers for these transactions. As we are applying adverse facts available to LG's unreported sales, we used instead the highest reported selling expenses from reported transactions involving identical products. Where there were no reported transactions involving identical merchandise, we used the highest U.S. selling expenses from sales that LG reported of the same density. Where we used CV and no quarterly cost data was available for the quarter in which the unreported sale took place, we used the highest CV from the remaining available quarters. *See* LG Analysis Memo.

Regarding Techgrow, we disagree with petitioner's argument that Techgrow's U.S. sales should be included in the pool of LG's sales used to calculate LG's margin because there is no information on the record of this review to support petitioner's contention. Therefore, we have not included Techgrow's sales in LG's margin calculation.

C. MultiTech

Comment 1: Automatic-Assessment Rate

MultiTech states that, if LG neither knew nor should have known that the destination of the unreported sales was the United States, then the Department must attribute the sales of such merchandise to an independent third-country reseller. Additionally, MultiTech argues that the Department cannot conduct a review of the independent third-country reseller's sales since a review was not timely requested. In the absence of a request for review, the Department, according to MultiTech, must liquidate all entries of the merchandise attributed to the third-country reseller and assess the antidumping duties on the basis of the amount equal to the cash deposited at the time of entry as required under the automatic-assessment provision in section 353.22 of the Department's regulations. Therefore, MultiTech maintains that the appropriate antidumping duty rate for the third-country reseller is LG's cash deposit rate of zero percent established during the third POR.

As noted above, LG states that it had no involvement in, or knowledge of, an evasion of the antidumping law. In addition, LG argues that the Department is not permitted to treat any diverted shipments as U.S. sales by LG. However, LG contends, the Department has lawful discretion to assess appropriate antidumping duties against the party that imported the goods into the United States. LG maintains that any antidumping duties which are due on

these sales must be assessed based on the actual exporter of the subject merchandise and the antidumping duties must be collected by the U.S. Customs Service from the actual importer.

Petitioner contends that it requested an administrative review of all subject merchandise produced by LG and either entered in, sold in, or sold to the United States during the period under review. With respect to such entries and sales, petitioner argues that the automatic-assessment provision is inapplicable because this provision is only applicable to merchandise not covered by the request. Petitioner notes that the Department's practice in previous DRAM reviews has been to apply the producer's dumping margin to all entries of merchandise produced by that company. As such, in these reviews petitioner contends the Department will instruct Customs to assess antidumping duties on DRAMs from Korea on the basis of the producer of the merchandise. According to the petitioner, the Department did not limit those instructions to entries that were exported to the United States by or on behalf of the producer or an affiliate, nor were the instructions dependent on a finding that a shipment to the United States through an unaffiliated reseller was made pursuant to a sale from the producer with knowledge that the goods were destined for the United States. Petitioner also notes that the Department has issued broad instructions to Customs which require the assessment of antidumping duties on Korean DRAMs manufactured by Korean producers, but imported from fifteen other countries, without regard to identity of the exporter or reseller.

DOC Position. This issue is moot since we have attributed the sales in question to LG. *See also DOC Position* to *LG-specific Comment 1* regarding LG's claims.

D. Techgrow

Petitioner states that Techgrow has significantly impeded this review. Petitioner asserts that Techgrow's failure to cooperate and submit a verifiable questionnaire response warrants an adverse inference. Petitioner notes that the Department requested that Techgrow supplement its response by reporting sales made from its U.S. affiliate, but the U.S. affiliate declined to respond, and, subsequently, Techgrow withdrew from further participation in this review. Moreover, petitioner contends, the Department has rewarded Techgrow for non-participation by assigning Techgrow a rate of 12.64 percent, the same rate as assigned to Hyundai. As argued by petitioner, this rate is lower than the rate Techgrow would have received had it cooperated with the Department.

Petitioner alleges that Techgrow's sales in the HM were made at prices below LG's COP. As part of this allegation, petitioner calculated a margin based on (1) a comparison of Techgrow's HM prices to LG's COP, and (2) a comparison of Techgrow's NV to Techgrow's sales to its U.S. affiliate. The petitioner states that the margin it calculated was substantially higher than the 12.64 percent the Department assigned to Techgrow in the preliminary results. Petitioner also contends that, if Techgrow had cooperated in this review, even with adjustments for both CEP and NV, the margin would have been far greater than 12.64 percent. Therefore, petitioner recommends that, as facts available, Techgrow must be assigned the margin that results from a comparison of NV based on CV with Techgrow's reported U.S. sales prices. Petitioner states that this information must be considered fully corroborated since it consists of LG cost data that has been subject to verification and U.S. sales data submitted by Techgrow. In its arguments on behalf of these calculated margins, petitioner cites the SAA (at 870) which states:

> In conformity with the Antidumping Agreement and current practice, new section 776(b) permits Commerce and the Commission to draw an adverse inference where a party has not cooperated in a proceeding * * * Commerce and the Commission may employ adverse inferences about the missing information to insure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation. Information used to make an adverse inference may include such sources as the petition, other information placed on the record, or determinations in a prior proceeding regarding the subject merchandise.

Petitioner also cites *Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789, 793 (CIT 1993) for the proposition that the Department may depart from its standard facts-available methodology on a case-by-case basis as the circumstances warrant. Petitioner also cites *Silicon Metal From Argentina; Final Results of Antidumping Duty Administrative Review*, 58 FR 65336, 65338 (December 14, 1993) as an example of a case where the Department used CV information developed by petitioner and applied it to respondent's sales information to derive respondent's dumping margin. In this case, the Department stated:

> * * * The primary purpose of the BIA rule is to induce respondents to provide the Department with timely, complete, and accurate factual information, so that the agency can achieve the fundamental purpose of the Tariff Act, namely, ''determining current [dumping] margins as accurately as possible''* * * A secondary purpose is to ensure that the antidumping duties assessed are not less than the actual amounts might have been, had we received full and accurate information.

DOC Position. We agree with the petitioner, in part. Techgrow's refusal to participate further in this review significantly impeded a determination under the antidumping statute. Moreover, as we explained earlier in this notice, we have assigned an adverse facts-available rate to Techgrow. *See* section entitled ''Application of Facts Available''. However, we disagree with petitioner's assertion that, as a result, Techgrow obtained a more favorable rate than it would have received had it cooperated fully.

Petitioner's calculations are based on assumptions and substantially incomplete data. Techgrow's response, for example, did not contain information pertaining to its sales to unaffiliated purchasers in the United States. Therefore, petitioner's calculations are based on transfer prices between Techgrow and its U.S. affiliate, figures which are not relevant to the calculation of a dumping margin. Moreover, the rate Techgrow received is clearly adverse when considered in the context of this proceeding. As mentioned earlier, we have assigned Techgrow the highest company-specific margin calculated in the history of this proceeding. Consequently we have continued to apply LG's rate as facts available to Techgrow for these final review results.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period May 1, 1996 through April 30, 1997:

Manufacturer/exporter	Margin (percent)
Hyundai Electronics Industries, Co	3.95
LG Semicon Co., Ltd	9.28
Techgrow Limited	9.28
Vitel Electronics	9.28

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the

percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. These final results of review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty-assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a) of the Act: (1) for the companies named above, the cash deposit rate will be the rate listed above (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results which covered that manufacturer or exporter; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results which covered that manufacturer; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 3.85 percent, the all others rate established in the LFTV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this in accordance with section 751(i) of the Act.

Dated: September 8, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–25434 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon from Norway; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping order on fresh and chilled Atlantic salmon from Norway. Based on this information, we preliminarily determine that Kinn Salmon AS is the successor-in-interest to Skaarfish Group AS for purposes of determining antidumping liability.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195.

SUPPLEMENTARY INFORMATION:

The 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 to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations, codified at 19 CFR part 351, April 1998.

Background

On April 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 14920) an antidumping duty order on fresh and chilled Atlantic salmon from Norway. On March 2, 1998, Kinn Salmon AS (Kinn) submitted a letter stating that Kinn is the successor-in-interest to Skaarfish Group AS (Skaarfish), and that Kinn should receive the same antidumping duty treatment as is accorded Skaarfish.

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called ''king'' or ''quinnat''); Coho (''silver''); Sockeye (''redfish'' or ''blueback''); Humpback (''pink''); and Chum (''dog''). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Initiation and Preliminary Results of Review

In a letter dated March 2, 1998, Kinn advised the Department that on July 1, 1997, the former Skaarfish reorganized to form two firms, Skaarfish Pelagisk AS and Kinn Salmon AS. The salmon activities of Skaarfish including processing, marketing and exporting were transferred to Kinn Salmon AS. Skaarfish Pelagisk AS oversees the processing, marketing and exporting activities of all other types of fish. Kinn stated that its operations are a direct continuation of the salmon related activities performed by Skaarfish. While the board of directors has changed, the officers and management of Kinn are

virtually identical to the officers and management of Skaarfish. Kinn stated that the address, telephone numbers and telefax numbers are the same as those of Skaarfish. Furthermore, it operates the same facilities in Floro, Norway that were operated by Skaarfish for the processing of salmon and conducts business operations at the same executive offices used by Skaarfish. It provided documentation showing that the customer list for Kinn and the supplier list to Kinn is the same as the customer and supplier lists for Skaarfish. Kinn submitted a copy of The Certificates of Registration of Skaarfish, Skaarfish Pelagisk AS, and Kinn Salmon AS.

Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed circumstances review to determine whether Kinn is the successor-in-interest to Skaarfish for purposes of determining antidumping duty liability. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See*, e.g., *Brass of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (Canadian Brass). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of its predecessor. *See*, e.g., *Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994) and Canadian Brass. This, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We preliminarily determine that Kinn Salmon AS is the successor-in-interest to Skaarfish Group AS. Skaarfish Group AS has reorganized to form two firms Skaarfish Pelagisk AS and Kinn Salmon AS. Kinn's management is virtually identical to Skaarfish's. Kinn's business operation, with respect to the subject merchandise are identical to the salmon operations of Skaarfish. Kinn's production facilities are unchanged as are its customer and supplier lists. Thus, Kinn Salmon AS should receive the same antidumping duty treatment as the former Skaarfish Group AS, i.e., a 2.30 percent antidumping duty cash deposit rate.

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than 30 days after date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, are due five days after the case brief deadline. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.309. The Department will publish the final results of the changed circumstances review including the results of any such comments.

This initiation of review, preliminary results of review and notice are in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: September 15, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–25436 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Iron Construction Castings From Canada: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order: Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order: Correction.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Wendy Frankel, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5346/5849, respectively.

Correction

The Department of Commerce (the Department) inadvertently referenced incorrect Harmonized Tariff Schedule (HTS) numbers in the scope of the order and new scope of the order sections in the notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of the antidumping duty order pertaining to iron construction castings from Canada (63 FR 49687, September 17, 1998). Due to revisions in the HTS, the HTS no longer classifies merchandise covered by the order under item numbers 8306.29.0000 and 8310.00.0000. Furthermore, also due to revisions in the HTS, the HTS now classifies heavy castings (as defined by the scope of the order) under item number 7325.10.0010, and classifies light castings (as defined by the scope of the order) under item number 7325.10.0050.

Pursuant to the Department's regulations at 19 CFR 351.224(e), we correct the scope of the order and new scope of the order sections in the above-referenced notice to read as follows:

Scope of the Order

The merchandise covered by the order consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item number 7325.10.0010; and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, classifiable as light castings under HTS item number 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

New Scope of the Order

The merchandise covered by the order consists of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item number 7325.10.0010. The HTS item number is provided for convenience and Customs purposes only.

The written description remains dispositive.

Dated: September 17, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–25438 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Adminstration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On February 27, 1998, the Department of Commerce published in the **Federal Register** (63 FR 10002) the notice of initiation of the administrative review of the antidumping duty order on potassium permangante from the People's Republic of China. We are terminating this review as a result of the timely withdrawal by Zunyi Chemical Factory, Guizhou Province Chemicals Import & Export Corp., and Wego Chemical & Mineral Corp. of their combined request for the review. These were the only interested parties that requested this review.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION: On June 3, 1996, Zunyi Chemical Factory, Guizhou Province Chemicals Import & Export Corp., Wego Chemical & Mineral Corp, (Zunyi/Guizhou/Wego) interested parties, requested an administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China for the period January 1, 1997 through December 31, 1997, pursuant to 751(1)(B) of the Tariff Act of 1930 as amended by the Uruguary Round Agreements Act. On February 27, 1998, the Department of Commerce published in the **Federal Register** (63 FR 10002) the notice of initiation of that administrative review. Zunyi/Guizhou/Wego withdrew their request for review on April 16, 1998, pursuant to 19 CFR 351.213(d)(1). There were no other requests for this review. As as result, the Department of Commerce is rescinding this review. This notice is published in accordance with section 351.213(d)(1) of the Department's regulations (19 CFR 351.213(d)(1)).

Dated: April 30, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–25435 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 18, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of administrative review of the antidumping finding on pressure sensitive plastic tape (PSPT) for Italy. The review covers one manufacturer/exporter of the subject merchandise shipped to the United States during the period October 1, 1996, through September 30, 1997. We did not receive any comments on the preliminary results. Therefore, the dumping margins for the reviewed companies are unchanged from the preliminary results.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the prelimary results of this review on June 18, 1998 (63 FR 33350). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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 to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citation to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Scope of the Review

Imports covered by the review are shipments of PSPT measuring over 1⅜ inches in width and not exceeding 4 mils in thickness. During the period of review (POR), the above described PSPT was classified under HTS subheading 3919.90.20 and 3919.90.50. The HTS subheading are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Final Results of Review

The Department received no comments on its preliminary result. Therefore, the margins from the preliminary results have not changed for the final result of review.

Manufacturer/Exporter	Margin (percent)
N.A.R. S.p.A.	12.66

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions for each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 12.66 percent, the ''new shipper'' rate established in the first notice of final results of administrative review published by the Department (48 FR 35686, August 5, 1983).

These deposits requirements, when imposed, shall remain in effect until

publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1)(B) and 777(i)(1) of the Act.

Dated: September 15, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–25437 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071798F]

Receipt and Availability of Applications for Permits to Allow Incidental Take of Threatened and Endangered Species by The Pacific Lumber Company and its Subsidiaries, Scotia Pacific Holding, L.L.C., and Salmon Creek Corporation, on Lands in Humboldt County, California

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of extension of comment period; request for public comment on Potential incidental take permit provisions and draft habitat conservation plan errata.

SUMMARY: As announced in the Federal Register on July 14, 1998, the Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) requested comments on the applications for permits to allow incidental take of threatened and endangered species submitted by the Pacific Lumber Company and its Subsidiaries, Scotia Pacific Holding, L.L.C., and Salmon Creek Corporation (collectively, the Companies), on lands in Humboldt County, California, including the associated draft Habitat Conservation Plan (HCP) and draft Implementation Agreement (IA) on or before October 13, 1998. By this Notice, the Services announce an extension of the public comment period on the permit applications, including the draft HCP and IA, and invite public comment on new provisions which may be included in incidental take permits that may be issued to the Companies, and provide information clarifying language in the July 1998 draft HCP.

DATES: Written comments on the permit applications, draft HCP and draft IA must be received on or before November 16, 1998.

ADDRESSES: Comments regarding the application, including the draft HCP and IA, should be addressed to Mr. Bruce Halstead, Fish and Wildlife Service, 1125 16th Street, Room 209, Arcata, California 95521-5582. Written comments may be sent by facsimile to (707) 822-8411. Please refer to permit number PRT-828950 and number 1157 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Halstead, Fish and Wildlife Service, (707) 822-7201, or Mr. Craig Wingert, National Marine Fisheries Service,(562) 980-4020.

SUPPLEMENTARY INFORMATION: The Companies have applied to the Services for incidental take permits pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (Act). The federally listed species for which the Companies have requested permits are the northern spotted owl, marbled murrelet, American peregrine falcon, bald eagle, western snowy plover, and coho salmon. The Companies have also requested inclusion in the permits of thirty currently unlisted species, which could be listed in the future under the Act. A draft HCP and draft IA were submitted to the Services as part of the permit applications. The draft HCP covers approximately 211,700 acres of the Companies' lands in Humboldt County, California. By a **Federal Register** Notice dated July 14, 1998 (63 FR 37900), the Services announced the availability of the permit applications, including the draft HCP and IA for public review and solicited comments on the documents for a 90-day period ending on October 13, 1998. The Services are required to comply with the National Environmental Policy Act (NEPA) in determining whether to issue incidental take permits and, in cooperation with the California Department of Forestry and Fire Protection, are in the process of preparing a joint Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) on the permit applications and related Federal and state actions.

By this Notice, the Services are extending the public review and comment period on the permit applications, including the draft HCP and IA, to November 16, 1998. It is anticipated that the close of the public comment period on the soon to be released Draft EIS/EIR on the Headwaters Project will close on the same date. A **Federal Register** Notice announcing the availability of the Draft EIS/EIR for public review is expected in early October. Should the deadline for comments on the draft EIS/EIR be later than November 16, the comment period on the permit application also will be extended.

By this Notice, the Services also advise the public that the agencies are considering additional provisions for inclusion in the incidental take permits that may be issued to the Company. These provisions, which are summarized below, are included in legislation regarding the Headwaters Forest and HCP (Assembly Bill 1986) recently passed by the California State legislature and currently waiting signature by the Governor. The full text of Assembly Bill 1986 may be obtained through the California Environmental Resources Evaluation System (CERES) website at http://www.ceres.ca.gov/ and through the Fish and Wildlife Service website at http://www.r1.fws.gov/text/species.html.

The California legislation appropriates monies to the state Wildlife Conservation Board to fund the State's share of the cost of acquiring approximately 7,500 acres of private forest lands, including the Headwaters Forest, in furtherance of an Agreement signed by the United States, the State of California, The Pacific Lumber Company, and its corporate parent on September 28, 1996. Like counterpart legislation passed by Congress (Pub. L. 105–83) in November 1997 to fund the Federal government's share of the cost of acquiring the forest lands, Assembly Bill 1986 provides that, among other things, incidental take permits covering the Companies' lands must be issued

before the appropriation becomes effective.

The state legislation further conditions the expenditure of state funds for acquisition of the Headwaters Forest and adjacent lands on the inclusion of several provisions in the final HCP intended to strengthen protections for threatened and endangered species. Those provisions include the following:

(1) Establishment of a 100–foot no-cut buffer on each side of each Class I watercourse until, following completion of a watershed analysis that has been reviewed by the Services, site specific prescriptions for the watercourse have been established by the Fish and Wildlife Service or National Marine Fisheries Service and implemented by the Companies;

(2) Establishment of a 30–foot no-cut buffer on each side of each Class II watercourse until, following completion of a watershed analysis that has been reviewed by the Services, site specific prescriptions for the watercourse have been established by the Fish and Wildlife Service or National Marine Fisheries Service and implemented by the Companies;

(3) A requirement that the restrictions applicable to all Class I, II and III watercourses contained in the January 7, 1998, document entitled ''Corrected Version Draft - Interagency Federal-State Aquatic Strategy and Mitigation for Timber Harvest and Roads for the Pacific Lumber Company'' (located in the draft HCP in Volume 4, part D, section 3, under the heading ''Default Strategy for Lands not Assessed through Watershed Analysis'') remain in effect until, following completion of a watershed analysis for each watercourse that has been reviewed by the Services, site specific prescriptions for the watercourse have been established by the Fish and Wildlife Service or National Marine Fisheries Service and implemented by the Companies;

(4) A requirement that the site specific prescriptions established by the Fish and Wildlife Service or National Marine Fisheries Service result in no-cut buffers of not less than 30 feet and not more than 170 feet on each side of each Class I and Class II watercourse, except that no-cut buffers of less than 30 feet on Class II watercourses (but no less than allowed under the draft HCP) may be established where either of the Services determines a smaller buffer would benefit aquatic habitat or species;

(5) Development of a peer review process by the Services, in consultation with the Department of Forestry and Fire Protection, the North Coast Regional Water Quality Control Board and the Department of Fish and Game, to evaluate on a spot-check basis the analyses and prescriptions developed through the watershed analysis process;

(6) Establishment of a schedule that results in completion of the watershed analysis process in five years;

(7) A prohibition on timber harvesting, including salvage logging and other management activities detrimental to the marbled murrelet and marbled murrelet habitat within the Marbled Murrelet Conservation Areas identified in the draft HCP for the life of the incidental take permits as defined in the February 27, 1998, document entitled ''Pre-Permit Application Agreement in Principle'';

(8) A 5-year moratorium on timber harvesting, including salvage logging and other management activities within the Grizzly Creek Marbled Murrelet Conservation Area to provide an opportunity for the purchase and permanent protection of the area;

(9) Inclusion of conditions on road-related activities that, on balance, are no less protective of species and habitat than the provisions contained in the Pre-Permit Application Agreement in Principle; and

(10) A requirement that the Companies submit each timber harvesting plan (THP) covering lands included in the HCP to the Services for review and comment and a finding that the THP is consistent with the final HCP at least 30 days prior to the earliest possible date of the THP's approval by the Department of Forestry and Fire Protection.

Under the legislation, expenditure of the funds appropriated for acquisition of the Headwaters Forest and adjacent lands also requires that the final HCP be no less protective of aquatic or avian species than the draft HCP as amended by the conditions in the state legislation.

Assembly Bill 1986 appropriates, conditioned on issuance of the incidental take permits and approval of the Sustained Yield Plan (SYP), additional funding for the future purchase of the Owl Creek and Grizzly Creek Marbled Murrelet Conservation Areas and, to the extent funds are available, purchase of tracts known as the ''Elk River Property''and forest land within the Mattole River watershed. These purchases would not be a component of the HCP, incidental take permits, or SYP. The state legislation also appropriates an additional $15,000,000 in economic assistance to Humboldt County conditioned on the approval of the incidental take permits and SYP.

Because the provisions of the state legislation identified in numbered paragraphs 1 through 10 above are being considered for inclusion in a final HCP and any incidental take permits that may be issued, the Services invite public comment on the provisions. The provisions will also be analyzed in the Draft EIS/EIR scheduled to be released for public review and comment in early October 1998.

Draft Habitat Conservation Plan Errata

Several inaccurate statements have been identified in the Pacific Lumber Company's Public Review Draft, Sustained Yield Plan/Habitat Conservation Plan, dated July, 1998. These statements describe the effects of the action as proposed by the Pacific Lumber Company at that time. Corrections are needed to provide an accurate portrayal of that proposal. The corrections detailed below relate to the description of the action as proposed in the July 1998 Public Review Draft.

The following corrections or clarifications are needed within the Marbled Murrelet Habitat Conservation Plan, Volume IV, Part B, and within the Summary, Volume I, Part G.3.

1. Correction of erroneous statement regarding protected acreage of residual timber stands.

In Volume IV, Part B, page 1, last paragraph, the next to the last sentence should be replaced with the following sentence: *A substantial amount (at least 3,300 acres, 27%) of the lower density residual* old growth will not be available for harvest.

The original sentence in the Public Review Draft contained two errors. The errors derived from direct incorporation of language provided by Thomas Reid & Associates in page 2 of a memorandum to members of the Marbled Murrelet Recovery Team, dated June 5, 1998. That memorandum is attached to the HCP/SYP at Volume IV, Part B, Section 14. As a result of a typographical error, the word ''not'' was omitted from a corresponding sentence in that memorandum. Also, the amount of residual old-growth that would be protected was incorrectly calculated.

2. Clarification regarding aggregate and protected acreages for MMCAs.

In the Public Review Draft HCP, 12 separate MMCAs are aggregated into 8 contiguous areas, one of which would be harvested under the provisions of the HCP (either Owl Creek or Grizzly Creek, see e.g., paragraph 4, Volume IV, Part B, Page 1). In aggregate, all 8 of the contiguous MMCAs comprise approximately 8,500 acres. This number is reported in Volume I, Part B, at two locations on page 24: the last sentence of the 4th paragraph, and the first sentence of the sixth paragraph. It also is reported in Volume IV, Part B, Section 9.a, page 31; and on page 35 in the last sentence of the first paragraph under Section II. It is also reported the Summary, Volume I, page 50, in the last sentence of the first paragraph under Section d.

For clarification, it should be understood that while the MMCAs in aggregate would

total approximately 8,500 acres, either the Owl Creek MMCA or the Grizzly Creek MMCA would be harvested, and thus, total acreage protected within the remaining MMCAs would actually amount to approximately 7,500 acres (i.e., if the Owl Creek MMCA were harvested total MMCA protection will be 7,586 acres), not 8,500 acres.

Similarly, total acreage of Headwaters Reserve and MMCAs would equal approximately 15,000 acres, not 17,000 acres, as stated in Volume IV, Part B, in the final sentence on page 1, and on page 31, sec. 9.a, second sentence. This error also emanates from the Reid memo to members of the Recovery Team dated June 5, 1998, attached to the HCP at Volume IV, Part B, Section 14. The total had been incorrectly calculated.

Dated: September 9, 1998.

Anne C. Badgley,

Acting Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

Dated: September 14, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–25459 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091798B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: A meeting of the RFSAP will be held beginning at 1:00 p.m. on Monday, October 5, 1998 and will conclude by 12:00 noon on Thursday, October 8, 1998.

ADDRESSES: The meeting will be held at the NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RFSAP will meet to review a stock assessment on the status of the red snapper stock in the Gulf of Mexico prepared by the NMFS.

Based on its review of the red snapper stock assessment, the RFSAP will recommend a range of allowable biological catch (ABC) for 1999, and may recommend management measures to achieve the ABC. In addition, the RFSAP will review the scientific information behind selection of specific values for the red snapper control rule parameters. These parameters will be used by the Council to define new criteria for establishing overfishing and overfished thresholds, and a rebuilding schedule that complies with new provisions of the Magnuson-Stevens Fishery Conservation and Management Act for preventing overfishing and rebuilding overfished stocks that were incorporated into the Act in 1996.

The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. They advise the Council on the status of stocks and, when necessary, recommend a level of ABC needed to prevent overfishing or to effect a recovery of an overfished stock. They may also recommend catch restrictions needed to attain management goals.

The conclusions of the RFSAP will be reviewed by the Council's Standing and Special Reef Fish Scientific and Statistical Committee (SSC) and by the Red Snapper Advisory Panel (RSAP) at meetings to be held in early November. The Council will set a 1999 red snapper total allowable catch (TAC) and associated management measures at its meeting in Galveston, TX on November 9–12, 1998, based on the recommendations of the RFSAP, SSC, and public testimony that will be taken at the Council meeting.

Although other issues not contained in this agenda may come before the RFSAP for discussion, in accordance with the MagnusonStevens Fishery Conservation 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.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 28, 1998.

Dated: September 18, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–25458 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091798D]

Mid-Atlantic Fishery Management Council (MAFMC); 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 its Executive Committee, Information and Education Committee, and Comprehensive Management Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, October 6, 1998 to Thursday, October 8, 1998..

ADDRESSES: This meeting will be held at the Holiday Inn Philadelphia International Airport, 45 Industrial Highway, Essington, PA, telephone 610–521–2400.

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: On Tuesday, October 6, the Information and Education Committee will meet from 11:00 until noon. The Comprehensive Management Committee will meet from 1:00–3:00 p.m. Council will meet from 3:00–5:00 p.m. On Wednesday, October 7, the Executive Committee will meet from 8:00–9:00 a.m. The Committee Chairmen will meet from 9:00–10:00 a.m. Council will meet from 10:00–11:00 a.m. Council will meet, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board from 11:00 until noon. Council will meet with the ASMFC Bluefish Board from 1:00–5:00 p.m. On Thursday, October 8, the Council will meet from 8:00 a.m. until noon.

Agenda items for this meeting are: Adoption of Amendment 1 to the

Bluefish Fishery Management Plan (FMP) for Secretarial submission; adoption of Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP, Amendment 12 to the Surfclam and Ocean Quahog FMP, and Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP for Secretarial submission; possible review and comment on monkfish, whiting, New England groundfish, herring, lobster, and scallop management measures; discussion of the 1998 *Illex* quota; discussion and possible recommendations on ICCAT recommendation on member nation compliance for large pelagics; hear committee reports and other fishery management matters.

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 Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

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 Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 18, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–25457 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082798D]

North Pacific Fishery Management Council; Public Meeting; Correction

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

ACTION: Clarification and Correction to a public meeting notice.

SUMMARY: The agenda for the meetings of the North Pacific Fishery Management Council's (Council) plenary session was published in the **Federal Register** on September 4, 1998. This document contains a clarification to the summary and an addition to the previously published agenda.

DATES: The meetings will be held on October 7–12, 1998.

ADDRESSES: The meetings will be held at the Doubletree Hotel-Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98118.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

SUPPLEMENTARY INFORMATION: The initial agenda was published in the **Federal Register** on September 4, 1998 (63 FR 47269). The following corrections are made:

On page 47269, under **SUMMARY,** add the following paragraph after the first sentence to read as follows:

''During their fishery management report to the Council, NMFS will report on ongoing Section 7 consultations on the inshore/offshore pollock fisheries in the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA), and on the BSAI Atka mackerel fisheries. NMFS will also report their progress on development of a Supplemental Environment Impact Statement for the BSAI and GOA groundfish fisheries.''

One page 47270, in the first column, insert agenda 16, after agenda 15, and agenda 16 is correctly added to read as follows:

''16. The Council will review Congressional action (Senate bill 1221) regarding pollock allocations in the Bering Sea/Aleutian Islands and determine what Council actions are necessary.''

All other information previously published remains unchanged.

Dated: September 18, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–25455 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091798C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Total Catch Determination Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, October 14, 1998, beginning at 1:00 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene at 8:00 a.m. on Thursday, October 15, 1998 and continue until the agenda has been completed.

ADDRESSES: The meeting will be held in the conference room at the Pacific Fishery Management Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This adhoc committee has been instructed to continue the investigation and development of a program to determine total groundfish fishing mortality and discard and to provide the information necessary to assess the effects of trip limit management. The adhoc committee will propose goals for a data collection program, identify funding options and impediments, and develop an overall program design. The Council has also instructed the committee to conduct a full exploration of reasonable alternatives, including an observer program and full retention, and to address equity issues associated with participation of various gear groups, vessel size categories, and funding.

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 listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 18, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–25456 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081798B]

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, Biology Department, Dalhousie University, Halifax, Nova Scotia, B3H 4J1 Canada, 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 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Regional Office, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115, (206/526–6150);

Regional Administrator, Alaska Regional Office, NMFS, NOAA, 709 West 9th Street, Federal Building, Juneau, Alaska 99802 (907/586–72212); and

Regional Administrator, Southwest Regional Office, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On June 30, 1998, notice was published in the **Federal Register** (63 FR 35568) that an amendment of permit No. 926, issued June 6. 1994 (59 FR 31217), had been requested by the above-named individual. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this amendment, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 15, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–25462 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 980605148–8148–01]

Request for Comments on Interim Guidelines for Examination of Patent Applications Under the 35 U.S.C. 112 ¶ 1 ''Written Description'' Requirement; Extension of Comment Period and Notice of Hearing

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearings, extension of comment period and request for comments.

SUMMARY: The Patent and Trademark Office (PTO) will hold public hearings, and it requests comments, on issues relating to the ''written description'' requirement under 35 U.S.C. 112 ¶ 1. Interested members of the public are invited to testify at public hearings and to present written comments on any of the topics outlined in the supplementary information section of this notice.

DATES: Public hearings will be held on Wednesday, November 4, 1998, and Friday, November 6, 1998, starting each day at 9 a.m. and ending no later than 5:00 p.m.

Those wishing to present oral testimony at either of the hearings must request an opportunity to do so no later than Friday, October 30. Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings no later than November 12, 1998.

To ensure consideration, written comments should be received at the PTO by November 12, 1998. Written comments and transcripts of the hearings will be available for public inspection on or about Monday, November 16, 1998.

ADDRESSES: The November 4th hearing will be held at the Marriott Long Wharf, Salons D, E, F, 296 State Street, Boston, MA 02109. Questions regarding the facilities and lodging should be directed to the Marriott Long Wharf, TEL (617) 227–0800, FAX (617) 227–2867.

The November 6th hearing will be held at The Sheraton San Diego Hotel & Marina, West Tower, Coronado Ballroom, 1590 Harbor Island Drive, San Diego, CA 92101–1092. Questions regarding the facilities and lodging should be directed to The Sheraton San Diego Hotel & Marina, West Tower, TEL (619) 291–2900, FAX (619) 692–2337.

Requests to testify should be sent to Mary Critharis by telephone at (703) 305–9300, by facsimile transmission at (703) 305–8885, or by mail marked to attention of Mary Critharis addressed to the Assistant Commissioner for Patents, Box 4, Washington, DC 20231. No requests for oral testimony will be accepted through electronic mail.

Written comments should be addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231, marked to the attention of Scott A. Chambers, Associate Solicitor, or to Box Comments, Assistant Commissioner for Patents, Washington, D.C. 20231, marked to the attention of Linda S. Therkorn. Comments may be submitted by facsimile transmission to Scott A. Chambers at (703) 305–9373, or to Linda S. Therkorn at (703) 305–8825. Comments may be submitted by electronic mail to scott.chambers@uspto.gov, or to linda.therkorn@uspto.gov.

Written comments and transcripts of the hearings will be maintained for public inspection in Suite 918 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia. Transcripts and comments provided in machine readable format will be available through anonymous file transfer protocol (ftp) via the Internet (address: comments.uspto.gov) and through the World Wide Web (address: www.uspto.gov).

FOR FURTHER INFORMATION CONTACT: Scott A. Chambers by telephone at (703) 305–9035, by facsimile transmission at (703) 305–9373, by mail to his attention addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, or by electronic mail at scott.chambers@uspto.gov; or Linda S. Therkorn by telephone at (703) 305–8800, by facsimile at (703) 305–8825, by mail to her attention addressed to Box Comments, Assistant Commissioner for Patents, Washington, D.C. 20231, or by electronic mail at linda.therkorn@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Interim Guidelines for Examination of Patent Applications Under the 35 U.S.C. 112 ¶ 1, ''Written Description'' Requirement were published at 63 FR

32639, June 15, 1998, and at 1212 O.G. 15, July 7, 1998. The period for comment on the Interim Guidelines was originally set to end September 14, 1998. The period for comment is now extended. Comments will be accepted by the PTO until November 12, 1998.

These guidelines are intended to assist examiners at the PTO in finding the attributes necessary to support the written description requirement of 35 U.S.C. 112 ¶ 1, in view of *University of California* v. *Eli Lilly*, 119 F.3d 1559, 43 USPQ2d 1398 (Fed. Cir. 1997), and the earlier cases *Fiers* v. *Revel*, 984 F.2d 1164, 25 USPQ2d 1601 (Fed. Cir. 1993), and *Amgen, Inc.* v. *Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991). The PTO endeavors to provide clear guidance to Office personnel in their task of administering the law so that consistent results are achieved. To ensure that examiners know when applicants have satisfied the requirements, the guidelines identify criteria supporting the determination that an application is in compliance with statutory requirements. The PTO invites the public to assist it in identifying the appropriate descriptive attributes that Office personnel should rely on in their determinations.

The PTO requests comments from any interested member of the public on the interim guidelines. Although the guidelines are directed primarily to written descriptions of biotechnological inventions, they reflect the current understanding of the PTO and apply across the board to all relevant technologies. Because these guidelines govern internal practices, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

II. Issues for Public Comment

Interested members of the public are invited to testify or to present written comments related to the written description requirement, including the following issues.

1. Is the methodology in the interim guidelines accurate? If not, please:

(a) Identify any legal and/or technical inaccuracies;

(b) Identify any changes to the guidelines that would improve their accuracy; and

(c) Provide explanations and/or legal basis for your comments.

2. Do the guidelines list the appropriate relevant factors and descriptive attributes to consider in determining whether the written description requirement of 35 U.S.C. 112 ¶ 1, is satisfied? If not, please:

(a) Identify factors and descriptive attributes which have been omitted;

(b) Identify any examples or parts of the analysis which are over inclusive; or

(c) Explain any changes which would improve the analysis.

3. Should the scope of these guidelines be limited to certain technologies? If so, please:

(a) Identify the technologies that should be encompassed, and

(b) Give reasons why the guidelines should not encompass other technologies generally.

4. Should the scope of these guidelines encompass all technologies? If so, please:

(a) State reasons why the guidelines should encompass technologies in addition to those discussed in the interim guidelines;

(b) Give specific, factual examples that the guidelines should address, and how 35 U.S.C. 112 ¶ 1, applies to the examples; and

(c) If these examples are subject to a rejection, how that rejection could be overcome.

5. How should ''possession of the invention'' be defined for purposes of applying the written description requirement?

6. How should the transition terms ''having'' and ''consisting essentially of'' be treated within the context of nucleotide and amino acid sequence claims?

7. How should the guidelines be expanded to specifically address process and/or product-by-process claims?

(a) Please suggest examples of process or product-by-process claims you want to see addressed in the guidelines, and how 35 U.S.C. 112 ¶ 1, applies to the examples;

(b) Suggest how the examples of process or product-by-process claims should be analyzed under the guidelines; and

(c) If these examples are subject to a rejection, how that rejection could be overcome.

8. How should the final guidelines address the deposit of a biological material made under 37 CFR 1.801?

(a) Please suggest how the date of deposit should be considered with respect to establishing possession of the invention at the time of filing;

(b) Suggest what significance should be assigned to a deposit in assessing compliance with the written description requirement; and

(c) Comment on the extent to which a deposit of biological material may be relied on to support the addition of sequence information or the correction of sequence information in the originally filed application.

9. What impact will the guidelines have on issued patents, currently pending applications, or applications to be filed after publication of the final written description guidelines?

10. Is there any basis in law or fact for treating expressed sequence tags (ESTs) differently than any other nucleic acid under the written description requirement?

11. Are there additional issues related to other statutory requirements of Title 35 invoked in the patenting of ESTs? If so, please set forth those issues separately and specifically.

III. Guidelines for Oral Testimony

Individuals wishing to testify at the hearings must adhere to the following guidelines:

1. Requests to testify must include the speaker's name, affiliation, title, phone number, fax number, mailing address, and Internet mail address (if available).

2. Speakers will have between seven and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be determined after the final number of parties testifying has been determined. All efforts will be made to accommodate requests presented before the day of the hearing for additional time for testimony.

3. Requests to testify may be accepted on the date of the hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.

A schedule providing approximate times for testimony will be provided to all speakers the morning of the day of the hearing.

Speakers are advised that the schedule for testimony may be subject to change during the course of the hearings.

IV. Guidelines for Written Comments

Written comments should include the following information:

1. Name and affiliation of the individual responding.

2. If applicable, an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views.

3. If applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, non-profit organization) and general areas of interest.

Information that is provided pursuant to this notice will be made part of the public record. In view of this, parties should not provide information they do not wish publicly disclosed. Parties who would like to rely on confidential information to illustrate a point being made are requested to summarize or

otherwise provide the information in a way that will permit its public disclosure.

Parties offering testimony or written comments should provide their comments in machine readable format, if possible. Such submissions should be provided by electronic mail messages over the Internet, or on a 3.5'' floppy disk formatted for use in either a Macintosh or MS-DOS based computer. Machine readable submissions should be provided as unformatted text (e.g., ASCII or plain text), or as formatted text in one of the following file formats: Microsoft Word (Macintosh, DOS or Windows versions) or WordPerfect (Macintosh, DOS or Windows versions).

V. Guidelines for Comments via Internet

Comments received via the Internet should include the same information requested in the guidelines set out for written comments.

Dated: September 16, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–25355 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment and Redesignation of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

September 16, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing and amending the coverage of limits.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a Memorandum of Understanding (MOU) dated August 19, 1998, the Governments of the United States and the Republic of the Philippines agreed to amend the coverage of Group II to include Categories 361, 369–S and 611 and to increase the 1998 Group II limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 64361, published on December 5, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1997, as corrected on December 23, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelven-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 23, 1998, you are directed to amend the Group II designation to include the coverage of Categories 361, 369–S [1] and 611. Categories 361, 369–S and 611 shall be sublevels in Group II. Import charges already made to these categories shall be moved to Group II. The 1998 limit for Group II shall be increased to 190,612,355 square meters equivalent [2].

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–25388 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 369–S: only HTS number 6307.10.2005.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1997.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 16, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for special shift, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 65246, published on December 11, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 23, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Level in Group I	
603	2,383,937 kilograms.
Sublevels in Group II	
338/339	2,308,579 dozen.
638/639	2,202,518 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–25387 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Re-instatement of Export Visa and Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Haiti

September 17, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs re-instating export visa and certification requirements.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the **Federal Register** on November 26, 1997 (62 FR 63076) announces a temporary suspension of export visa and certification requirements for all textile products, produced or manufactured in Haiti and exported to the United States. Effective on October 1, 1998, the suspension is rescinded.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to re-instate visa and certification requirements for cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Haiti and exported from Haiti on or after October 1, 1998. Textile products exported from Haiti during the period October 1, 1998 through October 31, 1998 shall not be denied entry for lack of a visa or certification. Goods exported from Haiti on or after November 1, 1998 shall be denied entry if not accompanied by an appropriate export visa or certification.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 17, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This letter cancels and supersedes the directive issued to you on November 21, 1997 by the Chairman, Committee for the Implementation of Textile Agreements which directed you, until further notice, to waive export visa and certification requirements for textile products, produced or manufactured in Haiti and exported from Haiti to the United States.

Effective on October 1, 1998, you are directed to require a visa or certification for all shipments of textile products, produced or manufactured in Haiti and exported from Haiti on or after October 1, 1998. Textile products exported from Haiti during the period October 1, 1998 through October 31, 1998 shall not be denied entry for lack of a visa or certification. Goods exported from Haiti on or after November 1, 1998 shall be denied entry if not accompanied by an appropriate export visa or certification.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–25389 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C.3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning the development of 4 new program progress reports. The 4 new progress reports are: (1) Progress Report for AmeriCorps*Indian Tribes or Territory Programs; (2)Progress Report for AmeriCorps*State Program or National Direct Operating Site; (3) Progress Report for AmeriCorps*National Parent Organizations or State Commission; and (4) AmeriCorps Education Awards Program Progress Report. This notice combines all four new progress reports into one notice for public comments.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by November 23, 1998.

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Corporation for National and Community Service, Attn: Peter Heinaru, Director, AmeriCorps*State and National, 1201 New York Avenue, N.W. Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Rosa Harrison (202) 606–5000, x433.

SUPPLEMENTARY INFORMATION:

I. Progress Report for AmeriCorps*Indian Tribes or Territory Programs

A. Background

The information being collected in these reports has previously been collected using draft copies of similar forms. These forms have been developed with significant input from AmeriCorps grantees and in many cases mirror those used by grantees to collect information from their sub-grantees, in some instances on a more frequent basis.

B. Current Action

This information will be submitted tri-annually to the Corporation for review and analysis. The information will be used to track progress toward objectives, monitor other aspects of program performance, identify training and technical assistance needs, and provide information for dissemination to Corporation stakeholders, including Congress.

Type of Review: New Request.

Agency: Corporation for National and Community Service.

Title: Progress Report for AmeriCorps*Indian Tribes or Territory Programs.

OMB Number: None.

Agency Number: None.

Affected Public: All approved Indian Tribes and Territory AmeriCorps Programs.

Total Respondents: 15 grantees.

Frequency: 3 times a year.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 135 hours.

Total Burden Cost (capital/startup): $140.13.

Total Burden Cost (operating/maintenance): $2,102.

II. Progress Report for AmeriCorps*State Program or National Direct Operating Site

A. Background

The information being collected in these reports has previously been collected using draft copies of similar forms. These forms have been developed with significant input from AmeriCorps grantees and in many cases mirror those used by grantees to collect information from their sub-grantees, in some instances on a more frequent basis.

B. Current Action

This information will be submitted tri-annually to the Corporation for review and analysis. The information will be used to track progress toward objectives, monitor other aspects of program performance, identify training and technical assistance needs, and provide information for dissemination to Corporation stakeholders, including Congress.

Type of Review: New Request.

Agency: Corporation for National and Community Service.

Title: Progress Report for AmeriCorps*State Program or National Direct Operating Site.

OMB Number: None.

Agency Number: None.

Affected Public: All approved AmeriCorps*State Program/National Direct Operating Sites.

Total Respondents: 650.

Frequency: 3 times a year.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 5850 hours.

Total Burden Cost (capital/startup): $138.42.

Total Burden Cost (operating/maintenance): $89,973.

III. Progress Report for AmeriCorps*National Parent Organization or State Commission

A. Background

The information being collected in these reports has previously been collected using draft copies of similar forms. These forms have been developed with significant input from AmeriCorps grantees and in many cases mirror those used by grantees to collect information from their sub-grantees, in some instances on a more frequent basis.

B. Current Action

This information will be submitted tri-annually to the Corporation for review and analysis. The information will be used to track progress toward objectives, monitor other aspects of program performance, identify training and technical assistance needs, and provide information for dissemination to Corporation stakeholders, including Congress.

Type of Review: New Request.

Agency: Corporation for National and Community Service.

Title: Progress Report for AmeriCorps*National Parent Organizations or State Commissions.

OMB Number: None.

Agency Number: None.

Affected Public: All approved AmeriCorps*National Parent Organizations or State Commissions.

Total Respondents: 70.

Frequency: 3 times a year.

Average Time Per Response: 5 hours.

Estimated Total Burden Hours: 1,050 hours.

Total Burden Cost (capital/startup): $230.13.

Total Burden Cost (operating/maintenance): $16,109.10.

IV. Progress Report for AmeriCorps Education Awards Program

A. Background

The information being collected in these reports has previously been collected using draft copies of similar forms.

B. Current Action

This information will be submitted tri-annually to the Corporation for review and analysis. The information will be used to track progress toward objectives, monitor other aspects of program performance, identify training and technical assistance needs, and provide information for dissemination to Corporation stakeholders, including Congress.

Type of Review: New Request.

Agency: Corporation for National and Community Service.

Title: Progress Report for AmeriCorps Education Awards Program.

OMB Number: None.

Agency Number: None.

Affected Public: All approved AmeriCorps Education Awards Program sponsors.

Total Respondents: 200.

Frequency: 3 times a year.

Average Time Per Response: 2 hours.

Estimated Total Burden Hours: 1,200 hours.

Total Burden Cost (capital/startup): $93.42.

Total Burden Cost (operating/maintenance): $18,684.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 17, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–25391 Filed 9–22–98; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Record of Decision for Pilot Testing Neutralization/Biotreatment of Mustard Agent at Aberdeen Proving Ground, Maryland

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision.

SUMMARY: This announces the availability of the Record of Decision (ROD) which documents and explains the Department of the Army's decision to construct and operate a facility to pilot test the neutralization/biotreatment process of mustard agent using water at Aberdeen Proving Ground (APG), Maryland.

ADDRESSES: To obtain copies of the ROD, contact Ms. Nancy Hoffman, Edgewood Community Outreach Office, Woodbridge, Station, 1011 Woodbridge Center Way, Edgewood, Maryland 21040.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Herlinger at (800) 488–0648 or (410) 436–2583.

SUPPLEMENTARY INFORMATION: The Army has determined that the Final Environmental Impact Statement (EIS) adequately addresses the potential impacts of the Army's actions relating to the disposal of mustard agent stored at APG. The Army has also determined that the conclusions in the Final EIS establish that the decision to pilot test the neutralization/biotreatment process for mustard agent using water at the preferred site provides maximum protection to the environment, the general public, and workers at the pilot test facility. The Army plans to dispose of 615 tons of mustard agent stored at APG consistent with the terms of the ROD.

The alternatives considered in the Final EIS were no action (i.e., continued storage of mustard agent at APG) and locating the pilot facility at one of two potential sites within APG. Although the no action alternative is not viable under Public Law 99–145 (the Department of Defense Authorization Act of 1986), it was analyzed to provide a comparison with the proposed action. A comparison was made of the potential impacts of two different locations at APG for the facility. The locations were identified using criteria based on safety and compatibility with current APG activities. The selected site, located on the Bush River Peninsula, has the advantage of being adjacent to the Chemical Agent Storage Yard, where the mustard agent is stored in ton containers. Additionally, it was determined to result in lower potential impacts to human health, land, water and ecological resources. Detonations of explosives and ordnance and testing munitions have previously contaminated the alternative site. Site clean up and remediation activities are not currently scheduled prior to construction. This would result in increased project duration and significantly impact the Chemical Stockpile Disposal Program mission's schedule date targeted for December 2004. Based on these impact analyses, it is concluded that conducting pilot test operations at the selected site is the preferred environmental alternative for implementing the neutralization/biotreatment process using water.

Copies of the ROD may also be obtained by calling Ms. Hoffman, Edgewood Community Outreach Office, at (410) 676–6800.

Questions may be forwarded to Office of the Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–P (Ms. Herlinger), Building E4585, Aberdeen Proving Ground, Maryland 21010–5401; or via e-mail at cherling@cdra.apgea.army.mil.

Dated: September 16, 1998.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–25394 Filed 9–22–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) on the Disposal and Reuse of the Defense Distribution Depot Memphis, Tennessee (DDMT)

AGENCY: Department of the Army, DoD.

ACTION: Extension of comment period.

SUMMARY: The Department of the Army is announcing today the extension of the comment period for the Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the disposal and reuse of the Defense Distribution Depot Memphis, Tennessee (DDMT).

DATES: Submit comments on or before October 23, 1998.

ADDRESSES: Questions and comments should be directed to Mr. Jerry Jones, Corps of Engineers, Mobile District (ATTN: CESAM–PD–EI), 109 St. Joseph Street, P.O. Box 2288, Mobile, Alabama 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Jones at facsimile (334) 694–3815.

SUPPLEMENTARY INFORMATION: A Notice of Availability (NOA) and a summary of the proposed action was published in the **Federal Register** (63 FR 24165) on May 1, 1998. The notice described the Army's preferred alternative of encumbered disposal of DDMT to mitigate the adverse economic impact of closing the installation. The FNSI was signed on March 13, 1998. Following publication of the NOA, the Defense Depot Memphis Concerned Citizens Committee, the Environmental Protection Agency, and the Tennessee Department of Environment and Conservation requested an extension of the public comment period. The original comment period closed June 1, 1998.

The EA evaluates the environmental and socioeconomic effects associated with the disposal and subsequent reuse of the DDMT. The Army proposes to dispose of 642 acres divided into two sections, the main installation (574 acres) and Dunn Field (68 acres). This EA concludes that the disposal and subsequent reuse of the property will not have a significant impact on the human environment.

A copy of the Environmental Assessment and Finding of No Significant Impact has been placed at the Memphis/Shelby County Public Library, Main Branch, 1850 Peabody, Memphis, TN 38104; Memphis/Shelby County Health Department, Pollution Control Division, 814 Jefferson Avenue, Memphis, TN 38106; Memphis/Shelby County Public Library, Cherokee Branch, 3300 Sharpe Avenue, Memphis, TN 38111; The Memphis Depot Caretaker, 2163 Airways Boulevard, Building 14, Memphis, TN 38114.

Dated: September 17, 1998.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–25404 Filed 9–22–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is given of a meeting of the Basic Energy Sciences Advisory Committee (BESAC).

DATES AND TIMES: Monday, October 26, 1998—8:30 a.m.–5:00 p.m. Tuesday, October 27, 1998—8:30 a.m.–3:00 p.m.

ADDRESSES: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

FOR FURTHER INFORMATION CONTACT: Patricia Dehmer; Basic Energy Sciences Advisory Committee; U.S. Department of Energy; ER–10, GTN; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The Committee will provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- BESAC High Flux Isotope Reactor (HFIR) Review Report
- BESAC 4th Generation Light Source Panel Update
- BESAC Complex and Collective Phenomena Update

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact Patricia Dehmer at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on September 16, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–25417 Filed 9–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3774–000]

Choctaw Generation Limited Partnership; Notice of Issuance of Order

September 17, 1998.

Choctaw Generation Limited Partnership (Choctaw), a Delaware limited partnership, and wholly-owned subsidiary of Tractebel Power, Inc., a Delaware corporation, which is in turn an indirect wholly-owned subsidiary of Tractebel, S.A., a Belgian energy services corporation, filed an application to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Choctaw requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Choctaw. On September 15, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 15, 1998, Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Choctaw 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 Procedures, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Choctaw is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Choctaw, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Choctaw's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 15, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–25383 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–400–000]

Crossroads Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 17, 1998.

Take notice that on September 14, 1998, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 1, 1998:

Third Revised Sheet No. 39
Third Revised Sheet No. 76
First Revised Sheet No. 76.1

Crossroad states that the filing is being filed to comply with Order No. 587–G, Standards of Business Practices of Interstate Natural Gas Pipelines issued on April 16, 1998 in Docket No. RM96–1–007, 83 FERC ¶ 61,029. Crossroads states that the revised tariff sheet included herewith reflects Version 1.2 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations. Specifically, in addition to upgrading the version of previously adopted standards, newly adopted Standards 1.4.6, 2.4.6, 4.3.5, 4.3.16 and 5.3.30 are incorporated by reference and Standard 4.3.4 has been deleted.

Crossroad states that copies of its filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

David P. Boergers,

Secretary.

[FR Doc. 98–25381 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–771–000]

Florida Gas Transmission Company and Texas Eastern Transmission Corporation; Notice of Joint Application

September 17, 1998.

Take notice that on September 10, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1888 and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP98–771–000 a request pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a gas exchange service agreement dated May 24, 1973 (May 24th Agreement), all as more fully set forth in the application on file with the Commission and open to public inspection.

FGT and Texas Eastern state that the May 24th Agreement was approved by the Federal Power Commission in Docket No. CP74–56 and that it provided for the exchange of gas between the parties at points of interconnection between FGT's and Texas Eastern's facilities in Matagorda County, Texas, St. Laundry Parish, Louisiana, and Pointe Coupee Parish, Louisiana. FGT and Texas Eastern also state that the May 24th Agreement has not been used since prior to June 1, 1993.

FGT and Texas Eastern state that in compliance with Part 154 of the Commission's Regulations, FGT filed the May 24th Agreement as Rate Schedule E–9 in its FERC Gas Tariff Original Volume No. 3, and that Texas Eastern filed the May 24th Agreement as Rate Schedule X–72 in its FERC Gas Tariff Original Volume No. 2.

FGT and Texas Eastern also state that the proposed abandonment will not result in the abandonment of any facilities; will not result in the abandonment of service to any customers; and will not disadvantage any customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 8, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT or Texas Eastern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–25376 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–401–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 17, 1998.

Take notice that on September 15, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of October 17, 1998:

Twentieth Revised Sheet No. 4
Fifth Revised Sheet No. 46
Second Revised Sheet No. 46A
Seventh Revised Sheet No. 47

Iroquois states that the instant filing is designed to convert its tariff and rates from a volumetric to a thermal basis. According to Iroquois, TransCanada PipeLines has announced that it will restate its contracts in terms of energy by using an average heating value for the 1997 calendar year; the heating value for deliveries to Iroquois during that time is 1.011693. Iroquois proposes to use this conversion factor in its tariff to simplify the conversion process across the two pipelines. Because its demand rates are based in part upon an assumed 1-to-1 conversion factor, Iroquois has also restated its rates (as approved by the Commission on August 31, 1998 in Docket No. RP97–126) to ensure that this conversion to energy does not adversely impact any customer on a financial basis.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

David P. Boergers,

Secretary.

[FR Doc. 98–25382 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–63–000]

MidAmerican Energy Company and MidAmerican Energy Holdings Company; Notice of Application for Approval of Merger

September 17, 1998.

Take notice that on September 14, 1998, MidAmerican Energy Company and MidAmerican Energy Holdings Company (MidAmerican Holdings) tendered for filing an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Regulations of the Federal Energy Regulatory Commission for an order authorizing and approving the merger of MidAmerican Holdings and CalEnergy Company, Inc. (the Merger). Applicants have requested Commission approval of the Merger by the end of 1998.

Pursuant to the terms of the Agreement and Plan of Merger dated as of August 11, 1998, MidAmerican Holdings will merge with and into a special purpose, wholly-owned subsidiary of CalEnergy, MAVH, Inc., which is an Iowa corporation, with MidAmerican Holdings to be the surviving corporation. Each issued and outstanding share of MidAmerican Holdings will be cancelled upon consummation of the Merger and converted to the right of the holder thereof to receive $27.15. Each share of MAVH, Inc. will be converted into one share of the surviving corporation, MidAmerican Holdings. As a result of the Merger, MidAmerican Holdings will become a wholly-owned subsidiary of CalEnergy, which, immediately prior to the Merger, will reincorporate in the State of Iowa and be renamed MidAmerican Energy Holdings Company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 16, 1998. Protests will be considered by the Commission to determine 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.

David P. Boergers,

Secretary.

[FR Doc. 98–25375 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–386–001]

Northern Natural Gas Company; Notice of Compliance Filing

September 17, 1998.

Take notice that on September 14, 1998, Northern Natural Gas Company (Northern), filed in compliance with the Commission's letter, requesting working papers to support the Gas Supply Realignment Reverse Auction Tracker Unrecovered balance and corresponding carrying charges.

Northern states that copies of the filing were served upon Northern's customers and interested State Commission.

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 on or before September 24, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–25380 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR95–9–000 and PR95–9–001]

Three Rivers Pipeline Company; Order Approving Settlement and Instituting Proceeding

Issued September 17, 1998.

On August 17, 1995, Three Rivers Pipeline Company (Three Rivers) filed an uncontested settlement of its rates for transportation service rendered under § 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Subsequently, staff sent Three Rivers data requests concerning its transportation services and jurisdictional status. Based on our review of the settlement and the record in this proceeding, the Commission finds that the settlement is a reasonable resolution of the issues concerning Three Rivers' rates in effect between April 1, 1995, and the issuance of any future order approving superseding rates based on the outcome of the proceeding instituted by this order. The Commission also finds, however, that Three Rivers should be required to explain why the Commission should not find Three Rivers to be an interstate pipeline subject to the Commission's Natural Gas Act (NGA) jurisdiction. In the alternative, Three Rivers may produce evidence that it qualifies as a ''Hinshaw pipeline'' exempt from Commission jurisdiction under the provisions of section 1(c) of the Natural Gas Act.

I. Background and Related Proceedings

A. Facilities

In 1946, Mobil Oil Company (Mobil) constructed a 300-mile long, 8-inch diameter oil-products pipeline extending from southwest Pennsylvania, at Midland, to the border of New Jersey. Mobil currently uses its pipeline east of Altoona, Pennsylvania, for the transportation of oil products. On August 29, 1991, Three Rivers purchased approximately 121 miles of Mobil's oil-products pipeline extending from Midland to Altoona in order to render natural gas service. Three Rivers, then owned by subsidiaries of GEMCO Gas Marketing, Inc. and Pentex Petroleum, Inc., converted the oil products pipeline to natural gas use. Subsequently, Three Rivers added compression on the eastern portion of its system, main line valves, and interconnections with National Fuel Gas Supply (National Fuel) at the Midland receipt point, and delivery points at downstream locations in Pennsylvania

with Columbia Transmission Corp. (Columbia),[1] Texas Eastern Transmission Corp. (Texas Eastern), and Peoples Natural Gas (Co. (Peoples), a local distribution company, at McKeesport, Rager Mt., and Altoona, Pennsylvania. Three Rivers' system design capacity is 30,000 MMBtu/d, and its annual system design capacity is 10,950,000 MMBtu.

On November 23, 1993, Parker & Paisley Gas Processing Co. purchased Three Rivers and certain producing properties, all of which were subsequently sold to Costilla Energy Inc. (Costilla). On January 1, 1997, Costilla sold Three Rivers to Equitable Resources, Inc. (Equitable), Three Rivers' current owner. Equitable purchased Three Rivers because of Three Rivers' ability to traverse major interstate pipelines serving the Northeast market and to access Appalachian gas supply through Equitrans, L.P., an affiliated interstate pipeline, which operates and manages Three Rivers.

B. Three Rivers' Services

1. Intrastate Transportation/Sales

Three Rivers states it commenced gas service on January 17, 1992, when it received intrastate (Pennsylvania-produced) gas from National Fuel and commenced firm intrastate bundled sales service to Peoples for its system supply. From January 17, through March 31, 1992, National Fuel delivered 396,595 MMBtu of Empire Production Co.'s (Empire) Pennsylvania production to Three Rivers for sale to Peoples. Empire's gas supply contract with Three Rivers was for a one year term. Three Rivers states that it has made no subsequent intrastate sales of Pennsylvania production.[2] During January, 1997, Three Rivers received 45,000 Dth of Pennsylvania production from National Fuel, which it transported for two intrastate transportation customers, Howard Energy and Atlas Gas Marketing.[3]

2. Interstate Transportation

On April 1, 1992, Three Rivers, considering itself to be an intrastate pipeline not regulated by the Pennsylvania Public Service Commission, commenced interstate transportation service on an interruptible basis on behalf of National Fuel pursuant to NGPA § 311(a)(2).[4] Three Rivers transported under NGPA § 311(a)(2) 456,876 MMBtu in 1994; 2,313,284 MMBtu in 1995; 1,930,673 MMBtu in 1996; and 3,336,983 MMBtu in 1997. Three Rivers currently receives all of this gas from National Fuel near Midland, pursuant to NGPA § 311(a)(2) and 18 CFR § 284.122, and transports the gas on a firm and interruptible basis for interstate shippers, such as National Gas Clearinghouse, Carnegie Natural Gas Co., and Duke Energy, for delivery at interconnections with Texas Eastern and Columbia.[5]

Three Rivers also purchases interstate gas from marketers for sale to Peoples. For example, between February and November, 1994, Three Rivers purchased interstate volumes from Meridian Marketing and Transportation Corp., which volumes Three Rivers resold to Peoples in unregulated sales for delivery at McKeesport.[6]

C. Part 284 Rate Proceedings

On January 28, 1992, Three Rivers filed a petition for rate approval in Docket No. PR92–9–000 for interruptible transportation service under NGPA § 311(a)(2) to become effective on April 1, 1992. On May 12, 1992, the Secretary of the Commission issued a letter order approving a settlement in Three Rivers' last rate proceeding authorizing Three Rivers to charge, effective April 1, 1992, a maximum interruptible transportation rate of $0.284 cents per MMBtu plus a maximum 2.5 percent fuel charge.[7] The settlement required Three Rivers to file an application for rate approval on or before April 1, 1995, to justify the current systemwide rate or to establish a new systemwide rate.

On April 3, 1995, Three Rivers filed a petition for rate approval in Docket No. PR95–9–000 for authorization to charge, effective April 1, 1995, a maximum interruptible transportation rate of $0.2374 per MMBtu, a firm demand rate of $4.0514 per MMBtu, a maximum firm commodity charge of $.1042 per MMBtu plus a maximum fuel charge of 2.5 percent. The Commission extended the time for acting on Three Rivers' petition, pursuant to 18 C.F.R. § 284.123(b)(2)(ii), to enable the Commission to determine whether the proposed rates are fair and equitable.[8] Staff sent data requests to Three Rivers concerning its proposed rates. On June 2, 1995, Three Rivers responded to staff's data requests. Under the Part 284 regulations, Three Rivers is authorized to collect its proposed rates subject to refund upon the filing of its petition.

On August 17, 1995, Three Rivers filed an uncontested settlement that addressed staff's concerns. The settlement would authorize a maximum interruptible rate of $0.1648 per MMBtu, a firm demand rate of $3.08 per MMBtu, a maximum firm commodity charge of $.0635, and a maximum fuel charge of .9 percent. Under the settlement, Three Rivers agreed to refund, with interest, amounts previously collected above settlement rates. Three Rivers agreed to file, on or before April 1, 1998, an application for rate approval pursuant to 18 C.F.R. § 284.123(b)(2) to justify the current systemwide rate or to establish a new systemwide rate. Three Rivers did not file the required rate application because of the pendency of its settlement.

Discussion

A. Rate Settlement

The Commission's Part 284 regulations (Subpart C) require an intrastate pipeline to apply for Commission approval of its proposed Part 284 rates by filing its rates and information showing that the proposed rates are fair and equitable.[9] On August 17, 1995, Three Rivers filed an uncontested settlement that purports to establish fair and equitable rates for interruptible and firm transportation by Three Rivers under NGPA § 311(a)(2), effective on April 1, 1995.

The settlement rates are based on calendar year 1994 costs, and volumes are based on design capacity. The projected throughput, proposed by Three Rivers, will place the burden of underutilization on Three Rivers. The settlement rates are less than the filed rates, and Three Rivers agrees in the settlement to refund the excess and to file a refund report with the Commission. No customer protests the settlement, which we find reflects a reasonable resolution of the issues raised. We find that Three Rivers' proposed settlement rates in Docket No. PR95–9–000 are fair and equitable for Part 284 services rendered between April 1, 1995, and any future

[1] On January 1, 1995, Three Rivers converted its interconnection with Columbia from a receipt point to a delivery point.

[2] Data responses (filed April 15, 1998).

[3] Data responses (filed April 15, 1998).

[4] NPA § 2(16) defines an intrastate pipeline as any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act).

[5] Three Rivers annually reports, pursuant to 18 C.F.R. § 284.126(b), the identity and volumes transported under NGPA § 311(a)(2).

[6] Data responses (filed October 10, 1995).

[7] *See* Three Rivers Pipeline Co., 59 FERC ¶61,181 (1992) (NGPA § 311(a)(2) rate settlement approved).

[8] Three Rivers Pipeline Co., 72 FERC ¶ 61,107 (1995).

[9] 18 C.F.R. § 284.123(b)(2)(I).

Commission order approving superseding rates based on the outcome of the proceeding instituted by this order. The proceeding does not affect the propriety of Three Rivers' rendition of Part 284 services or collection of Part 284 rates from April 1, 1995 until a future order of the Commission. The settlement is approved subject to one clarification.

Article II(A)2 of the settlement requires Three Rivers to have filed, by April 1, 1998, a petition for rate approval pursuant to 18 C.F.R. § 284.123(b)(2) to justify its settlement rates or to propose new Part 284 rates. As noted, Three Rivers did not make the required rate filing because of the pendency of its settlement. The outcome of this order's proceeding on Three Rivers' jurisdictional status could affect the rate design and thus the level of Three Rivers' transportation rates. Accordingly, Article II(A)(2) is clarified to defer the settlement's requirement that Three Rivers file a new petition for approval of Part 284 rates, subject to the outcome of the proceeding.

B. Requirement for Further Proceeding

Three Rivers' pending rate settlement and the Secretary's letter order approving Three Rivers' last rate settlement assume that Three Rivers is an intrastate pipeline. While no intervenor in Three River's pending rate proceeding disputed Three Rivers' status as an intrastate pipeline, Three Rivers' responses to staff's data requests suggest that Three Rivers transports natural gas exclusively in interstate commerce under NGPA § 311(a)(2). Thus, Three Rivers' interstate transportation activities require us to scrutinize its status as an intrastate pipeline and to raise the issue whether Three Rivers has made itself subject to the Commission's NGA jurisdiction. If a bona fide intrastate pipeline, Three Rivers may continue to provide transportation service pursuant to NGPA § 311(a)(2) subject to the Commission's regulation of Part 284 rates, but exempt from the Commission's NGA jurisdiction.[10] Or, if Three Rivers is a Hinshaw Pipeline that is regulated by the Pennsylvania Public Utilities Commission it would be exempt from Commission regulation pursuant to section 1(c) of the NGA.[11] In such a case, however, Three Rivers would be required to file an application for a certificate under section 284.224, 18 C.F.R. § 284.224, of the Commission's regulations to conduct its interstate services. If Three Rivers is not exempt from the Commission's NGA jurisdiction as a bona fide intrastate pipeline, local gas distributor, or Hinshaw, Three Rivers would be subject to NGA §§ 4, 5, and 7 as an interstate pipeline.

Before an intrastate pipeline is eligible to provide open access transportation under NGPA § 311(a)(2) on behalf of an interstate pipeline, it must first be a bona fide intrastate pipeline.[12] The Commission looks to all the facts and circumstances of a particular case to determine if the pipeline is eligible to offer interstate services under NGPA § 311. Essentially, an intrastate pipeline rendering intrastate service is constructed within the borders of one state and delivers gas produced in the same state to end-users or an LDC to be consumed within the same state.

Based upon Three Rivers' data responses, Three Rivers has primarily transported out-of-state gas in interstate commerce and has not functioned predominately as an intrastate pipeline exempt from the Commission's NGA jurisdiction. Nor does it appear that Three Rivers provides local gas distribution service. To date Three Rivers has not represented that it qualifies for a Hinshaw exemption. Three Rivers states that it currently receives out-of-state gas, some volumes purchased for its system supply resale, and consumption in Pennsylvania and the rest transported and delivered to interconnecting pipelines for further transportation out-of-state in interstate commerce. Thus, in both situations, Three Rivers engages in interstate commerce because it receives out-of-state gas delivered by National Fuel operating in interstate commerce. The interstate nature of Three Rivers' operations is further supported by the fact that Three Rivers has added interconnections with Columbia and Texas Eastern to move gas owned by others beyond Three Rivers's system further downstream in interstate commerce.

Three Rivers sold and delivered 396,595 MMBtu of exclusively Pennsylvania production to Peoples from the commencement of operations on January 17, 1992, until April 1, 1992, when Three Rivers because an open access transporter under NGPA § 311(a)(2). In 1994, Three Rivers sold Peoples 1,491,467 MMBtu of interstate volumes purchased by Three Rivers from a marketer, delivered by National Fuel to Three Rivers, and commingled with the interstate gas stream. There is no indication in the record, however, that Three Rivers continues to purchase Pennsylvania production for resale to Peoples.[13] In its April 15, 1998 data responses, Three Rivers identifies 45,000 Dth of intrastate transportation of Pennsylvania gas in January 1997 as the only intrastate service provided by Three Rivers since 1995. Yet Three Rivers data responses indicate that it receives out-of-state natural gas prior to transporting that gas to Columbia and Texas Eastern for delivery out of Pennsylvania.

Three Rivers may be an interstate pipeline based on the apparent absence of any ongoing intrastate transportation service and its current receipt of exclusively out-of-state volumes from National Fuel for delivery to Pennsylvania customers and interconnection jurisdictional pipelines.

Three Rivers was sold and acquired several times since its conversion in 1991 to natural gas service. Neither Three Rivers nor its owners/transferees sought NGA § 7 authorization to acquire operate, or abandon Three Rivers, because it appears that they assumed that Three Rivers was an intrastate pipeline not regulated by the Commission.[14]

The regulatory purpose of the NGA of ensuring consumers access to an adequate supply of gas at a reasonable price may have been frustrated because Three Rivers has not had to comply with Order No. 636. If Three Rivers were found to operate as an interstate pipeline, Three Rivers would be subject to §§ 4, 5, and 7 of the NGA, and Three Rivers would be required to file initial rates and to comply with Order No. 636, including the filing of a *pr forma* FERC tariff stating its terms and conditions of service, and GISB requirements.

[10] 18 C.F.R. § 284.123 and 18 C.F.R. § 284.3(a).

[11] Midcoast Ventures I, *order granting interventions and issuing certificates,* 62 FERC ¶ 61,029 (1992); *order disclaiming jurisdiction and terminating proceedings,* 66 FERC ¶ 61,285 (1994) (Midcoast).

[12] In Midcoast Ventures I, 61 FERC ¶ 61,029 at p. 61,158 (1992), the Commission stated that it has never ruled that a company could qualify as an intrastate pipeline without doing any intrastate business in the state where it claims intrastate status * * * The service provided by Midcoast's facilities in Kansas is intrinsically interstate in character, since the sole service performed on these facilities is the transportation of gas from another interstate pipeline [Williams Natural Gas Co] to an end-user.

[13] Data responses (filed October 10, 1995 and April 15, 1998).

[14] In a similar situation, the Commission required certification to operate existing interstate storage and connecting pipeline facilities, previously constructed under NGPA § 311, where there were no intrastate customers and the facilities only provided interstate storage services to and from several interstate pipeline systems. *See* Egan Hub Partners, L.P., 72 FERC ¶61,224 (1995), *order on show cause,* 73 FERC ¶61,334 (1995), and *order denying stay,* 74 FERC ¶61,021 (1996). *See also* Petal Gas Storage Co., 64 FERC ¶61,190 (1993), *as amended,* 67 FERC ¶61,135 (1994).

Accordingly, for these reasons, the Commission is instituting a proceeding pursuant to NGA §§ 5, 7, and 16. The Commission is requiring Three Rivers, within 30 days after the issuance of this order, to establish why the Commission should not find it to be an interstate pipeline subject to the Commission's NGA jurisdiction.

The Commission Orders

(A) Three Rivers' settlement in Docket No. PR95–9–001 is approved, as clarified.

(B) Three Rivers is directed to make refunds to its customers, within 30 days after the issuance of this order, and to file a refund report, consistent with its settlement.

(C) A proceeding is institute concerning Three Rivers' transportation services and operations. Within 30 days after the issuance of this order, Three Rivers is directed to provide evidence concerning its jurisdictional status as discussed in the body of this order.

(C) Notice of this proceeding will be published in the **Federal Register**. Interested persons will have 20 days from the date of publication to intervene.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 98–25374 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

September 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Non-Project Use of Project lands and Waters.

b. Project Name: Catawba-Wateree Project.

c. Project No.: FERC Project No. 2232–370.

d. Date Filed: July 28, 1998.

e. Applicant: Duke Energy Corporation.

f. Location: Mecklenburg County, North Carolina On Lake Norman.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. FERC Contact: Brian Romanek, (202) 219–3076.

j. Comment Date: OCTOBER 30, 1998.

K. Description of the filing: Duke Energy Corporation proposes to lease to Spinnaker Point Bay Marina Homeowners Association, Inc. (Spinnaker Bay) a 0.27 acre parcel of project land for the construction of a commercial/residential marina with a total of 10 boat slips on Lake Norman. The marina would provide access to the reservoir for residents of Spinnaker Bay.

1. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–25377 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

September 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project Name:* Catawba-Wateree Project.

c. *Project No.:* FERC Project No. 2232–371.

d. *Date Filed:* August 18, 1998.

e. *Applicant:* Duke Energy Corporation.

f. *Location:* Iredell County, North Carolina On Lake Norman.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Brian Romanek, (202) 219–3076.

j. *Comment Date:* October 30, 1998.

k. *Description of the filing:* Duke Energy Corporation proposes to lease to Pinnacle Shores South Homeowners Association, Inc. (Pinnacle Shores) a 0.376 acre special of project land for the construction of a commercial/residential marina with a total of 12 boat slips on Lake Norman. Duke also proposes to allow Pinnacle Shores to remove about 1400 cubic yards of accumulated sediment from the lake bottom within this leased area to accommodate boat navigation. The marina would provide access to the reservoir for residents of Pinnacle Shores.

l. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene to accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in

all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'' as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application:

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–25378 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

September 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project Name:* Catawba-Wateree Project.

c. *Project No.:* FERC Project No. 2232–372.

d. *Date Filed:* August 19, 1998.

e. *Applicant:* Duke Energy Corporation.

f. *Location:* Mecklenburg County, North Carolina On Lake Norman.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Brain Romanek, (202) 219–3076.

j. *Comment Date:* October 30, 1998.

k. *Description of the filing:* Duke Energy Corporation proposes to lease to Spinnaker Point Homeowners Association, Inc., (Spinnaker Point) a 0.27 acre parcel of project land for the construction of a commercial/residential marina with a total of 10 boat slips on Lake Normam. The marina would provide access to the reservoir for residents of Spinnaker Point.

l. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–25379 Filed 9–22–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6165–6]

Announcement Regarding Implementation of the Section 112(g) Program in the State of Connecticut and the Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Effective on June 29, 1998, the Environmental Protection Agency (EPA) plans to implement section 112(g) of the Clean Air Act as amended in 1990 through provisions promulgated in 40 CFR part 63, subpart B. Subpart B requires State permitting authorities with an approved title V program to make case-by-case maximum achievable control technology (MACT) determinations for constructed or reconstructed major sources in source categories for which national emission standards for hazardous air pollutants (NESHAPs) have not yet been promulgated.

Subpart B requires State or local permitting agencies to implement the section 112(g) program promulgated in subpart B, or the State or local permitting authorities may request that EPA implement the program for that State or local agency for a period of no more than one year. With this document, EPA Region I announces that it will implement the section 112(g) program for the State of Connecticut and the Commonwealth of Massachusetts until June 29, 1999, or the effective date of the State section 112(g) program, whichever is earlier. In Connecticut, where Connecticut Department of Environmental Protection (CT DEP) has the authority to issue a pre-construction permit to a constructed or reconstructed source with potential to emit greater than 15 tons per year of any individual hazardous air pollutant (HAP), CT DEP will issue the Notice of MACT approval to those subject sources after EPA concurs in writing on the MACT determination. For all other sources in Connecticut subject to section 112(g), EPA Region I will issue the Notice of MACT approval.

FOR FURTHER INFORMATION CONTACT: For more information about the implementation of the section 112(g) programs by Region I, please contact Susan Lancey, telephone (617) 565–3587 or E-mail lancey.susan.@epamail.epa.gov, Office of Ecosystem Protection, JFK Federal Building (CAP), Boston, MA 02203.

SUPPLEMENTARY INFORMATION: The regulations regarding the implementation of section 112(g) of the Clean Air Act for constructed or reconstructed sources as well as guidance for the State permitting authorities are found in 40 CFR 63.40–63.44 (subpart B). The final rule was published in the **Federal Register** on December 27, 1996 (61 FR 68384). Effective on June 29, 1998, no person may construct or reconstruct any major source of HAP in Massachusetts and Connecticut for which no applicable NESHAP has been promulgated unless that person applies for and obtains a Notice of MACT approval under the procedures set forth in 40 CFR 63.43(f)–(h). Except as provided below, the application should be submitted to EPA Region I at the address given above. In Connecticut, where Connecticut Department of Environmental Protection (CT DEP) has the authority to issue a pre-construction permit to a constructed or reconstructed source with potential to emit greater than 15 tons per year of any individual hazardous air pollutant (HAP), CT DEP will issue the Notice of MACT approval to those subject sources after EPA concurs in writing on the MACT determination. For all other sources in Connecticut subject to section 112(g), EPA Region I will issue the Notice of MACT approval.

To apply for and obtain a Notice of MACT approval from the EPA Regional office, any source subject to subpart B must fulfill the following requirements. First, the constructed or reconstructed major source must recommend a MACT emission limitation or requirement that must not be less stringent than the emission control which is achieved in practice by the best controlled similar source (§ 63.43(d)(1)). The recommended MACT emission limitation must achieve the maximum degree of reduction in emissions of HAP which can be achieved by utilizing the recommended control techniques. The recommended MACT emission limitation must consider the non-air quality health and environmental impacts as well as the associated energy requirements (§ 63.43(d)(2)). Furthermore, the constructed or reconstructed major source may recommend a specific design, equipment, or work practice standard, and EPA may approve such a standard, if it determines that it is not feasible to prescribe or enforce an emission limitation under section 112(h)(2) of the Clean Air Act (§ 63.43(d)(3)). Finally, if the EPA has proposed a relevant emission standard through either section 112(d) or section 112(h) of the Clean Air Act, then the MACT requirements applied to the constructed or reconstructed major source must take into consideration those MACT emission limitations and requirements of the proposed standards or presumptive MACT determination (§ 63.43(d)(4)).

In reviewing and approving any application for a Notice of MACT approval, EPA will utilize the procedures set forth in 40 CFR 63.43(f)–(h).

Dated: September 11, 1998.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 98–25320 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6166–8]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the Fall meeting of the Ozone Transport Commission to be held on October 8, 1998.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on October 8, 1998 from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at: Newark Airport Marriott, Newark International Airport, Newark, NJ, (973) 623–0006.

FOR FURTHER INFORMATION CONTACT: *EPA:* Susan Studlien, U.S. Environmental Protection Agency—Region I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3800.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 638, Washington, DC 20001, (202) 508–3840, e-mail: ozone@sso.org.

SUPPLEMENTARY INFORMATION:

The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the Commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with ground level ozone formation, transport, and control within the transport region.

The purpose of this document is to announce that this Commission will meet on October 8, 1998. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 (or by e-mail: ozone@sso.org) on Thursday, October 1, 1998. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, including actions by EPA under sections 110 and 126 of the Clean Air Act to evaluate the potential for additional emission reductions through new motor vehicle emission standards, and to discuss market-based programs to reduce pollutants that cause ozone.

Dated: September 16, 1998.

John DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–25452 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30412B; FRL–6025–9]

Certain Companies; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to

register the pesticide products Pralle, Multicide Intermediate 2734, Multicide Pressurized Roach Spray 27341, and Raid Ant and Roach 17, containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM 13), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 204, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA, 703–305–6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

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

EPA issued a notice, published in the **Federal Register** of June 14, 1996 (61 FR 30234)(FRL–5373–7), which announced that the companies listed below, had submitted applications to register the pesticide products Pralle, Multicide Intermediate 2734, Multicide Pressurized Roach Spray 27341, and Raid Ant and Roach 17, (EPA File Symbols 10308–EU, 1021–RAIN, 1021–RATO, and 4822–UUT) respectively, containing active ingredients not included in any previously registered products, except for cypermethrin, which is a currently registered chemical.

These applications were approved on March 31, 1998, for two technical products and two end-use products listed below.

1. EPA Registration Number: 10308-24. Applicant: Sumitomo Chemical Company Limited 5-33 Kitahama, 4-Chome, Chou-Ku Osaka 541, Japan. Product name: Pralle. Insecticide. Active ingredient: [2,5-Dioxo-3-(2-propynyl)- imidazolidinyl]methyl (1*RS*)-*cis*,*trans*-chrysanthemate at 50.5%. For formulation use only.

2. EPA Registration Number: 1021–1680. Applicant: McLaughlin Gormley King Company, 8810 Tenth Avenue North, Minneapolis, MN 55427. Product name: Multicide Intermediate 2734. Insecticide. Active ingredients: Imiprothrin [2,5-Dioxo-3-(2-propynyl)-imidazolidinyl]-methyl (1*RS*)-*cis*,*trans*-chrysanthemate at 16.00%, 3-phenoxybenzyl-(1*RS*,3*RS*;1*RS*,3*SR*)-2,2-dimethyl-3-(2-methylprop-1-enyl) cyclopropanecarboxylate at 11.20%, and *N*-octyl bicycloheptene dicarboximide at 20.00%. For manufacturing use only.

3. EPA Registration Number: 1021–1679. Applicant: McLaughlin Gormley King Co. Product name: Multicide Pressurized Roach Spray 27341. Insecticide. Active ingredients: Imiprothrin [2,5-Dioxo-3-(2-propynyl)-imidazolidinyl]-methyl (1*RS*)-*cis*,*trans*-chrysanthemate at 0.400%, 3-phenoxybenzyl-(1*RS*,3*RS*;1*RS*,3*SR*)-2,2-dimethyl-3-(2-methylprop-1-enyl) cyclopropanecarboxylate at 0.500%, and *N*-octyl bicycloheptene dicarboximide at 1.000%. For indoor use on ants, cockroaches, crickets, and other pests.

4. EPA Registration Number: 4822–447. Applicant: S.C. Johnson and Son, Inc., Racine, WI 53403–2236. Product name: Raid Ant and Roach 17. Insecticide. Active ingredients: Imiprothrin [2,4-Dioxo-1-(prop-2-ynyl)-imidazolidin-3-ylmethyl (1*R*)-*cis*,*trans*-chrysanthemate at 0.100% and cypermethrin [cyano (3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate at 0.100%. For household use.

The Agency has considered all required data on risks associated with the proposed use of imiprothrin and cypermethrin, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of imiprothrin and cypermethrin when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations are contained in the EPA Pesticide Fact Sheet on imiprothrin and cypermethrin.

A copy of the fact sheet, which provides a summary description of these pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 31, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–25083 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–834; FRL–6028–4]

Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–834, must be received on or before October 23, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any

part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Anne S. Ball, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 5th. FL, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8717; e-mail: ball.anne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–834] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–834] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 8, 1998.

Kathleen D. Knox

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

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Biosafe Systems

PP 8F4996

EPA has received a pesticide petition 8F4996 from Biosafe Systems, 45 E. Woodthrush Trail, East Medford, NJ 08055, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide hydrogen peroxide in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Biosafe Systems has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Biosafe Systems and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Product Name and Proposed Use Practices

ZeroTol Broad Spectrum Algicide/Fungicide; Oxidate Broad Spectrum Algicide/Fungicide. Biosafe has already registered ZeroTol for use as an algicide, bactericide and fungicide to control plant pathogenic diseases on ornamentals and turf. Biosafe intends to pursue the same use pattern for Oxidate (bactericide, fungicide) as a plant dip, soil drench and foliar spray on food crops in greenhouse and agricultural use sites (such as nurseries). Both products contain 27% hydrogen peroxide by weight as the active ingredient. The food crops are as follows: apples, bananas, beans, broccoli, cabbage, cauliflower, cherries, cucurbits, filberts, grapes, nectarines, onions, peaches, peppers, plums, potatoes (including seed potatoes), prunes, and tomatoes.

B. Product Identity/Chemistry

1. *Identity of the pesticide*. Zerotol and Oxidate Algicide/Fungicide both contain 27% hydrogen peroxide as the active ingredient which is a colorless, moderately pungent liquid and is soluble in water. The pH is 1.05 at 25 °C, and it is non-flammable and non-explosive. In storage it is unstable at 50 °C at 30 days, is moderately corrosive and its viscosity is 0.78 cS at 22 °C. The boiling point is 100 °C and the specifie gravity is 1.091 at 22 °C.

2. *Magnitude of residue at the time of harvest*. Biosafe believes that hydrogen peroxide reacts on contact with a surface on which it is applied, and rapidly degrades to oxygen and water, neither of which are of toxicological concern. Biosafe quotes a **Federal Register** notice of May 6, 1998 (63 FR 24949) (FRL 5789-2) in which the EPA established an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide hydrogen peroxide up to 120 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs and spices. '' Therefore, the lack of residues of toxicological concern and the existence of toxicological effects only at high dose levels (HDL) in experimental animals minimizes any concern for exposure to the very low doses that may be present as a result of the proposed uses.''

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed*. Biosafe has quoted the same **Federal Register** notice of May 6, 1998

as follows: '' Hydrogen peroxide is highly reactive and short lived because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics and metals accelerates decomposition. The instability of hydrogen peroxide to exist as itself, along with detoxifying enzymes found in cells (e.g. catalase, glutathione peroxidase), makes it very difficult to find any residues in or on foods (at proposed use levels) by conventional analytical methods.''

C. Mammalian Toxicological Profile

BioSafe Systems proposes products containing 27% hydrogen peroxide by weight. In all cases the product is diluted with water at a rate of 1:50, 1:100 or 1:300, which results in a concentration of 0.25% to 1.50% hydrogen peroxide in the product that is applied. BioSafe Systems has cited open literature with respect to toxicity data which shows that hydrogen peroxide is toxic at high levels; that at a 1.5% concentration it has no impact on human skin, eyes or respiratory system; that the concentrate has a pH of 1.05 and thus has been categorized in Toxicity Category I for skin and eye irritation; that for the oral route of exposure, a concentration of 0.5% hydrogen peroxide was determined not to present a possible adverse effect due to the fact that hydrogen peroxide at concentrations of 0.04 and 0.05% has been classified as GRAS by FDA and USDA for use as a food additive, toothpaste or mouthwash. Biosafe summarized open literature pertaining to toxicology as follows:

Solutions containing 6% hydrogen peroxide have an acute oral LD_{50} >5,000 milligram/kilogram (mg/kg) in rats (Toxicity Category III), an acute dermal LD_{50} > 10,000 mg/kg in rabbits (Toxicity Category IV), and an inhalation LC_{50} of 4 mg/l (Toxicity Category IV). Such solutions are mild irritants to rabbit skin and cause severe, irreversible corneal injury in half of the exposed rabbits (Toxicity Category I).

Solutions containing 50% hydrogen peroxide have an acute oral LD_{50} > 500 mg/kg in rats (Toxicity Category II) and an acute dermal LD_{50} >1,000 mg/kg in rabbits (Toxicity Category II). No deaths resulted after an 8-hour exposure of rats to saturated vapors of 90% hydrogen peroxide, LC_{50} is 4 mg/l (2,000 ppm). Solutions containing 50% hydrogen peroxide are also extremely irritating (corrosive) to rabbit eyes (Toxicity Category I).

D. Aggregate Exposure

1. *Dietary exposure— Food*. BioSafe has asserted that dietary exposure from use of hydrogen peroxide, as proposed is minimal since hydrogen peroxide reacts rapidly on contact with surfaces such as food and degrades into oxygen and water, neither of which are of toxicologial concern.

2. *Drinking water*. BioSafe states that the proposed use may result in the transfer of minor amounts of residues to potential drinking water sources, however there is no concern for exposure due to the fact that the residues of hydrogen peroxide are oxygen and water, neither of which are of toxicological concern. Biosafe quotes the existing exemption'' the EPA Office of Water indicates that when used for potable disinfection, no residues of hydrogen peroxide are present by the time the water is pumped through a distribution system.'' 40 CFR 180.1197.

3. *Non-dietary exposure*. BioSafe states that the potential for non-dietary exposure to the general population including infants and children is unlikely as the proposed use sites are commercial, agricultural and horticultural settings and that non-dietary exposures would not be expected pose any quantifiable risk due to lack of residues of toxicological concern.

E. Cumulative Exposure

BioSafe states that it is not expected that, when used as proposed, hydrogen peroxide would result in residues that would remain in human food items since hydrogen peroxide reacts on contact and degrades rapidly into compounds that are not of toxicological concern.

F. Safety Determination

1. *U.S. population*. Biosafe quotes from the established exemption from the requirement of a tolerance that EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute, short-term or intermediate-term exposures from the proposed food contact uses of hydrogen peroxide''. BioSafe states that since hydrogen peroxide degrades rapidly on contact into residues that are not of toxicological concern, chronic risk from dietary exposure is not anticipated and since residues of hydrogen peroxide are not expected on agricultural commodities, exposure to the general U.S. population from the proposed uses is not anticipated.

2. *Infants and children*. BioSafe states that, as mentioned above, residues of hydrogen peroxide are not expected on agricultural commodities and that hydrogen peroxide degrades rapidly on contact into residues that are of no toxicological concern and that there is a reasonable certainty of no harm for infants and children from exposure to hydrogen peroxide from the proposed uses.

G. Effects on the Immune and Endocrine Systems

BioSafe has cited open literature in that weak direct mutagenicity responses were seen for hydrogen peroxide in Ames tests with *Salmonella typhimurium* strains TA97, TA98, TA102, and TA1537 in a 20 minute preincubation test and in a liquid incubation modification using strain TA1537. Biosafe states that there is additional information regarding immunotoxicity, developmental toxicity and chronic toxicity in the open literature.

H. Existing Tolerances

An exemption from the requirement of a tolerance has been established for residues of hydrogen peroxide up to 120 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs and spices (40 CFR 180.1197).

I. International Tolerances

There is no Codex Alimentarium Commision Maximum Residue Level (MRL) for hydrogen peroxide.

[FR Doc. 98–25084 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–833; FRL–6026–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–833, must be received on or before October 23, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Diana Horne	9th Floor, CM #2, 703–308–8367, e-mail: horne.diana@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Sheila A. Moats	9th Floor, CM #2, 703–308–1259, e-mail: moats.sheila@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–833] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–833] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 8, 1998.

Kathleen D. Knox,

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

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. EDEN Bioscience Corporation

PP 8F4975

EPA has received a pesticide petition (PP) 8F4975 from EDEN Bioscience Corporation, 11816 North Creek Parkway N., Bothell WA 98011-8205, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a temporary tolerance for the biological pesticide Harpin in or on all food commodities. Harpin will be utilized on under the conditions of Experimental Use Permit 69834-EUP-R.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, EDEN Bioscience Corporation has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by EDEN Bioscience Corporation and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Proposed Use Practices

The proposed experimental program will be conducted in Alabama, Arkansas, Arizona, California, Connecticut, Florida, Georgia, Iowa, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Washington. The following crops are to be treated: tomatoes (fresh market and processing), peppers (bell and chile), cotton, cucurbits (cucumbers, squash, and melons), rice, ornamental roses, ornamentals (greenhouse foliage and bedding plants), strawberries, tobacco (burley and flue-cured), small grains (winter or spring wheat and barley), peanuts, conifer seedlings, alfalfa, potatoes, grapes (wine and table varieties), turf (lawn and garden), apples, citrus (oranges, grapefruit, lemons, limes, tangerines, and tangelos), soybeans (dry), blueberry, cranberry, raspberry, corn, sweet corn, and sugar cane. The proposed experimental program would utilize 559.98 pounds of

active ingredient per year on 4,997 acres during 1998-2000. Harpin will be applied by various methods at a maximum rate of 0.06 pounds to 0.39 pounds active ingredient per acre per site during the season, depending on the crop. For tomatoes and peppers, which represent the majority of the acreage to be treated, all plants will be treated once or twice prior to transplanting to the field, minimizing any potential environmental impact of product application in the field. Application methods may include seed treatments by soaking or dusting, root or seedling drenches, drenches at transplanting and foliar sprays during the growing season, with emphasis on pre-flowering applications. Standard spray equipment is appropriate for foliar applications.

B. Product Identity/Chemistry

Harpin is a bacterial protein product that is produced by fermentation. The harpin protein confers systemic resistance to multiple diseases in numerous crops. The dried formulated product containing harpin is Messenger™. In addition to broad-spectrum control of diseases caused by bacteria, fungi, and some viruses, Messenger™ also provides enhanced plant growth in many crops. Such enhancements include improved germination, increased overall plant vigor, accelerated flowering and fruit set, advanced maturity, and increased yield and quality of the final harvest. Messenger™ may enhance plant growth in the absence of detectable plant disease. Finally, treatment with Messenger™ provides substantial tolerance to certain soil-borne plant pathogens, reducing the need for toxic, conventional chemical means of control.

An analytical method for residues is not applicable, since the petitioner has requested an exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Harpin is a naturally occurring protein derived from the plant pathogenic bacterium, *Erwinia amylovora*, the causative agent for fire blight disease. Because of its role in plant host-parasite relationships, harpin is presumed to have been present in *E. amylovora* for as long as the bacterium has been involved in the fire blight disease. As such, harpin protein has been constantly produced and secreted by *E. amylovora* on or in edible fruits such as apple or pear with no apparent adverse effects on humans.

EDEN has conducted studies to evaluate the mammalian toxicology of the harpin protein. The results of these studies indicate that harpin is a Toxicity Category III or IV substance and that it poses no significant human health risks. No toxicity was observed in either of the acute oral toxicity studies conducted with the harpin technical grade active ingredient (TGAI) or a concentrated harpin TGAI. Acute oral LD_{50} values for both harpin protein technical and concentrated harpin protein technical were greater than 2,000 mg/kg in the rat (Toxicity Category IV). The 4-hour LC_{50} for harpin was determined to be greater than 2 mg/L in an acute inhalation study with rats. EDEN has not observed any incidents of harpin-induced hypersensitivity in individuals exposed to harpin during research, production, and/or field testing. The harpin end product produced minimally and mildly irritating results in the eye irritation and dermal irritation studies, respectively.

The proteinaceous nature of harpin, in combination with its lack of acute toxicity, lends an additional measure of safety because when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (LDLs) (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3-9). Therefore, because no significant adverse effects were observed, even at the limit doses, harpin is not considered to be an acutely toxic protein.

D. Aggregate Exposure

1. *Dietary exposure— Food*. Because of the low rate of application and rapid degradation of harpin in the environment, residues of harpin in or on treated raw agricultural commodities are expected to be negligible. Moreover, because harpin exhibits no mammalian toxicity, any dietary exposure, if it occurred, would not be harmful to humans.

2. *Drinking water*. Residues of harpin are unlikely to occur in drinking water, due to the low application rate of the product and its rapid degradation in soil and water and on foliar surfaces.

3. *Non-dietary exposure*. Increased non-dietary exposure of harpin via lawn care, topical insect repellents, etc., is not applicable to this EUP application.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate, given that there is no indication of mammalian toxicity of harpin protein and no information that indicates that toxic effects would be cumulative with any other compounds. Moreover, harpin does not exhibit a toxic mode of action in its target pests or diseases.

F. Safety Determination

1. *U.S. population*. Harpin's lack of toxicity has been demonstrated by the results of acute toxicity testing in mammals in which harpin caused no adverse effects when dosed orally and via inhalation at the limit dose for each study. Thus, the aggregate exposure to harpin over a lifetime should pose negligible risks to human health. Based on lack of toxicity and low exposure, there is a reasonable certainty that no harm to adults, infants, or children will result from aggregate exposure to harpin residue. Exempting harpin from the requirement of a tolerance should pose no significant risk to humans or the environment.

2. *Infants and children*.

See Unit F.1. above.

G. Effects on the Immune and Endocrine Systems

EDEN Bioscience Corporation has no information to suggest that harpin will adversely affect the immune or endocrine systems.

H. International Tolerances

EDEN Bioscience Corporation is not aware of any tolerances, exemptions from tolerance, or MRL's issued for harpin outside of the United States.

2. Stoller Enterprises, Inc.

PP 8F4960

EPA has received a pesticide petition (PP 8F4960) from Stoller Enterprises, Inc., 8580 Katy Freeway, Suite 200, Houston, Texas 70024, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide, salicylic acid, in or on all raw agricultural commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Stoller Enterprises, Inc. has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Stoller Enterprises, Inc. and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Product Name and Proposed Use Practices

Salicylic acid will be incorporated into the end-use product, Adjust I, as an active ingredient. Adjust I is proposed

for use on a variety of agricultural, horticultural, and floricultural applications to enhance plant defense against pathogens.

Depending on the crop, the first application of Adjust I is made at the 3-5 leaf stage or other prescribed growth stage. Subsequent applications may be made at 12-day intervals. The rate is 2 quarts of formulated product/acre per treatment. This equates to the application of 20 grams/acre salicylic acid.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Salicylic acid is a phenolic acid found in insects and plants as free acid or bound. The biochemical is a white, practically odorless, free-flowing crystalline powder. It is slightly soluble in water, forming acidic solutions.

2. *Magnitude of the residue at time of harvest and method used to determine residue.* An analytical method using High Performance Liquid Chromatography (HPLC), UV spectrophotometery, and Gas Chromatography for determining salicylic acid content in Adjust I is available.

3. *A statement of why an analytical method for detecting the levels and measuring of the pesticide residue is not needed.* Because this phenolic acid is found naturally in plants, residue analysis would not yield meaningful results, i.e., the analysis would not discern whether the salicylic acid source was the plant or from treatment. Additionally, phenolic levels harmful to plants and animals are highly unlikely to occur when the product is applied according to label instructions.

C. Mammalian Toxicological Profile

Salicylic acid is highly regulated in man and other organisms, the mechanisms of which are well understood. Salicylic acid has been administered to numerous species in long term dietary studies without adverse effects at a range of concentrations. The end-use product containing salicylic acid, Adjust I, has been evaluated for acute toxicity. Acute oral toxicity in rats is greater than 3,000 milligrams/kilogram (mg/kg) (Toxicity Category III). Acute dermal toxicity in rabbits is greater than 5,050 mg/kg (Toxicity Category III). In an eye irritation study, there were no signs of irritation following administration of Adjust I (Toxicity Category IV). A rabbit dermal irritation study with Adjust I resulted in no signs of irritation (Toxicity Category IV). There was no indication of dermal sensitization in a guinea pig dermal sensitization study.

Waivers have been requested for genotoxicity, reproductive and developmental toxicity, subchronic toxicity, chronic toxicity, and acute toxicity to nontarget species based on salicylic acid's ubiquity in nature, long history of medicinal uses, favorable toxicological profile in chronic toxicology studies, and inconsequential exposure resulting from label-directed use rates.

D. Aggregate Exposure

1. *Dietary exposure— Food.* Salicylic acid is ubiquitous in nature and is found in lower and higher plant species, insects, cosmetics, over-the-counter medications and natural and processed foods. Many items in the human daily diet contain appreciable quantities of free and bound salicylic acid. Dietary exposure due to topical applications of salicylic acid is difficult to estimate because of the phenolic acid's prevalence in skin care products and over-the-counter medications.

Considering the low dose of salicylic acid required to achieve the desired effect, the levels of salicylic acid found naturally in the diet and the quantity consumed from processed foods, it can be concluded that incremental dietary exposure to salicylic acid resulting from Adjust I applications is negligible.

2. *Drinking water.* The active ingredient, salicylic acid, decomposes readily in water and sunlight. The oxidation reactions of ultraviolet radiation/H_20_2/O_2 with either phenol or salicylic acid successfully degrade those compounds, which are building blocks of aquatic humic substances. Many compounds, including salicylic acid, have been identified by means of spectroscopy and chromatography. The degradation pathway is thought to involve hydroxylation of the aromatic ring and abstraction of a hydrogen atom to form 1,2-benzoquinone, which is cleaved to form muconic acid. The muconic acid is converted to maleic acid, fumaric acid, and oxalic acid. Fumaric and maleic acids eventually become malic acid, and the oxalic acid is degraded to formic acid and then CO_2. These reactions demonstrate how phenolics substances are converted to biodegradable ones.

3. *Non-dietary exposure.* Adjust I is proposed for use on non-residential turf and ornamentals. Exposure from turf grass applications is expected to be minimal because turf users will be protected by shoes and socks. Further, based on the limited frequency of use on turf grass, this non-food use is not likely to result in potential chronic exposure and thus should not be factored into a chronic exposure assessment. Exposures resulting from application to ornamentals is also anticipated to be negligible because consumers normally will not be in contact with treated plants.

E. Cumulative Exposure

Salicylic acid is highly regulated in plants and mammals, the mechanisms of which are well understood. This phenolic acid is not intended for pesticidal use and does not share a common mechanism of toxicity with currently available pesticides, thus Adjust I anticipate no cumulative effects with other substances.

F. Safety Determination

1. *U.S. population.* Because the use of salicylic acid will be delivered at label rates concentrations that are less than or equal to those found in plants, and because the active ingredient has a favorable toxicological profile, the use of the salicylic acid when delivered at label rates poses a negligible, or nonexistent, risk to the U.S. population.

2. *Infants and children.* Salicylic acid and its conjugates, esters, and metabolites are ingested and excreted daily. The compound and its analogs are ubiquitous in the food chain. When used at label rates, the product poses no threat to infants and children. In fact as the product replaces existing fungicides with less favorable toxicological profiles the risk to infants and children will be reduced.

G. Effects on the Immune and Endocrine Systems

There is no literature available to suggest the immune or endocrine systems will be compromised with the use of salicylic acid as an active ingredient at recommended rates.

H. Existing Tolerances

There are no known existing tolerances for the use of salicylic acid for use as a pesticide.

I. International Tolerances

There are no CODEX tolerances or international tolerance exemptions for salicylic acid at this time.

[FR Doc. 98–25315 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–827; FRL–6023–6]

Rohm and Haas Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on food contact paper and paperboard.

DATES: Comments, identified by the docket control number PF–734, must be received on or before October 23, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Marshall Swindell, PM 33, Antimicrobial Division (7510W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 6B, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–6341; e-mail: swindell.marshall@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on food contact paper and paperboard under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–827] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–827) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 1, 1998.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Rohm and Haas Company

PP 8F4977

EPA has received a pesticide petition 8F4977 from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 4,5-Dichloro-2-n-octyl-3(2*H*)-isothiazolone (CASRN 64359-81-5), in or on food contact paper and paperboard. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

Alternatively, this petition is proposing, pursuant to section 409 of the FFDCA, 21 U.S.C. 348, to amend 21 CFR 176.170 and 176.300, to establish a regulation for the use of 4,5-Dichloro-2-n-octyl-3(2*H*)-isothiazolone in or on food contact paper and paperboard. Regulatory authority for the rule proposed by this petition currently resides with EPA. EPA intends to transfer this regulatory authority to FDA, by rulemaking, pursuant to section 201(q)(3) of the FFDCA, 21 U.S.C. 321(q)(3). Any final regulation based on this petition will be determined by the status of the rulemaking at the time of the petition's final disposition.

Rohm and Haas Company's summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Rohm and Haas Company and represents the views of Rohm and Haas Company. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

A. Residue Chemistry

This petition is not for residues in or on raw agricultural commodities. It is for residues in or on food contact paper

and paperboard. Accordingly, the residue chemistry data submitted are solely for the residues remaining in food contact paper and paperboard and coatings on food contact paper and paperboard when the subject slimicide (4,5-dichloro-2-n-octyl-3(2*H*)-isothiazolone, CASRN 64359-81-5, hereafter referred to as RH-287) is used in the following applications: for addition to pulp and paper mill process water to control slime-forming microorganisms, for addition to coatings that will be used on paper and paperboard to preserve the paper, for application to wet lap at pulp mills prior to manufacture of paper, and for addition to dispersed pigments that will be used in the manufacture of paper and paperboard. Each of these applications is discussed separately below.

1. *Residues in paper and paperboard from treatment of process water.* Gas chromatography with mass spectral detection was used to analyze paper from a field trial where the maximum use concentration (4 part per million (ppm) in the slurry water, 0.033 lb. RH-287 per ton of paper) was added to the process water. Paper from this trial had a concentration of RH-287 that ranged from 6.9 to 35.4 ppm based on the weight of the paper. Samples of paper that had 25 ppm RH-287 were extracted with food simulants using standard FDA protocols for determining food additive extractables from food contact materials. Samples were extracted for 24 hours with the appropriate aqueous and fatty food simulants for uncoated paper. The concentration of RH-287 in the food simulants was 0.68 µg RH-287/inch^2 of paper in the aqueous simulant and <0.22 µg RH-287/inch^2 of paper in the fatty food simulant.

2. *Residues from coated paper and paperboard.* Samples of paper were coated with either a latex-based coating or a starch-based coating. The concentration of RH-287 in the latex-coated paper was 100 ppm of RH-287 based on the weight of paper, whereas the concentration in the starch-coated paper was 145 ppm based on the weight of paper. These papers were then extracted with food simulating solvents using standard FDA methods for 24 hours. The concentration of RH-287 found in the aqueous food simulant was 1.23 µg/inch^2 in the latex-coated paper and 2.64 µg/inch^2 in the starch-coated paper. The concentration of RH-287 found in the fatty food simulant was 4.78 µg/inch^2 in the latex-coated paper and 5.02 µg/inch^2 in the starch-coated paper.

3. *Residues in paper from wet lap treated with RH-287.* The maximum use level for treatment of wet lap is 100 ppm of RH-287 based on the dry weight of the fiber. Laboratory-made paper containing 108 ppm of RH-287 was repulped in a manner consistent with the actual repulping of wet lap. From this experiment it was found that the final paper contained 15 ppm of RH-287. Using standard FDA assumptions, this concentration is equivalent to 0.70 µg RH-287/inch^2 of paper.

4. *Residues from dispersed pigments in paper and paperboard.* The allowable concentration of RH-287 in dispersed pigments is between 10 and 50 ppm. Since dispersed pigments will be a component of latex or starch-type coatings, the coated paper migration study encompassed these uses. As a result, no separate migration studies were conducted with paper prepared from dispersed pigments that were treated with RH-287. The dietary contribution of RH-287 from dispersed pigments is expected to be at most 21% of the dietary contribution for the coated paper.

5. *Analytical method.* This is a tolerance exemption petition and, accordingly, no enforcement analytical method is proposed.

B. Toxocological Profile

1. *Acute toxicity.* RH-287 Technical (96.9% active ingredient) is slightly to moderately toxic by the oral route, with an acute oral LD_{50} in rats of 1636 milligram/kilogram (mg/kg) (MRID 42977701) and in mice of 567 mg/kg (MRID 43471601). RH-287 is considered corrosive to the skin and eyes. A formulation of RH-287 in xylene produced skin sensitization in guinea pigs (MRID 126793). RH-287 is irritating to the respiratory tract via inhalation exposure; the 4 hr inhalation LC_{50} in rats was 0.26 mg/liter (MRID 43471602).

Acute toxicity studies conducted on an end-use product containing 4.25% RH-287 with surfactants in water indicated that the product was practically non-toxic by either the oral or dermal routes; the oral and dermal LD_{50} in rats was > 5,000 and > 2,000 mg/kg product, respectively (MRID 44259302 and 44259303, respectively). The 4.25% product was slightly irritating to the skin (MRID 44259306) but was corrosive to the eyes (MRID 44259305). The 4 hr inhalation LC_{50} for the use product in rats was 1.3 mg/liter product (MRID 44259304).

2. *Genotoxicity.* RH-287 Technical was negative (non-mutagenic) in the Ames *Salmonella* gene mutation assay (MRID 43471605), negative in a gene mutation assay in Chinese hamster ovary (CHO) cells (MRID 43471606), negative in *in vitro* chromosomal aberration assay in CHO cells (MRID 43471607), and negative in a mouse *in vivo* micronucleus assay (MRIDs 43471601, 43471608, and 43901901). RH-287 is judged to be non-genotoxic.

3. *Subchronic toxicity.* RH-287 Technical (98.8% active ingredient) was administered in the diet to groups (10/sex/group) of Crl:CD® BR rats for three months at dietary concentrations of 0, 100, 500, 1,000, and 4,000 ppm (MRID 43471603). No treatment-related mortality was observed. Significant reductions in body weight and body weight gain were observed at 1,000 ppm in females and at 4,000 ppm in both sexes. Food consumption was transiently reduced at 1,000 ppm in females. Food and water consumption were reduced throughout the treatment period at 4,000 ppm in both sexes. Serum triglyceride levels were decreased at 1,000 ppm in females; several other clinical chemistry parameters were affected in both sexes at 4,000 ppm. Histological findings indicative of gastric irritation were limited to the forestomach and were observed at 1,000 and 4,000 ppm in both sexes. The no-observed effect level (NOEL) for RH-287 when administered in the diet to rats for three months was 500 ppm (equivalent to 32.5 and 36.7 mg/kg/day in males and females, respectively).

4. *Chronic toxicity/oncogenicity.* Chronic toxicity and oncogenicity studies have not been conducted with RH-287 since these studies were not required for the FIFRA registration of RH-287 Technical. Chronic toxicity and oncogenicity studies are judged not to be warranted for RH-287 based on the primary toxicity of gastric irritation observed in the RH-287 three-month dietary toxicity study described above, its non-mutagenic potential, and its negligible dietary exposure (see below).

5. *Developmental toxicity.* RH-287 Technical was administered to pregnant rats by daily oral gavage on days 6-15 of gestation at 0, 10, 30, 100, and 300 mg/kg/day, and dams were killed on day 20 for cesarean sectioning (MRID 43471604). Significant mortality was observed at 300 mg/kg/day, and this group was terminated prior to day 20. Maternal body weight change was reduced at 100 mg/kg/day. Feed consumption was reduced throughout the treatment period at 100 mg/kg/day but was increased in this group following the treatment period. An increased number of litters from rats dosed with 100 mg/kg/day had fetuses with wavy ribs, a skeletal variation. There were no treatment-related effects on the numbers of early or late resorptions, live fetuses per litter, fetal body weight or sex ratio, external, soft-

tissue, or head abnormalities, or skeletal malformations. The NOELs for maternal and fetal toxicity in this study were 10 and 30 mg/kg/day, respectively. RH-287 was not teratogenic in rats.

6. *Pharmacokinetics*. The absorption, distribution, and excretion of oral administration of 20 and 250 mg/kg ^{14}C-RH-287 were investigated in male and female Crl:CD® BR rats (MRID 43471609 and 43901901). ^{14}C-RH-287 was moderately rapidly absorbed; peak plasma concentrations were achieved between 6 and 24 hr. ^{14}C-RH-287 was rapidly excreted mostly within two days after dosing and primarily in the feces. Tissues and residual carcasses contained negligible amounts of ^{14}C-label four days after dosing indicating that ^{14}C-RH-287 does not bioaccumulate.

7. *Reference dose (RfD)*. EPA has not previously set an RfD for RH-287 since at the time of registration review for RH-287 microbicide (EPA Reg. No. 707-224) Rohm and Haas did not request use in food contact materials. Based on the subchronic NOEL of 32.5 mg/kg/day and an uncertainty factor of 100, Rohm and Haas Company proposes an RfD for RH-287 of 0.325 mg/kg/day (based on minimal gastric irritation and decreased body weight and food consumption). An RfD of 0.325 mg/kg/day leads to the following allowable daily intakes (ADI) for adult males and females and for children and infants:

Adult male (70 kg), ADI = 22.8 mg/day;

Adult female (60 kg), ADI = 19.5 mg/day;

Child (20 kg), ADI = 6.5 mg/day; and

Infant (8 kg), ADI = 2.6 mg/day.

Since the RfD for RH-287 is based primarily on the physico-chemical effect of gastric irritation, a wide difference in the susceptibility between children/infants and adults would not be anticipated. The gastric irritation effects are likely a function of the concentration of RH-287 in the stomach, which is a function of the amount of RH-287 per unit of body weight. Thus, exposure to a given mg/kg/day dose of RH-287 is expected to yield similar gastric concentrations of RH-287 among infants, children, and adults. An RfD of 0.325 mg/kg/day is judged to be an appropriate safe maximum ingestion dose for RH-287.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food in contact with paper or paperboard made in process water containing RH-287*. Analysis of paper samples manufactured in a papermill which used RH-287 amended slurry water by gas chromatography with mass spectral detection revealed levels of RH-287 in the paper ranging from 6.9 to 35.4 ppm. Samples of paper that had 25 ppm were extracted with food simulating solvents using standard FDA protocols for determining food additive extractables for 24 hours. The levels of RH-287 recovered were 0.68 µg/inch^2 of paper in the aqueous food simulant and less than 0.22 µg/inch^2 of paper in the fatty food simulant. The standard FDA assumption is that 10 g of food is in contact with one inch^2 of paper. Therefore, the corresponding food concentrations are 68 ppb of RH-287 in aqueous food and 22 ppb of RH-287 in fatty foods. Using a standard equation provided by the FDA for estimating dietary exposure to an indirect food additive migrating from food packaging, the hypothetical worst case potential for dietary exposure to RH-287 as a result of RH-287 migration into foods in contact with paper and paperboard made in process water containing RH-287 is:

$\langle M_{slimicide} \rangle = f_{aqueous\ and\ acidic}(M_{10\ percent\ ethanol}) + f_{alcohol\ and\ fatty}(M_{fatty})$

The food type distribution factors ($f_{foodtype}$) are:

$f_{aqueous\ and\ acidic}$ 0.57 + 0.01 = 0.58

$f_{alcohol\ and\ fatty}$ 0.01 + 0.41 = 0.42

and <M> is the concentration of residues in food.

$\langle M_{slimicide} \rangle = 0.58(68\ ppb) + 0.42(22\ ppb)$

$\langle M_{slimicide} \rangle = 48\ ppb$

The above value of $\langle M_{slimicide} \rangle$ was obtained from paper that contained 25 ppm of RH-287. In the paper mill trial, the concentration of RH-287 ranged from 6.9 to 35.4 ppm. To ensure that the dietary concentration is conservatively estimated, the value for $\langle M_{slimicide} \rangle$ is adjusted upward by multiplying by 1.4 (35/25) to give a concentration of 67 ppb. This value is then converted into a dietary concentration by taking into consideration the consumption factor for uncoated paper and paperboard, which is 10% for this type of packaging material. As a result, the maximum dietary concentration of RH-287 resulting from its use in slimicide applications is 6.7 ppb ($Diet_{slimicide}$).

ii. *Food in contact with paper or paperboard prepared with coatings containing RH-287*. Two different coatings were prepared. One was a latex-based coating, and the other was a starch-based coating. The latex coating was applied to paper at the maximum use level of 100 ppm (based on the weight of paper). The concentration found in the aqueous food simulant from the latex-based coating was 123 ppb and in the fatty food simulant was 478 ppb. However, the starch-based coating was 145 ppm, approximately 50% higher. The starch values, 264 ppb for the aqueous food simulant and 502 ppb in the fatty food simulant, can be normalized to the maximum use level of 100 ppm of RH-287 by multiplication by 0.69 (100/145) to give food concentrations of 182 ppb for the aqueous food simulant and 346 ppb for the fatty food simulant. Worst case calculations are based on using the concentration in the aqueous food simulant from the starch coating and the concentration in the fatty food simulant from the latex coating. This calculation takes into account the rather rare possibility that starch coatings containing RH-287 would be used exclusively with aqueous foods while latex coatings would be used exclusively with fatty foods.

$\langle M_{coatings} \rangle = f_{aqueous\ and\ acidic}(M_{10\ percent\ ethanol}) + f_{alcohol\ and\ fatty}(M_{fatty})$

$\langle M_{coatings} \rangle = 0.58(0.182) + 0.42(0.478)$

$\langle M_{coatings} \rangle = 0.310$ µg RH-287/g of food = 310 ppb RH-287

The $\langle M_{coating} \rangle$ is converted into a dietary concentration by utilizing a 10% consumption factor. The contribution to the diet from paper prepared from latex and starch based coatings is 31 ppb ($Diet_{coating}$).

iii. *Food in contact with paper or paperboard made from wet lap treated with RH-287*. The maximum use level permitted for RH-287 on wet lap is 100 ppm based on the dry weight of fiber. Wet lap consists of approximately 50% fiber and 50% water and never contacts food directly. It is a pulp product that requires further processing before paper can be made from it. During the manufacture of paper from wet lap, the wet lap is repulped in water. This slurry is approximately 0.5% to 1% fiber. Laboratory experiments demonstrated that paper made from wet lap contains only 14% of the RH-287 active material originally present in the wet lap, indicating that most of the RH-287 is lost during the repulping process.

Paper manufactured from wet lap represents only 3% of all paper made in North America. If we assume the worst case that all of the RH-287 in the paper made from repulped wet lap migrates into food, then the maximum RH-287 residues in food would be:

$\langle M_{wet\ lap} \rangle$ = (100 µg/g of paper)(0.14)(0.05g of paper/inch^2 of paper)(1 inch^2 of paper/10 g of food) = 0.07 µg/g = 70 ppb

The above worst case value of RH-287 residues in food ($\langle M_{wet\ lap} \rangle$) can then be converted to the dietary contribution ($Diet_{wet\ lap}$) by multiplication by the consumption factor. The consumption factor for uncoated paper is 0.1, and since wet lap represents only 3% of all paper made in North America, the overall consumption factor for wet lap

paper is 0.003. The worst case overall amount of RH-287 in the diet contributed from wet lap would be (70 ppb) (0.003) = 0.21 ppb.

iv. *Food in contact with paper or paperboard made with dispersed pigments containing RH-287.* As described above, the maximum level of RH-287 in paper coatings contributed from dispersed pigments is 21% of the value determined for the latex-coated paper. We can, therefore, calculate the amount of RH-287 that dispersed pigments would contribute to the diet by multiplying 31 ppb ($Diet_{coating}$) by 0.21 = 6.5 ppb ($Diet_{dispersed\ pigment}$).

v. *Summation of dietary exposure.* The sum of the dietary contributions of RH-287 from the different applications is shown below:

$Diet_{slimicide}$	6.7 ppb
$Diet_{coating}$	31.0 ppb
$Diet_{wet\ lap}$	0.21 ppb
$Diet_{dispersed\ pigment}$	6.5 ppb
$Diet_{sum}$	44.4 ppb

2. *Drinking water.* The use of RH-287 as a slimicide for pulp and paper mills does not provide for entry of RH-287 into drinking water sources. Spent process water from such sites is treated as waste water, typically on-site, prior to release into surface waters. There is no provision for RH-287 to enter groundwater systems since RH-287 is not registered for use directly on raw agricultural commodities.

3. *Non-dietary exposure.* RH-287 is an industrial-use microbicide whose only other registered water-treatment uses (i.e., other than use in pulp and paper manufacturing) is as a slimicide control agent in recirculating cooling water, air washer systems, recirculating closed loop water cooling systems, decorative fountains, and can warmer and brewery pasteurizers. All of the uses of RH-287 involve only occupational exposures. There are no registrations and no intended uses in residential scenarios.

4. *Estimated total daily intake.* The daily diet for adults is 3 kg/day. The worst case estimated daily intake (EDI) of RH-287 for adults from possible residuals in food contact paper and paperboard is:

EDI_{adult} = 3.0 kg of food/day x 44.4 ppb = 133 µg/day

The daily diet differs in quantity for children of different ages. At 6 months of age, the daily diet is 1.1 kg, and the mean body weight for a 6 month old infant is 8 kg. In the age interval 4 to 6 years of age, the daily diet is 2 kg/day, and the mean body weight of a child this age is 20 kg. The EDI's for infants and children are based on these total diet amounts and are:

EDI_{infant} = 1.1 kg of food/day x 44.4 ppb = 49 µg/day

EDI_{child} = 2.0 kg of food/day x 44.4 ppb = 89 µg/day

Thus for a 6 month old infant (8 kg), a 4 to 6 year old child (20 kg), an adult woman (60 kg), and an adult man (70 kg), the daily intakes of RH-287 associated with the above EDIs, expressed as µg/kg/day and as percent of RfD utilization (RfD = 0.325 mg/kg/day = 325 µg/kg/day) are:

	Dietary exposure	Percent RfD utilized
Infant	6.1 µg/kg/day	1.9
Child	4.5 µg/kg/day	1.4
Woman	2.2 µg/kg/day	0.7
Man	1.9 µg/kg/day	0.6

Rohm and Haas Company notes that in 40 CFR 180.1 (l) EPA has defined that a ''negligible residue ordinarily will add to the diet an amount which will be less than 1/2000th of the amount that has been demonstrated to have no effect from feeding studies on the most sensitive animal species tested.'' Thus, for a 100-fold uncertainty factor based RfD, this means an RfD utilization of 5% or less. Rohm and Haas considers, therefore, that under the hypothetical worst case dietary exposure assessment, RH-287 residues are clearly negligible residues.

D. Cumulative Effects

RH-287 has the intrinsic toxicological potential to produce irritation at the site of contact at relatively high concentrations. This chemico-physico (non-systemic) property is consistent with other compounds which cause irritation effects at the site of application. We have evaluated this effect in the context of the extremely low dietary exposure to RH-287 in the subject indirect food additive application and do not believe there is any evidence for a cumulative risk concern.

E. Safety Determination

1. *U.S. population.* Since the use of RH-287 as a slimicide in pulp and papermills is, under hypothetical worst case conditions, expected to lead to at most only negligible indirect dietary exposures in adults [i.e., not greater than 0.6 to 0.7% of the RfD for adults which is less than the negligible criteria of 5% of RfD defined in 40 CFR 180.1(1)], it is Rohm and Haas Company's judgment that there is a reasonable certainty that no harm will come to adults from dietary exposure to RH-287 residues which could occur in food contact paper and paperboard produced in pulp and paper mills utilizing RH-287 for slime control, and for paper coatings, wet lap, and dispersed pigment preservation in accordance with its FIFRA labeling.

2. *Infants and children.* Since the use of RH-287 as a slimicide in pulp and papermills is, under hypothetical worst case conditions, expected to lead to at most only negligible indirect dietary exposures in infants and children [i.e., not greater than 1.4-1.9% of the RfD for infants and children which is less than the negligible criteria of 5% of RfD defined in 40 CFR 180.1(1)], it is Rohm and Haas Company's judgment that there is a reasonable certainty that no harm will come to infants and children from dietary exposure to RH-287 residues which could occur in food contact paper and paperboard produced in pulp and paper mills utilizing RH-287 for slime control, and for paper coatings, wet lap, and dispersed pigment preservation in accordance with its FIFRA labeling.

3. *Sensitive individuals.* Since the RfD for RH-287 is based primarily on the physico-chemical effect of gastric irritation, wide differences in susceptibility to RH-287 based on metabolic differences among individuals would not be anticipated. Because of this, and because of the relatively large margins of safety for exposure to RH-287 from food in contact with paper products (i.e., 5,300 to 17,000), it is Rohm and Haas Company's judgment that there is a reasonable certainty that no harm will come to individuals with pre-existing gastro-intestinal tract conditions, such as ulcers, colitis, and similar pathologies, from dietary exposure to RH-287 residues which could occur in food contact paper and paperboard produced

in pulp and paper mills utilizing RH-287 for slime control, and for paper coatings, wet lap, and dispersed pigment preservation in accordance with its FIFRA labeling.

F. International Tolerances

There are no Codex maximum residue levels (MRLs) established for residues of RH-287.

G. Estrogenic Effects

RH-287 is judged not to be an estrogenic material for the following reasons:

1. RH-287 is not structurally related to any known estrogenic materials. Although RH-287 contains two chlorine atoms, these chlorine atoms are readily released as chloride ions upon environmental degradation;

2. An extensive toxicology database on RH-287 and other isothiazolones indicates that these materials do not cause direct systemic toxicity. Relatively high concentrations of these materials are only toxic to the site of application;

3. Histopathologic examination in our RH-287 three-month dietary study summarized above indicated no toxicity to reproductive organs; and

4. Our developmental toxicity study summarized above indicated no reproductive toxicity.

Thus, based on structure activity analysis and on toxicology studies conducted with RH-287, there is no scientific evidence that indicates, or even suggests, that RH-287 is estrogenic. (Karen Levy)

[FR Doc. 98–25448 Filed 9–22–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Docket No. 98–16]

Eastern Mediterranean Shipping Corp. d/b/a Atlantic Ocean Line and Anil K. Sharma Possible Violations of Sections 10(a)(1), 10(b)(1) and 10(d)(1) of the Shipping Act of 1984; Order of Investigation and Hearing

Eastern Mediterranean Shipping Corp. (''Eastern''), also doing business as Atlantic Ocean Line,[1] is a tariffed and bonded NVOCC located at 990 Avenue of the Americas, Suite 6E, New York, NY 10018. Eastern holds itself out as an NVOCC pursuant to its ATFI tariff FMC No. 013236–001, effective December 12, 1995. Eastern currently maintains an NVOCC bond, No. 8941330, in the amount of $50,000 with the Washington International Insurance Company, located in Schaumburg, Illinois.

Eastern was incorporated in 1994, and Anil (a.k.a. ''Andy'') K. Sharma, who owns 100% of the company stock, is the President and Chief Executive Officer. Sharma currently manages Eastern, and is actively involved in the company's day to day operations as an NVOCC.

Section 10(a)(1) of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. § 1709(a)(1), prohibits any person knowingly and willfully, directly or indirectly, by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. It appears that Eastern has knowingly and willfully misdeclared cargo shipments in order to obtain favorable rates under a service contract entered into with Zim Israel Navigation Co. Ltd. (''Zim''). For the shipments at issue, Eastern's house bills of lading properly declared the commodity being shipped. However, the master bills of lading issued by the carrier show that Eastern declared a different commodity for the same shipment. Zim rated the commodities in accordance with the inaccurate description furnished by Eastern. In each instance, Eastern changed the declaration from a commodity not listed in the service contract, to a commodity that was contained therein. Eastern was named as shipper on all of Zim's bills of lading, and therefore had knowledge of the actual commodity for which transportation was obtained. Other documentation, such as invoices, rate quotes, booking confirmations and shipper's export declarations reflect that Eastern and its principals were apparently cognizant that the shipments actually consisted of commodities different from those listed on Zim's bills of landing.

Section 10(b)(1), 46 U.S.C. app. § 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. It appears that Eastern did not charge the rates set forth in its tariff on numerous shipments, filed tariff amendments subsequent to the shipment taking place, and in other instances failed to file a commodity rate at all. Eastern also filed commodity rates under the wrong commodity description, making them inapplicable to the shipments involved. It further appears Eastern also improperly assessed surcharges not filed in its tariff.

Section 10(d)(1), 46 U.S.C. app. § 1709(d)(1), states that no common carrier may fail to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. It appears Eastern has failed to establish and observe reasonable practices in receiving and delivering property entrusted to it by its customers. The Commission's Office of Informal Inquiries and Complaints and Informal Dockets, has received over 40 complaints in the last two years from shippers and freight forwarders who have dealt with Eastern. The complaints include instances such as Eastern failing to pay ocean freight to the ocean common carrier, failing to respond to requests for information about shipments, as well as failing to release bills of lading once freight has been paid. Furthermore, it appears that Eastern repeatedly fails to notify shippers regarding sailing schedules and vessel names, provides deceptive information about the location of cargo and fails to deliver cargo as promised. As a direct result of Eastern's failure to perform its duties as an NVOCC, shippers experience frustration and anxiety over losing their business reputation as well as lost revenue in correcting the problems caused by Eastern.

Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations.[2] Section 13 further provides that a common carrier's tariff may be suspended for violations of section 10(b)(1) for a period not to exceed one year, while section 23 of the 1984 Act, 46 U.S.C. app. § 1721 provides for a similar suspension in the case of violations of section 10(a)(1) of the 1984 Act.

Now therefore, it is ordered, That pursuant to sections 10, 11, 13, and 23 of the 1984 Act, 46 U.S.C. app. §§ 1709, 1710, 1712 and 1721, an investigation is instituted to determine:

(1) Whether Eastern Mediterranean Shipping Corp. and/or Anil K. Sharma violated section 10(a)(1) of the 1984 Act by directly or indirectly obtaining

[1] Although Eastern currently uses Atlantic Ocean Line as a d/b/a, the principal of Eastern started Atlantic Ocean Line Corp., ATFI org. number 014201, in 1996 as a separately tariffed and bonded NVOCC. It appears that Atlantic Ocean Line Corp. operated, until recently, from the same office as Eastern.

[2] The maximum penalties are raised by 10 percent for violations occurring after November 7, 1996. See Inflation Adjustment of Civil Monetary Penalties, 276 S.R.R. 809 (1996).

transportation at less than the rates and charges otherwise applicable through the means of misdescription of the commodities actually shipped;

(2) Whether Eastern Mediterranean Shipping Corp. violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its NVOCC tariff;

(3) Whether Eastern Mediterranean Shipping Corp. violated section 10(d)(1) of the 1984 Shipping Act by failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property;

(4) Whether, in the event violations of sections 10(a)(1), 10(b)(1) and 10(d)(1) of the 1984 Act are found, civil penalties should be assessed against Eastern Mediterranean Shipping Corp. and/or Anil K. Sharma and, if so, the amount of penalties to be assessed;

(5) Whether, in the event violations of sections 10(a)(1) or 10(b)(1) of the 1984 Act are found, the tariff of Eastern Mediterranean Shipping Corp. should be suspended; and

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statement, affidavits, depositions, or other documents or that the nature of the matters in issue in such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That Eastern Mediterranean Shipping Corp. and Anil K. Sharma are designated as Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register,** and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be service on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by September 18, 1999 and the final decision of the Commission shall be issued by January 18, 2000.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–25405 Filed 9–22–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

This notice corrects a notice (FR Doc. 98-24553) published on pages 49122-49123 of the issue for Monday, September 14, 1998.

Under 1. Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H, is revised to read as follows:

Frequency:

development of policy statement: one-time;

trust company report: quarterly;

transactions recordkeeping: on occasion;

disclosure: on occasion;

Comments on this application must be received by November 16, 1998.

Board of Governors of the Federal Reserve System, September 17, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–25353 Filed 9–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 8, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. John W. Allison and Robert H. Adcock, Jr., both of Conway, Arkansas; to acquire voting shares of Holly Grove Bancshares, Inc., Holly Grove, Arkansas, and thereby indirectly acquire voting shares of Bank of Holly Grove, Holly Grove, Arkansas.

Board of Governors of the Federal Reserve System, September 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25440 Filed 9–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Banknorth Group, Burlington, Vermont; to acquire at least 19.9 percent and up to 100 percent of the voting shares of Evergreen Bancorp, Inc., Glens Falls, New York, and thereby indirectly acquire Evergreen Bank, N.A., Glens Falls, New York.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First Commonwealth Financial Corporation, Indiana, Pennsylvania; to merge with Southwest National Corporation, Greensburg, Pennsylvania, and thereby indirectly acquire Southwest National Bank of Pennsylvania, Greensburg, Pennsylvania.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Albion National Management Co., Inc., Albion, Nebraska; to acquire 16.87 percent of the voting shares of Sutton Agency, Sutton, Nebraska; and indirectly acquire City State Bank, Sutton, Nebraska.

2. First York Ban Corp., York, Nebraska; to acquire 70 percent of Sutton Agency, Sutton; Nebraska and thereby indirectly acquire City State Bank, Sutton, Nebraska.

3. Ottawa Bancshares, Inc., Ottawa, Kansas; to merge with First State Management Corporation, Inc., Salina, Kansas, and thereby indirectly acquire First Bank Kansas, Salina, Kansas.

Board of Governors of the Federal Reserve System, September 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25350 Filed 9–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 19, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Associated Banc-Corp, Green Bay, Wisconsin; to merge with Citizens Bankshares, Inc., Shawano, Wisconsin, and thereby indirectly acquire Citizens Bank, National Association, Shawano, Wisconsin.

In connection with this application, Applicant also has applied to acquire Wisconsin Finance Corporation, Shawano, Wisconsin, and thereby indirectly acquire Citizens Financial Services, Inc., Shawano, Wisconsin, and thereby engage in the nonbank activities of extending credit and servicing loans and acting as principal, agent, or broker for credit related insurance, pursuant to §§ 225.28(b)(1) and 225.28(b)(11)(ii) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with Meigs County Bancshares, Inc., Decatur, Tennessee, and thereby indirectly acquire Meigs County Bank, Decatur, Tennessee. Comments regarding this application must be received not later than October 16, 1998.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Washington Bancorp, Walla Walla, Washington; to merge with Whatcom State Bancorp, Bellingham, Washington, and thereby indirectly acquire Whatcom State Bank, Ferndale, Washington.

Board of Governors of the Federal Reserve System, September 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25439 Filed 9–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-24972) published on page 49696 of the issue for Thursday, September 17, 1998.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Lake Bank Shares, Inc., Employee Stock ownership Plan, Albert Lea, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Lake Bank Shares, Inc., Employee Stock Ownership Plan, Emmons, Minnesota; to become a bank holding company by acquiring 30 percent of the voting shares of Lake Bank Shares, Inc., Albert Lea, Minnesota, and thereby indirectly acquire Security Bank Minneapolis, Albert Lea, Minnesota and First State Bank of Emmons, Emmons, Minnesota.

Comments on this application must be received by October 8,

Board of Governors of the Federal Reserve System, September 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25441 Filed 9–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-24719) published on page 49358 of the issue for Tuesday, September 15, 1998.

Under the Federal Reserve Bank of Boston heading, the entry for State Street Corporation, Boston, Massachusetts, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. State Street Corporation, Boston, Massachusetts; to acquire through Bridge Information Systems, Inc., Saint Louis, Missouri, substantially all the assets and certain liabilities of ADP Financial Information Services, Inc., Jersey City, New Jersey, and thereby engage in financial data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

Comments on this application must be received by September 30, 1998.

Board of Governors of the Federal Reserve System, September 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25351 Filed 9–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. PNC Banc Corp., Pittsburg, Pennsylvania; to engage *de novo* through its subsidiary, PNC Capital Markets, Inc., Pittsburgh, Pennsylvania, in underwriting and dealing in all types of debt and equity securities (*See e.g., J.P. Morgan & Co., Inc., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Fed. Res. Bull. 192 (1989) (the ''1989 Morgan Order''), aff'd sub nom., *Securities Industry Association v. Board of Governors*, 900 F.2d 360 (D.C. Cir. 1990) (''SIA'' v. Board); *Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barcalys PLC, and Barclays Bank PLC*, 76 Fed. Res. Bull. 158 (1990), 80 Fed. Res. Bull. 1104 (1990)) and certain incidental activities permissible for nonbank subsidiaries of bank holding companies, pursuant to § 225.25(a)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, September 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25442 Filed 9–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 22. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Rooms E and F of the Martin Building (Terrace level). The meeting will begin at 9:00 a.m. and is expected to continue until 4:00 p.m., with a lunch break from approximately 1:00 p.m. until 2:15 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Development Lending on Indian Reservations. The Community Affairs and Housing Committee will lead a Council discussion on ways to overcome potential barriers to community reinvestment and community development lending on Indian Reservations.

Debit Cards with Stored-Value Characteristics. The Depository and Delivery Systems Committee will lead a discussion of possible treatment under Regulation E (Electronic Fund Transfers) of certain debit-card products with stored-value characteristics.

Community Reinvestment Act. The Bank Regulations Committee will lead a discussion on several issues related to the implementation of Regulation BB (Community Reinvestment Act), such as the scope of the limited-purpose bank designation, the primacy of the lending test, bank performance under the services and investments tests, and the use of the strategic plan option.

Credit Scoring. An ad hoc committee representing the Bank Regulations, Consumer Credit, and Community Affairs and Housing Committees will lead a discussion on issues related to the increased use and possible impact of credit scores on mortgage and small business loan providers and consumers.

Governor's Report. Federal Reserve Board Member Edward M. Gramlich will report on recent Board initiatives and issues of concern.

Members Forum. Individual Council members will present views on economic conditions present within their industries or local economies.

Committee Reports. Council committees will report on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit views to the Council regarding any of the above topics may do so by sending written statements to Deanna Aday-Keller, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Aday-Keller, 202-452-6470. Telecommunications Device for the Deaf

(TDD) users may contact Diane Jenkins, 202-452-3544.

Board of Governors of the Federal Reserve System, September 17, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–25352 Filed 9–22–98; 8:45am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; GSA Centralized Household Goods Traffic Management Program (CHAMP)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of extension to comment period.

SUMMARY: GSA published for comment in the **Federal Register** on July 17, 1998, a notice entitled ''Federal Supply Service; Move Management Services (MMS) and the General Services Administration's (GSA's) Centralized Household Goods Traffic Management Program (CHAMP)'' (63 FR 38653). The notice requested that comments be submitted by September 15, 1998. This notice announces that GSA is extending the comment period as set forth below in the **DATES** paragraph.

DATES: Please submit your comments by October 9, 1998.

ADDRESSES: Mail comments to the Transportation Management Division (FBF), General Services Administration, Washington, DC 20406; Attn: **Federal Register** Notice.

GSA will consider your comments prior to implementing this proposal.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Senior Program Expert, Transportation Management Division, FSS/GSA, 703–305–5745.

Dated: September 16, 1998.

Barbara R. Vogt,

Deputy Assistant Commissioner, Office of Transportation and Property Management.

[FR Doc. 98–25347 Filed 9–22–98; 8:45 am]

BILLING CODE 6820–24–M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Monday, October 19, 1998, through Thursday, October 22, 1998, in San Diego, California. The sessions will take place from 9 a.m. until 5 p.m. on Monday, Tuesday, and Wednesday, and from 9 a.m. until 10 a.m. on Thursday. The meeting will be held at the Handlery Hotel, 950 Hotel Circle North, San Diego, California. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

A limited number of hotel rooms have been reserved at the Handlery Hotel for anyone needing hotel accommodations. Telephone: 800–676–6567, Monday through Friday, 8 a.m. to 5 p.m. PDT or 619–298–0511. Please specify the U.S. Government Printing Office when you contact the hotel. Room cost per night is $93 through September 18, 1998.

Michael F. DiMario,

Public Printer.

[FR Doc. 98–25422 Filed 9–22–98; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to grant a ''Voluntary Customer Satisfaction Survey Generic Clearance for the Agency for Health Care Policy and Research,'' In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection request to allow AHCPR to conduct voluntary customer satisfaction surveys.

DATES: Comments on this notice must be received by October 23, 1998.

ADDRESSES: Written comments should be submitted to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Voluntary Customer Satisfaction Survey Generic Clearance for the Agency for Health Care Policy and Research.''

In response to Executive Order 12862, the Agency for Health Care Policy and Research (AHCPR) plans to conduct voluntary customer satisfaction surveys to assess strengths and weaknesses in program services. Customer satisfaction surveys to be conducted by AHCPR may include readership surveys from individuals using AHCPR automated and electronic technology data bases to determine satisfaction with the information provided or surveys to assess effects of the grants streamlining efforts. Results of these surveys will be used in future program planning initiatives and to redirect resources and efforts, as needed, to improve AHCPR program services. A generic approval will be requested from OMB to conduct customer satisfaction surveys over the next three years.

Method of Collection

The data will be collected using a combination of preferred methodologies appropriate to each survey. These methodologies are:

- Evaluation forms;
- Mail surveys;
- Automated and electronic technology (e.g., instant fax, AHCPR Clearinghouse publications); and
- Telephone surveys

The estimated annual hour burden is as follows:

Type of survey	Number of respondents	Average burden/response	Total hours of burden
Mail/Telephone Surveys	23,100	0.25	5,755
Focus Groups	72	2.0	144
Totals	23,172	.255	5,919

Request for Comments

Comments are invited on: (a) the necessity of the proposed collection; (b) the accuracy of the Agency's estimate of 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 upon the respondents, including 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.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: September 15, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–25275 Filed 9–22–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee: Notice of Rechartering

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Breast and Cervical Cancer Early Detection and Control Advisory Committee, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been rechartered for a 2-year period, through September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca B. Wolf, Executive Secretary, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–64, Atlanta, Georgia 30341–3724, telephone 770/488–3012.

Dated: September 17, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–25397 Filed 9–22–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., October 7, 1998. 8:30 a.m.–12 p.m., October 8, 1998.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include revisiting the 1989 TB elimination strategic plan; follow-up on TB prevention activities in Botswana; and review and discussion of TB Trials Consortium activities. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Beth Wolfe, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

Dated: September 16, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–25396 Filed 9–22–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 63 FR 46458–61, dated September 1, 1998) is amended to reflect the merger of the Administrative Services Branch and the Extramural Programs Branch to establish the Program Services Branch, Office of the Director, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP).

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in their entirety the title and functional statement for the *Administrative Services Branch (CL12).*

Delete in their entirety the title and functional statement for the *Extramural Programs Branch (CL14).*

After the functional statement for the *Technical Information and Editorial Services Branch (CL16),* insert the following:

Program Services Branch (CL17). (1) Establishes strategic goals and tactical objectives for the development of funding mechanisms for intramural and extramural program activities; (2) provides leadership, planning, coordination, advice, and guidance in the execution and maintenance of the Center's budget and administrative functions; (3) assists in the development of NCCDPHP programs focusing on chronic disease prevention and health promotion priorities and needs, in conjunction with other components of the Center, and other governmental and non-governmental agencies and organizations; (4) plans, develops, and implements Center-wide policies, procedures, and practices for administrative management, acquisition and assistance mechanisms, including contracts and memoranda of agreement, discretionary and block grants, and cooperative agreements; (5) analyzes, evaluates, reviews, and develops recommendations for policies and procedures in the areas of fiscal, human, and facility resources; (6) provides and coordinates Center-wide administrative management and support services for fiscal management, personnel, travel, and other administrative areas; (7) plans, coordinates, and implements management information procedures and systems; (8) provides Center-wide management information for fiscal and extramural inquiries, and advises Center staff on programmatic, administrative, and fiscal data collection, reporting, and analytical methods; (9) plans, coordinates, and implements training for the Divisions' administrative personnel; (10) provides guidance, support, and assistance in recruitment and staff development; (11) monitors, advises, and provides guidance in the allocation of FTE, discretionary funds, budget execution, and preparation of management reports; (12) develops Program Announcements and Requests for Assistance in collaboration with NCCDPHP program entities and the Procurement and Grants Office, and coordinates reviews for scientific and programmatic merit and relevance to health promotion and chronic disease

prevention; (13) reviews Center-wide acquisition and assistance operations to ensure adherence to law, policies, procedures, and regulations; (14) coordinates NCCDPHP requirements relating to small purchase procurement, material management, and interagency agreements; (15) in the conduct of these activities, maintains liaison with other CDC Centers/Institute/Offices, HHS, and other Federal agencies.

Dated: September 14, 1998.

Claire V. Broome,

Acting Director.

[FR Doc. 98–25392 Filed 9–22–98; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States and Territories (Supplement).

OMB No.: 0970–0114.

Description: The Child Care and Development Block Grant (CCDBG) Act of 1990 requires the States and Territories to submit a biennial Plan (ACF–118) in order to receive Federal funds. The statutorily required Plan provides the public and ACF with a description of, and assurances about, the States's Child Care Program. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) provided additional fiscal resources for child care but required that the funds be spent in accordance with the provisions of the CCDBG Act. This supplement to the existing Plan reflects the changes made by PRWORA, and provides information to determine in State programs are administered in accordance with the applicable statutes and regulations. The Tribal Plan (ACF–118A) is not effected by this notice.

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	1	4	112

Estimated Total Annual Burden Hours: 112.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Attn: Ms. Wendy Taylor.

Dated: September 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–25385 Filed 9–22–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 22, 1998, 9 a.m. to 5:30 p.m., and October 23, 1998, 9 a.m. to 3 p.m.

Location: National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center is reserved for Clinical Center patients and their visitors.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or John M. Treacy (HFD–21), 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 22, 1998, the committee will discuss guidelines for the study of congestive heart failure. On October 23, 1998, the committee will discuss new drug application (NDA) 20–873, Hirulog (bivalirudin, The Medicine's Co.), injection for anticoagulation in patients undergoing percutaneous transluminal angioplasty.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 14, 1998. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. on October 23, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 14, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 16, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–25360 Filed 9–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0510]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practice Regulations for Medicated Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Current Good Manufacturing Practice Regulations for Medicated Feeds'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 10, 1998 (63 FR 37396), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0152. The approval expires on August 31, 2001.

Dated: September 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25361 Filed 9–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0515]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practice for Type A Medicated Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Current Good Manufacturing Practice for Type A Medicated Articles'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 1998 (63 FR 39092), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0154. The approval expires on August 31, 2001.

Dated: September 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25362 Filed 9–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0727]

Draft ''Guidance for Industry: Interpretation of On-farm Feed Manufacturing and Mixing Operations''; Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Interpretation of On-farm Feed Manufacturing and Mixing Operations.'' The draft guidance is intended to clarify the applicability of certain sections of the Animal Proteins Prohibited from Use in Animal Feed regulation to ruminant feeders. The agency is requesting comments on this draft guidance.

DATES: Submit written comments by November 23, 1998.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Gloria J. Dunnavan, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1726, E-mail: gdunnava@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 589.2000 *Animal proteins prohibited from use in animal feed* (21 CFR 589.2000) defines ''feed manufacturer'' to include ''on-farm feed manufacturing and mixing operation.'' This draft guidance makes it clear that an operation that mixes, but does not manufacture feed onfarm is not considered a feed manufacturer by FDA. Rather such mixing operations are ruminant feeders. While all ruminant feeders are subject to the regulation, the regulation imposes significantly different requirements on ruminant feeders that are also ''feed manufacturers.'' For this reason, FDA finds it necessary to clarify the phrase ''on-farm feed manufacturing and mixing operations.''

FDA believes that a ruminant producer who mixes total mixed rations (TMR's), a complete mix of the cow's daily diet, for the animals under the producer's control is not

''manufacturing and mixing.'' This draft guidance provides our rationale for this interpretation.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is issued as a Level 1 guidance consistent with GGP's. If finalized, this document will represent current FDA thinking on on-farm feed manufacturing and mixing operations and their responsibilities under § 589.2000. The guidance will not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

II. Comments

Interested persons should submit written comments on or before November 23, 1998, to the Dockets Management Branch (address above) regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance using the World Wide Web (WWW). For WWW access, connect to CVM at ''http://www.fda.gov/cvm''.

Dated: September 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25357 Filed 9–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1047–NC]

Medicare and Medicaid Programs; Announcement of Additional Applications From Hospitals Requesting Waivers for Organ Procurement Service Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces two additional applications that HCFA has received from hospitals requesting waivers from entering into agreements with their designated organ procurement organizations (OPOs) in accordance with section 1138(a)(2) of the Social Security Act. It supplements notices published in the **Federal Register** on January 19, 1996, May 17, 1996, November 8, 1996, April 21, 1997, and September 17, 1997, that announced hospital waiver requests received by us. This notice requests comments from OPOs and the general public for our consideration in determining whether these waivers should be granted.

COMMENT DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 23, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1047–NC, P.O. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA1047NC@hcfa.gov. E-mail comments must include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1047–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Mark A. Horney (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 1996, May 17, 1996, November 8, 1996, and April 21, 1997, and September 17, 1997, we published notices in the **Federal Register** (61 FR 1389, 61 FR 24941, 61 FR 57876, 62 FR 19326, and 62 FR 48872) that announced applications that HCFA had received from hospitals requesting waivers from entering into agreements with their designated organ procurement organizations (OPOs) in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice supplements these five notices. Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located), as defined under section 1138(a)(3)(B) of the Act, of potential organ donors. Under section 1138(a)(1)(C) of the Act, the hospital must have an agreement to identify potential donors only with that designated OPO.

Section 1138(a)(2) of the Act provides that the hospital may obtain a waiver from the Secretary of these requirements. A waiver allows the hospital to have an agreement with an OPO other than the designated OPO if conditions specified in section 1138(a)(2)(A) of the Act are met.

Section 1138(a)(2)(A) further states that in granting a waiver, the Secretary must determine that such a waiver: (1) Is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO service area due to the changes made in definition of metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with the OPO other than the designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application within 30 days of receiving the application and offer interested parties an opportunity to comment in writing within 60 days of the published notice.

The regulations at 42 CFR 486.316(d) provide that if we change the OPO

designated for an area, hospitals located in that area must enter into agreements with the newly designated OPO or submit a request for a waiver within 30 days of notice of the change in designation. The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under section 1138(a)(2)(A) of the Act and have been incorporated into the regulations at § 486.316(e). Section 486.316(g) further specifies that a hospital may continue to operate under its existing agreement with a now out-of-area OPO while we are processing the waiver request submitted in accordance with § 486.316(d).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) that has been supplied to each hospital. This Program Memorandum detailed the waiver process and discussed the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of the waiver requests, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

We will review the requests and comments received. During the review process, we may consult on an as-needed basis with the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver requests and notify the affected hospitals and OPOs.

III. Additional Hospital Waiver Requests

As allowed under § 486.316(e), each of the following two hospitals has requested a waiver to have an agreement with an alternative, out-of-area OPO. The listing includes the name of the facility, the city and state of the facility, the requested OPO, and the currently designated area OPO. The exception under § 486.316(g) does not apply to these two hospitals, so these hospitals may not work with the requested OPOs rather than the designated OPOs until the completion of our review.

Name of facility	City	State	Requested OPO	Designated OPO
Jennie Stuart Medical Center	Hopkinsville	KY	KYDA	TNDS
Medical University of S.C.	Charleston	SC	GALL	SCOP

IV. Keys to the OPO Codes

The keys to the acronyms used in the listings to identify OPOs and their addresses are as follows:

KYDA KENTUCKY ORGAN DONOR AFFILIATES, 106 East Broadway, Louisville, KY 40202

TNDS TENNESSEE DONOR SERVICE, 1714 Hayes Street, Nashville, TN 37203

GALL LIFELINK OF GEORGIA, 3715 Northside Parkway, 100 Northcreek, Suite 300, Atlanta, GA 30327

SCOP SOUTH CAROLINA ORGAN PROCUREMENT AGENCY, 1064 Gardner Road, Suite 105, Charleston, SC 29407.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection requirement should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on the following issue for the information collection requirements described below.

Section 486.316 Designation of one OPO for each service area:

In summary, § 486.316 states the requirements for a Medicare or Medicaid participating hospital to request a waiver permitting the hospital to have an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located. However, the burden associated with these requirements are currently approved under OMB 0938–0688, HCFA–R–13, Conditions of Coverage for Organ Procurement Organizations, with an expiration date of November 30, 1999.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Groups, Division of HCFA Enterprise Standards, Attention: Louis Blank, HCFA–1047–NC, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Allison Eydt, HCFA Desk Officer, Room 10235, New Executive Office Building, Washington, DC 20503.

Authority: Sec. 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774 Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: September 8, 1998.

Robert A. Berenson,

Director, Center for Health Plans and Providers, Health Care Financing Administration.

[FR Doc. 98–25403 Filed 9–22–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4364–FA–03]

Housing Opportunities for Persons with AIDS Program, Announcement of Funding Award, Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of

Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department under the Fiscal Year 1998 Housing Opportunities for Persons with AIDS (HOPWA) program. The notice announces the selection of Food & Friends, Inc., a District of Columbia-based nonprofit organization, for the award of $250,000 to support their home-delivered meal services program for home-bound persons living with HIV/AIDS.

DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: David Vos, Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Room 7212, 451 Seventh Street, SW, Washington, DC 20410, telephone (202)708–1934. The TTY number for the hearing impaired is (202)708–2565. (These are not toll-free numbers). Information on HOPWA, community development and consolidated planning, and other HUD programs may also be obtained from the HUD Home Page on the World Wide Web. HOPWA program information is found at http://www.hud.gov/cpd/hopwahom.html.

SUPPLEMENTARY INFORMATION: The selection on an award was authorized by Congress in the Department's fiscal year 1998 appropriations act under the appropriation for the Housing Opportunities for Persons with AIDS (HOPWA) program. That act allows the Secretary to designate, on a noncompetitive basis, awards to non-profit providers of home delivered meal services. The funds for this award are available under the $20.4 million that is available to make HOPWA competitive grants in 1998.

The HOPWA assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and was appropriated by the FY 1998 HUD Appropriations Act (Pub. L. 105–65, approved October 27, 1997).

The FY 1998 Appropriations provides for carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), $204,000,000, to remain available until expended: Provided, That of the amount made available under this heading for non-formula allocation, the Secretary may designate, on a noncompetitive basis, one or more nonprofit organizations that provide meals delivered to homebound persons with acquired immunodeficiency syndrome or a related disease to receive grants, not exceeding $250,000 for any grant, and the Secretary shall assess the efficacy of providing such assistance to such persons.

The award of funds to Food & Friends, Inc, will significantly contribute to its mission. HOPWA funds will be used to support the provision of an estimated 800,000 home-delivered meals to an estimated 1,100 persons living with HIV/AIDS in the metropolitan DC area during the next year. The recipients of this assistance are expected to be very-low income or low-income persons who will be better enabled to remain in their current residences by receiving meals, grocery services and nutrition education. The organization assesses each client's nutritional needs and adjusts the support being provided. The organization reports that this service is crucial in helping clients attain the physical and emotional support to help fight the debilitating effects of AIDS through good nutrition.

The Catalog of Federal Domestic Assistance number for this program is 14.241.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is awarding $250,000 to the Food & Friends, Inc., an organization to serve clients in the metropolitan Washington DC area.

Dated: September 17, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–25348 Filed 9–22–98; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

American Samoa Economic Advisory Commission

AGENCY: Office of Insular Affairs, Interior.

ACTION: American Samoa Economic Advisory Commission—Notice of Establishment.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the American Samoa Economic Advisory Commission. The purpose of the Commission is to make recommendations to the President, through the Secretary of the Interior, on policies, actions and time frames necessary to achieve a secure and self-sustaining economy for American Samoa.

The Commission will be comprised of six members to be appointed by the Secretary of the Interior, including: One member after considering a list of a least three persons nominated by the Governor of American Samoa, except that if no such list is received by the Secretary of the Interior within 21 days after the date of establishment of the Commission the Secretary may appoint a member in his sole discretion; one member after considering a list of at least three persons nominated jointly by the President of the Senate and Speaker of the House of Representatives of American Samoa, except that if no such list is received by the Secretary of the Interior within twenty-one days after the date of establishment of this Commission the Secretary may appoint a member in his sole discretion; two members who are Federal government officials; and two members who represent the financial, business, or trade community. The Secretary will designate one member of the Commission as the chairperson. The Secretary may also appoint ex-officio, non-voting members.

FOR FURTHER INFORMATION CONTACT: Nikolao I. Pula, Office of Insular Affairs, Department of the Interior, 1849 C Street, N.W., MS 4328, Washington, D.C. 20240, (202) 208–6816. The certification of establishment is published below.

Certification

I hereby certify that the establishment of the American Samoa Advisory Economic Commission is necessary and in the public interest in connection with the Secretary of the Interior's general responsibility in taking action as may be necessary and appropriate, and in harmony with applicable law, for the administration of the civil government in American Samoa.

Dated: September 15, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–25386 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit 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–002648

Applicant: Michelle Chapman, Sarasota, Fl.

The applicant requests a permit to reexport and reimport leopards (*Panthera pardus*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–001990

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one captive-born male Kuhl's deer (Axis kuhlii) from Zoo Poznan, Poland for the purpose of enhancement of the species through captive propagation.

PRT–002885

Applicant: Emil J. Graham, Jr., Homestead, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–002952

Applicant: Thomas E. Cate, Tulsa, OK.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for permits to conduct certian activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–002869

Applicant: Robert B. Ashton, Hanover, NH.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application 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 to the above address within 30 days of the date of publication of this notice.

Dated: September 18, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–25446 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–49782]

Termination of Recreation and Public Purpose Classification; Nevada

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purpose (R&PP) Classification N–49782 in its entirety. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: October 23, 1998.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Assistant Field Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Michael McGinty, Realty Specialist, at the above address or telephone (702) 289–1882.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by appendix 1 of Bureau of Land Management Manual 1203 dated April 6, 1998, Recreation and Public Purpose Classification N–49782 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 1 N., R. 68 E.,
Sec. 16, SW¼NE¼, S½NW¼, S½,
Sec. 17, E½SE¼,
Sec. 21, NW¼NE¼, N½NW¼.

The area described contains 640 acres in Lincoln County.

The classification made pursuant to the Act of June 14, 1926, as amended, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws and the mineral leasing laws. The land was leased to the State of Nevada, Division of State Lands for the construction of a women's prison facility. The women's prison facility was never developed. The lease expired February 14, 1996. The Recreation and Public Purpose classification is, therefore, no longer considered appropriate.

At 10 a.m. on October 23, 1998, the land will be open to the operation of the public land laws and the mineral leasing laws, subject to valid existing rights, existing classifications and withdrawals, and requirements of applicable law. All valid applications received prior to or at 9 a.m. on October 23, 1998, will be considered as simultaneously filed. All other applications received will be considered in order of filing.

At 9 a.m. on October 23, 1998, the lands described above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a

location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 10, 1998.

Gene L. Drais,

Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 98–25371 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–930–08–1020–04–WEED]

Use of Certified Noxious Weed-Free Hay, Straw or Mulch; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final supplementary rule to require the use of certified noxious weed-free hay, straw or mulch on Bureau of Land Management (BLM) administered lands in Utah to help prevent the spread of noxious weeds.

SUMMARY: Beginning 30 days from the date of publication of this rule in the **Federal Register**, the Utah State Director of the Bureau of Land Management will require all visitors, licensees, and permittees to use certified noxious weed-free hay, straw, or mulch. This requirement will affect all public land users who use hay, straw or mulch on BLM administered lands in Utah. These individuals or groups will be required to use certified noxious weed-free forage products, or use other approved products, such as processed grains and pellets, while on BLM-administered lands in Utah.

SUPPLEMENTARY INFORMATION: BLM in Utah published a Notice of Proposed Supplementary Rule on February 9, 1998, in the **Federal Register**. That notice listed a thirty-day comment period. Eight people commented on the proposal. Seven of those comments were from people who supported the proposal and one generally opposed the rule.

Noxious weeds are a serious problem in the western United States and are rapidly spreading at an estimated rate of 14 percent per year. Species like Leafy Spurge, Squarrose Knapweed, Russian Knapweed, Musk Thistle, Dalmatian Toadflax, Purple Loosestrife, and many others are alien to the United States and have no natural enemies to keep noxious weed populations in balance. Consequently, these undesirable weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and destroy wildlife habitats. Widespread infestations lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasion impact revegetation efforts, reduce domestic and wild ungulates' grazing capacity, occasionally irritate public land users by aggravating allergies and other ailments, and threaten federally-protected plants and animals.

To help curb the spread of noxious weeds, a number of western states have developed noxious weed-free forage certification standards and have passed weed management laws. Utah's BLM Resource Advisory Council (RAC) developed a guideline requiring certified weed-free forage to be used on BLM lands. This guideline was approved by both the Utah BLM State Director and the Secretary of the Interior in May, 1997. The use of salt, protein, and other supplements are not considered in this rule. Utah State Department of Agriculture has developed a crop field inspection and certification process. Participants may have their hay fields inspected and certified as being noxious weed free. The producers can obtain bale Identification tags from the Utah Department of Agriculture, which verifies that the product is certified. Utah Department of agriculture also maintains a list of growers who produce certified products. Region four, of the United States Forest Service, has implemented a similar policy for National Forest lands in Utah. This rule will provide a standard for all users of BLM lands in Utah, and will provide for coordinated management with National Forest lands across jurisdictional lines.

RESPONSE TO COMMENTS: Eight people commented on the proposed rule. Most comments (6) were positive toward the program. One comment suggested that the program should be implemented over two years, while another said implement it immediately. One comment asked if the equestrian public was going to be part of the education process. The education and information plan is to include all special interest groups that use the public lands, regardless of the fact that they do not use or take forage products with them. Two comments were about their own private lands where weeds have increased and control is costing them large sums of money each year. One comment was opposed to the weed free requirement because it was targeted at the livestock interests only. This rule will apply to recreationists, horse back riders, hunting camps, livestock, erosion control projects, etc., or anyone who has a need to take hay, straw or mulch products onto BLM administered lands. The supplementary rules will not appear in the Code of Federal Regulations.

For the reasons stated above, under the authority of 43 CFR 8365.1–6, the Utah State Office, BLM, has finalizes supplementary rules to read as follows: Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in Utah.

(a)(1) To help prevent the spread of weeds on BLM-administered lands in Utah. Effective 30 calender days following publication of this rule, all BLM lands within the state of Utah will be closed to those possessing, using or storing hay, straw, or mulch that has not been certified as free of prohibited noxious weed vegetative parts and/or seeds, at all times of the year.

(2) Certification will comply with the Utah Department of Agriculture and with Regional Weed-Free Forage Certification Standards, jointly developed by the States of Utah, Idaho, Montana, Nebraska, Colorado, and Wyoming.

(3) The following persons are exempt from this order: anyone with a permit signed by BLM's authorized officer at the Field Office level, specifically authorizing the prohibited act or omission within that Field Office Area.

(b) Any person who knowingly and willfully violates the provisions of these supplemental rules regarding the use of non-certified noxious weed-free hay, straw or mulch when visiting Bureau of Land Management-administered lands in Utah, without required authorization, may be commanded to appear before a designated United States Magistrate and may be subject to a fine of no more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code 1733(a).

FOR FURTHER INFORMATION CONTACT: Larry Maxfield, Rangeland Management Specialist, Biological Resources, Division of Natural Resources, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, UT 84145–0155, or phone (801–539–4059).

Dated: September 15, 1998.

G. William Lamb,

Utah State Director.

[FR Doc. 98–25393 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1610–00/G018–G8–0253]

Amendment to a Notice of Availability of a Proposed Coordinated Resource Management Plan (CRMP) and Final Environmental Impact Statement (EIS); Taos Field Office, New Mexico and San Luis Resource Area, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice.

SUMMARY: The Bureau of Land Management (BLM) Taos Field Office and Cañon City District, San Luis Resource Area have completed a Proposed CRMP/EIS, and a Taos Resource Management Plan Amendment. This notice amends the Notice of Availability published in the **Federal Register** on Friday, August 14, 1998 (Vol. 63, No. 157, 43717).

DATES: Protests related to decisions at the New Mexico Resource Management Plan level must be filed in writing to: Director, Bureau of Land Management, Attn: Ms. Brenda Williams, Protest Coordinator, WO– 210/LS–1075, Department of the Interior, Washington, D.C. 20240. An informal protest may be made on specific actions described in Chapter 2, Activity-Level Proposals. Informal protests must be filed in writing to the address below. All protests and informal protests must be postmarked by October 5, 1998.

FOR FURTHER INFORMATION CONTACT: CRMP Team Leader, Taos Field Office, 226 Cruz Alta Road, Taos, NM 87571; phone (505) 758–8851.

Dated: September 16, 1998.

Sam Desgeorges,

Acting Field Office Manager.

[FR Doc. 98–25395 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

September 14, 1998.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., September 14, 1998. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the corrective resurvey of a portion of the subdivision to correct the location of the Center ¼ sec. Cor. Of Section 22, T. 2 N., R. 2 W., Ute Meridian, Colorado, Group 1184, was accepted August 25, 1998.

This survey was requested by the Bureau of Reclamation for administrative purposes.

The supplemental plat creating new lots 16, 17, and 18 in Section 21, T. 42 N., R. 9 W., New Mexico Principal Meridian, Colorado, Group 1181, was accepted September 8, 1998.

The supplemental plat creating new lots 5, 6, 7, 8, 9, 10, and 11 in Section 19, T. 13 S., R. 85 W., Sixth Principal Meridian, Colorado, Group 1216, was accepted July 20, 1998.

The supplemental plat creating new lots 14 and 15, from old lot 11 in Section 13, T. 13 S., R. 86 W., Sixth Principal Meridian, Colorado, Group 1216, was accepted July 20, 1998.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the survey of a portion of the subdivisional lines of T. 33 N., R. 19 W., New Mexico Principal Meridian, Colorado, Group 1100, was accepted September 9, 1998.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines and the subdivision of certain sections of T. 32 N., R. 4 W., New Mexico Principal Meridian, Colorado, Group 1158, was accepted July 9, 1998.

The plat representing the entire record of the dependent resurvey of S. 2 ½ miles of the E. Boundary of T. 35 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group 1173, was accepted August 31, 1998.

These surveys were requested by the Bureau of Indian Affairs for administrative purposes.

The supplemental plat correcting the informative traverse portion for two curves in lot 6 of section 27 in T. 2 N., R. 77 W., Sixth Principal Meridian, Colorado, Group 1091, was accepted August 17, 1998.

The plat (in 5 sheets) representing the dependent resurvey of portions of the subdivisional lines, and certain mineral claims and portions thereof and the subdivision of section 12, T. 1 N., R. 73 W., Sixth Principal Meridian, Colorado, Group 875, was accepted August 20, 1998.

The plat (in 5 sheets) constituting the map of the Powderhorn Wilderness Boundary and the survey in Townships 44, 45, and 46 North, Ranges 2 and 3 West, New Mexico Principal Meridian, Colorado, Group 1080, was accepted June 30, 1998.

The plat (in 4 sheets) representing the corrective dependent resurvey of a portion of the subdivisional lines, the corrective survey of a portion of the subdivision of sections 11 and 12, and the corrective survey of the subdivision of sections 15 and 22, with an informational metes-and-bounds survey, T. 44 N. R. 2 W., New Mexico Principal Meridian, Colorado, Group 1080, was accepted June 29, 1998.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines and the dependent resurvey of a portion of the subdivisional lines, the corrective survey of the subdivision of section 23, and the subdivision of sections 11 and 14, with a metes-and-bounds survey for the Powderhorn Wilderness Boundary, T. 45 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group 1080, was accepted June 29, 1998.

The plat representing the entire record of the dependent resurvey of a portion of the subdivisional line between section 19 and 20 and a portion of the E–W center line, section 17, T. 46 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group 1080, was accepted June 25, 1998.

The plat representing the dependent resurvey of a portion of the Eleventh Standard Parallel North (south boundary), a portion of the north boundary, and a portion of the subdivisional lines, and the subdivision of sections 7 and 8, T. 45 N., R. 3 W., New Mexico Principal Meridian, Colorado, Group 1080, was accepted June 29, 1998.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of section 25, T. 35 N., R. 7 E., New Mexico Principal Meridian, Colorado, Group 1147, was accepted August 5, 1998.

The plat representing the dependent resurvey of portions of the south boundary, and subdivisional lines, and the subdivision of sections 27 and 34 in T. 12 N., R. 96 W., Sixth Principal Meridian, Colorado, Group 1153, was accepted August 17, 1998.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of sections 5 and 6, T. 6 S., R. 93 W., Sixth Principal Meridian, Colorado, Group 1160, was accepted August 11, 1998.

The plat representing the dependent resurvey of portions of the First Standard Parallel South (south boundary), Eleventh Auxiliary Guide

Meridian West (east boundary), and subdivisional lines, and the subdivision of certain section, T. 5 S., R. 93 W., Sixth Principal Meridian, Colorado, Group 1160, was accepted August 11, 1998.

The plat (in 3 sheets) representing the dependent resurvey of portions of the north boundary, subdivisional lines, certain claim lines, the survey of Browns Park School, traverse of the centerline of Colorado Highway No. 318 as built, the metes-and-bounds survey, and the subdivision of certain sections in T. 9 N., R. 102 W., Sixth Principal Meridian, Colorado, Group 1161, was accepted August 25, 1998.

The plat representing the entire record of survey, consisting of the limited corrective dependent resurvey of the ¼ section corner of sections 22 and 27, T. 17 S., R. 72 W., Sixth Principal Meridian, Colorado, Group 1171, was accepted August 12, 1998.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel South (south boundary, T. 15 S., R. 73 W.), a portion of the north boundary, and a portion of the subdivisional lines, and the subdivision survey of certain sections, T. 16 S., R. 73 W., Sixth Principal Meridian, Colorado, Group 1174, was accepted July 9, 1998.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 11, T. 5 S., R. 101 W., Sixth Principal Meridian, Colorado, Group 1175, was accepted August 12, 1998.

The plat representing the dependent resurvey of portions of the south boundary, sectional correction line, and subdivisional lines, and the subdivision of certain sections, T. 2 S., R. 84 W., Sixth principal Meridian, Colorado, Group 1176, was accepted July 29, 1998.

The plat representing the dependent resurvey of portions of the subdivisional lines and Tract 37, and the subdivision of sections 15 and 21, T. 4 S., R. 85 W., Sixth Principal Meridian, Colorado, Group 1176, was accepted July 29, 1998.

The plat representing the entire record of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 11 and 14, T. 11 N., R. 80 W., Sixth Principal Meridian, Colorado, Group 1187, was accepted June 25, 1998.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 5, T. 4 S., R. 83 W., Sixth Principal Meridian, Colorado, Group 1176, was accepted July 29, 1998.

These plats were requested by BLM for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 98–25424 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting Flow Objectives for the San Joaquin River Agreement, 1999–2010, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft environmental impact statement/draft environmental impact report (DEIS/DEIR). DES 98–42

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the San Joaquin River Group Authority (SJRGA) have prepared a joint DEIS/DEIR on a proposed program to acquire water to be used to provide protective measures for fall-run chinook salmon in the San Joaquin River system and to support the San Joaquin River flow objectives of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. The water would be used to provide:

- A pulse flow for a 31-day period at Vernalis during April and May in support of the Vernalis Adaptive Management Program, and
- other flows to facilitate migration and attraction of anadromous fish, including fall attraction flows.

The affected portions of the San Joaquin River and its tributaries (Stanislaus, Tuolumne, and Merced rivers) are located in the Central Valley of California. The rivers and related storage and conveyance facilities are located in the following counties: Fresno, Madera, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne.

The DEIS/DEIR presents and describes the environmental effects of three alternatives, including no action. Two public hearings will be held to receive comments from interested parties, organizations, and individuals on the environmental impacts of the proposal.

DATES: Submit written comments on the DEIS/DEIR on or before November 9, 1998. Comments may be submitted to Reclamation or the SJRGA at the addresses provided below. The public hearings on the DEIR/DEIS will be held on October 23, 1998, at 2 p.m. and on October 29, 1998, at 6:30 p.m.

ADDRESSES: The public hearing scheduled for October 23, 1998, will be held at the Bureau of Reclamation in Basement Conference Room A at 3310 El Camino Avenue in Sacramento CA. The public hearing scheduled for October 29, 1998, will be held at the Modesto Irrigation District in the second floor Multi-Purpose Room (use the south entrance), 1231 Eleventh Street in Modesto CA.

Written comments on the DEIS/DEIR should be addressed to Mr. Michael Delamore, Bureau of Reclamation, 2666 N. Grove Industrial Drive, Suite 106, Fresno CA 93727; or to Mr. Allen Short, San Joaquin River Group Authority, c/o Modesto Irrigation District, PO Box 4060, Modesto CA 95252. Copies of the DEIS/DEIR may be requested from Mr. Delamore at the above address or by calling (209) 487–5039.

See Supplementary Information section for a list of the locations where copies of the DEIS/DEIR are available for public inspection and review.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Delamore, Bureau of Reclamation, at (209) 487–5039; or Mr. Dan Fults, Friant Water Users Authority, at (916) 441–1931.

SUPPLEMENTARY INFORMATION: The proposed action involves providing water supplies to meet flow requirements for fall-run chinook salmon and other environmental needs on the San Joaquin River. The SJRGA, consisting of several water districts in the San Joaquin River basin, is working with State and Federal Government agencies to address needs on the San Joaquin, including increased instream flows, and compliance with the 1995 State Water Resources Control Board Water Quality Control Plan flow objectives at Vernalis. Debate over the flow objective led to a proactive problem-solving process to develop an adaptive fishery management plan (the Vernalis Adaptive Management Program [VAMP]) and the water supplies (from willing sellers on the San Joaquin River system) to support the plan. The San Joaquin River Agreement identifies where the water to support the VAMP and other flow needs would be obtained, specifically from the SJRGA whose members are making the water available. The water would be used during the period 1999–2010; the flows would vary, depending on hydrologic conditions.

The water supply program consists of three components:

(1) A 31-day pulse flow in April-May to support the VAMP that would require up to 110,000 acre-feet annually;

(2) Additional water for a fall attraction flow for salmon in October (12,500 acre-feet) from Merced Irrigation District; and

(3) Additional water from Oakdale Irrigation District (26,000 acre-feet less up to 11,000 acre-feet contributed by Oakdale to the 31-day pulse flow). This additional water would be used for such purposes as ramping around the pulse flows, temperature control, water quality, and protection of salmon redds during periods of low flow.

A total of 137,500 acre-feet of water per year could be provided, and most of this (up to 92%) is expected to come directly from surface water sources, including reservoir storage and changes in diversions and release patterns from reservoirs. Other sources of the water include groundwater, tailwater recovery, and conservation.

Copies of DEIS/DEIR are available for public inspection and review at the following locations:

- Modesto Irrigation District, 1234 Eleventh Street, Modesto, CA 95252; telephone (209) 526–7360.
- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW, Washington, DC 20240; telephone (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone (303) 445–2072.
- Bureau of Reclamation, Attention: MP–140, 2800 Cottage Way, Sacramento CA 95825–1898; telephone (916) 978–5100
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240–0001

Copies will also be available for inspection at the following public libraries:

- California State Library at 914 Capitol Mall in Sacramento, CA 94237
- Fresno County Public Library at 2420 Mariposa Street in Fresno, CA 93721
- Merced County Library at 2100 O Street in Merced, CA 95340–3637.
- Merced County, Los Banos Branch Library at 1312 South Seventh Street in Los Banos, CA 93635.
- Modesto City Library at 1500 I Street in Modesto, CA 95354–1220.
- Sacramento Public Library at 828 I Street in Sacramento, CA 95814–2589.
- Stockton-San Joaquin County Public Library at 605 North El Dorado Street in Stockton, CA 95202–1999.
- University of California Berkeley, Government Documents Library at 350 Library Annex in Berkeley, CA 94720.
- University of California Davis at Shields Library in Davis, CA 95616.

Hearing Process Information

Reclamation staff will make a brief presentation to describe the proposed project. The public may comment on environmental issues addressed in the DEIS/DEIR. If necessary due to large attendance, comments will be limited to 5 minutes per speaker. Written comments will also be accepted. If special services are required to attend these hearings, please contact Mr. Michael Delamore at (209) 487–5039 or TDD (209) 487–5933.

Dated: September 17, 1998.

Roger K. Patterson,

Regional Director.

[FR Doc. 98–25443 Filed 9–22–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 1, 1998 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–383 and 731–TA–805 (Preliminary) (Elastic Rubber Tape from India)—briefing and vote.
5. Outstanding action jackets:

1. Document No. GC–98–039: Approval of correction of error in the Commission opinion in Inv. No. 337–TA–395 (Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 18, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–25624 Filed 9–21–98; 3:58 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Reinstatement, with change of a previously approved collection for which approval has expired; Crime Victim Compensation State Certification Form.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed Information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty (60) days'' until: November 23, 1998.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Jeffrey Kerr, 202–616–3581, U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, 810 7th Street, NW, Washington DC 20530. Additionally, comments may be submitted via facsimile to 202–514–6383.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission or responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection form for which approval has expired.

(2) *Title of the Form/Collection:* Crime Victim Compensation State Certification Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: OJP 7390/5. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The Victims of Crime Act (VOCA) as amended and the Victim Compensation Program Guidelines to submit an annual Crime Victim Compensation Certificate Form. Information received from each program will be used to calculate the annual grant amount for the VOCA state crime victim compensation programs. The information will also be aggregated and serve as supporting documentation for the Director's biennial report to the President and Congress.

Primary: State Government. 42 U.S.C. 1921 et. seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia for the Victims of Crime Act (VOCA) formula grant program. *Other:* None.

This application will be used by state and local jurisdictions to apply for federal funding which will be used to increase the number of law enforcement positions in their law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 52 respondents will complete an 1-hour annual report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the form is 52 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 17, 1998.

Brenda E. Dyer,

Department Deputy Clearance Office, United States Department of Justice.

[FR Doc. 98–25402 Filed 9–22–98; 8:45 am]

BILLING CODE 3510–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Public Safety Officers Benefits Program Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; (Reinstatement, without change, of a previously approved collection for which approval has expired); Report of Public Safety Officers Permanent and Total Disability Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 12, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 23, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written 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 the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* report of Public Safety Officers' Permanent and Total Disability Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form 3650/7, Public Safety Officers' Benefit Program, Bureau of Justice Assistance, 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: Federal Government, State, Local public safety agencies.

Other: National public safety membership organizations. The Public Safety Officers' Disability Program provides a benefit to Public Safety Officers who have become permanently and totally disabled by a catastrophic injury sustained in the line of duty.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 30 respondents at 10 hours to respond (one hour for application form, and nine hours for compilation of required supporting documents).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours. The total number of annual hour burden hours to complete the application form and compile supporting documentation is 300 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 16, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–25401 Filed 9–22–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of meeting.

SUMMARY: The Metalworking Fluids Standards Advisory Committee (MWFSAC), established under Section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Detroit, Michigan, on Monday through Wednesday, October 19 through October 21, 1998.

DATES: The meeting will be held October 19 from 10 a.m. to approximately 5 p.m.; October 20, from 9 a.m. to approximately 6 p.m.; and on October 21, from 9 a.m. to approximately 12 noon.

ADDRESSES: The Committee will meet at the Westin Hotel, at the Renaissance Center, at East Jefferson Avenue and Brush Street, Detroit, Michigan, 48243. Telephone: (313) 568–8000.

Mail comments, views, or statements in response to this notice to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, (202) 219–8151.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of the Metalworking Fluids Standards Advisory Committee, at the times and places indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 219–8615 ext. 106 (Fax: 202–219–5986) no later than October 5, 1998, to obtain appropriate accommodations.

Meeting Agenda

This meeting will focus on non-cancer respiratory effects associated with exposure to metalworking fluids and possible approaches to estimating risk of non-malignant respiratory diseases. Other items for discussion will include ventilation and design of enclosures, occupational dermatitis related to metalworking fluids, and product stewardship.

Public Participation

Written data, views, or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 25 copies, to Dr. Peter Infante at the address provided above. Submissions received by October 9, 1998, will be provided to the members of the committee. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Dr. Peter Infante at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR Part 1912.

Signed at Washington, DC, this 18th day of September, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–25450 Filed 9–22–98; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 1:30 pm–3:30 pm–Monday, September 28, 1998.

STATUS: Open.

ADDRESS: The Old Post Office Building, Room M–09, 1100 Pennsylvania Avenue, NW, Washington, DC 20005, (202) 606–4649.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Monday, September 28, 1998 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506—(202) 6066–8536—TDD (202) 606–8536 at least seven (7) days prior to the meeting date.

73rd Meeting of the National Museum Service Board, the Old Post Office Building, Room M–09, 1100 Pennsylvania Avenue, NW, Washington, DC

September 28, 1998, 1:30 pm–3:30 pm

Agenda

I. Chairman's Welcome and Approval of Minutes of the 72nd NMSB meeting—June 12, 1998
II. Director's Report
III. Appropriations Report
IV. Legislative/Public Affairs Report
V. Office of Research and Technology Report
VI. Office of Museum Services Program Report
VII. Office of Library Services Reports

Dated: September 15, 1998.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 98–25423 Filed 9–22–98; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities; Comment Request; Title of Collection: 1998–99 Pilot Study on Instructional Facilities at U.S. Colleges and Universities

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the

submission requesting that OMB clearance of this collection for no longer than 3 years.

SEND COMMENTS TO: Mary Lou Higgs, Acting Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to mlhiggs@nsf.gov. Written comments should be received within 60 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Higgs on (703) 306–1125 x 2010 or send email to mlhiggs@nsf.gov. You may also obtain a copy of the data collection instrument and instructions from Ms. Higgs.

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 on respondents, including through the use of automatic collection techniques or other forms of information technology.

Proposed Project: The 1998 Survey of Science and Engineering Research Facilities at Colleges and Universities conducted by NSF collected data on the status of academic science and engineering (S&E) research facilities. This proposed survey will build on that data collection methodology and assess the quantity, quality, and needs for instructional facilities in all academic fields at the nation's colleges and universities.

Use of Information: Currently there exists no nationwide inventory of postsecondary instructional facilities. The demand for college-level education is expected to rise sharply in the near future due to at least three factors:

1. Current enrollments are at alltime highs and not expected to decline soon;
2. An increasing number of students are nearing typical college age;
3. ''Mature'' (older) students continue to return to campus in growing numbers.

By establishing an inventory of postsecondary instructional facilities, Federal legislators and policymakers can better assess and plan for the future educational needs of the country.

Burden on the Public: The pre-test will include no more than nine colleges and universities, requiring approximately 1.5 hours each. The pilot test instrument will be sent to 150. We expect each to spend approximately 1.5 hours to 6 hours, for a total annual burden of 225–900 hours.

Dated: September 17, 1998.

Mary Lou Higgs,

Acting NSF Clearance Officer.

[FR Doc. 98–25411 Filed 9–22–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270 and 50–287–LR ASLBP No. 98–752–02–LR]

Duke Energy Corporation; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for hearing and for leave to intervene and to preside over the proceeding in the event that a hearing is ordered.

Duke Energy Corporation; Oconee Nuclear Station

Facility Operating Licenses No. DPR–38, DPR–47 and DPR–55

This Board is being established pursuant to a notice published by the Commission on August 11, 1998, in the **Federal Register** (63 FR 42885) and the Commission's Order Referring Petition for Intervention and Request for Hearing to Atomic Safety and Licensing Board Panel, CLI–98–17 (September 15, 1998). The proceeding involves an application by Duke Energy Corporation to renew operating licenses for Units 1, 2 and 3 of its Oconee Nuclear Station pursuant to the provisions of 10 CFR Part 54. The renewal license, if granted, would authorize the applicant to operate those units for an additional 20-year period.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 16th day of September 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–25416 Filed 9–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company (Haddam Neck Plant); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w) and 10 CFR 140.11 regarding financial protection requirements to Connecticut Yankee Atomic Power Company (CYAPCo or the licensee) for the Haddam Neck Plant (HNP) located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would allow an exemption from the requirements of 10 CFR 50.54(w) regarding the amount of onsite property insurance required for the licensee and from the requirements of 10 CFR 140.11 regarding the amount of offsite liability insurance required by the licensee.

By letter dated September 26, 1997, the licensee presented the results of an analysis of the capability of spent fuel stored in the spent fuel pool (SFP) to heat up in the absence of cooling water. The licensee provided information that as of October 1, 1997, the spent fuel could not heat up above 538 °C in the absence of any cooling water. In order to achieve the results presented, the licensee had to arrange the spent fuel in a configuration consistent with the analysis.

By letter dated October 7, 1997, the licensee requested the exemption on the basis that HNP is permanently shut down and defueled, and, therefore, the potential risk to public health and safety is substantially reduced. The requested action would allow CYAPCo to reduce onsite insurance coverage to $50 million and offsite coverage to $100 million for HNP.

By letter dated December 18, 1997, the licensee stated that movement of the spent nuclear fuel into the configuration consistent with the fuel heat-up analysis had been completed on October 23, 1997.

Need for the Proposed Action

The proposed exemption is needed because the licensee's required insurance coverage significantly exceeds the potential cost consequences of radiological incidents possible at a permanently shutdown and defueled nuclear power plant with spent fuel that will have cooled for two years on July 22, 1998.

Environmental Impacts of the Proposed Action

The NRC's evaluation of the proposed exemption from 10 CFR 50.54(w) and 10 CFR 140.11 indicates that issuance of the proposed exemption is an administrative action and will not have any environmental impact. The HNP facility permanently ceased reactor power operations on July 22, 1996, and completed the permanent transfer of all reactor fuel to the SFP on November 15, 1996. The licensee maintains and operates the plant in a configuration necessary to support the safe storage of spent fuel and to comply with the facility operating license and NRC's rules and regulations.

No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in occupational or public 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 exemption does not affect nonradiological plant effluents and has no other nonradiological environmental impact.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request, thereby requiring the licensee to maintain insurance coverage required of an operating plant (no-action alternative); such an action would not enhance the protection of the environment. Denial of the application would result in no change in current environmental impacts. The impacts of the proposed action and the alternative are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for HNP issued in October 1973.

Agencies and Persons Consulted

In accordance with its stated policy on August 19, 1998, the NRC staff consulted with the Connecticut State Official, Mr. D. Galloway, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed exemption, see letters from the licensee dated September 26, October 7, and December 18, 1997, which are available at the Commission's Public Document Room, 2120 L Street, NW., Washington, D.C. 20555-0001 and at the Local Public Document Room, Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 16th day of September 1998.

For the Nuclear Regulatory Commission.

Micheal T. Masnik,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25413 Filed 9–22–98; 8:45 am]

BILLING CODE 7590–01–P.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Energy Company (Big Rock Point Nuclear Plant); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–6, a license held by the Consumers Energy Company (Consumers or the licensee). The exemption would apply to the Big Rock Point (BRP) plant, a permanently shutdown and defueled reactor power facility located at the Consumers site in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would modify emergency response plan requirements due to the permanently shutdown and defueled status of the BRP facility.

The proposed action is in accordance with the licensee's application dated September 19, 1997, as supplemented or modified by letters of October 29, 1997, and March 2, July 30, and August 28, 1998. The requested action would grant an exemption from certain requirements of 10 CFR 50.54(q) to discontinue offsite emergency planning activities and to reduce the scope of onsite emergency planning.

The Need for the Proposed Action

On June 26, 1997, Consumers certified that it would permanently cease reactor power operations at its BRP facility. On August 30, 1997, the reactor was shut down. By letter dated September 23, 1997, the licensee certified the permanent removal of all fuel from the reactor vessel. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications, Facility Operating License DPR–6 no longer authorizes operation of the reactor or emplacement or retention of the fuel into the reactor vessel. In this permanently shutdown and defueled condition, the facility poses a reduced risk to public health and safety. Because of this reduced risk, certain requirements of 10 CFR 50.54(q) are no longer required. An exemption is required from portions of 10 CFR 50.54(q) to allow the licensee to implement a revised Defueled Emergency Plan (DEP) that is appropriate for the permanently shutdown and defueled reactor facility.

Environmental Impact of the Proposed Action

Before issuing the proposed exemption, the Commission will have concluded that the granting of the exemption from certain portions of 10 CFR 50.54(q) is acceptable, as described in the safety evaluation accompanying issuance of the exemption. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, 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 that there is no significant environmental impact associated with the proposed action, any alternative with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed exemption would be to deny the request (no-action alternative). Denial of the exemption 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 resources not previously considered in BRP's Environmental Report for Decommissioning, dated February 27, 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on December 18, 1997, the NRC staff consulted with Mr. David W. Minnaar of the State of Michigan, Radiation Protection Section, Drinking Water and Radiological Protection Division, Michigan Department of Environmental Quality, regarding the environmental impacts of the proposed action. The State official had no comment regarding environmental impacts of the proposed action.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action 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 action.

For further details with respect to this action, see licensee letters dated September 19, and October 29, 1997, and March 2, July 30, and August 28, 1998, which are all available for public review at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room, North Central Michigan College, 1515 Howard Street, Petosky, MI 49770.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 17th day of September 1998.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25409 Filed 9–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410]

Niagara Mohawk Power Corporation Nine Mile Point Nuclear Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding an indirect transfer of control of the operating licenses for Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP1 and NMP2, or collectively, the facility) to the extent held by Niagara Mohawk Power Corporation (NMPC). The transfer would be to a New York corporation, Niagara Mohawk Holdings, Inc., to be created as a holding company over NMPC in accordance with a Settlement Agreement reached with the New York Public Service Commission (PSC Case Nos. 94–E–0098 and 94–E–0099), dated October 10, 1997, and revised March 19, 1998. NMPC is licensed by the Commission to possess, maintain, and operate both NMP1 and NMP2. NMPC fully owns NMP1 and is a 41-percent co-owner of NMP2. The facility is located in Scriba, New York.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would consent to the indirect transfer of control of the licenses to the extent effected by NMPC becoming a subsidiary of the newly formed holding company in connection with a proposed plan of restructuring. Under the restructuring plan, each share of NMPC's common stock would be exchanged for one new share of common stock of the holding company. NMPC's outstanding preferred stock would not be exchanged. Under this restructuring, NMPC would divest all of its hydro and fossil generation assets by auction, but would retain its nuclear assets, and would continue to be an ''electric utility'' as defined in 10 CFR 50.2 engaged in the transmission, distribution and, through NMP1 and NMP2, the generation of electricity. NMPC would continue to be the owner of NMP1 and a co-owner of NMP2 and would continue to operate both NMP1 and NMP2. No direct transfer of the operating licenses or ownership interests in the facility would result from the proposed restructuring. The transaction would not involve any change in the responsibility for nuclear operations within NMPC. Officer responsibilities at the holding company level would be primarily administrative and financial in nature and would not involve operational matters related to NMP1 or NMP2. No NMPC nuclear management positions would be changed as a result of the corporate restructuring. The proposed action is in accordance with NMPC's application submitted under a cover letter dated July 21, 1998.

The Need for the Proposed Action:

The proposed action is required to enable NMPC to restructure as described above.

Environmental Impacts of the Proposed Action:

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that it is an administrative action unrelated to plant operation; therefore, there will be no resulting physical or operational changes to the facility. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate and maintain the facility.

The proposed action 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 occupational or offsite 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 restructuring will not affect nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action:

Since the Commission has concluded there are no significant environmental impacts that will result from 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 Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 1 dated January 1974 (39 **Federal Register** 3309, dated January 25, 1974), or in the Final Environmental Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2, (NUREG–1085) dated May 1985.

Agencies and Persons Contacted:

In accordance with its stated policy, on September 10, 1998, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action 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 action.

For further details with respect to the proposed action, see NMPC's application dated July 21, 1998, 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 located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 14th day of September 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25415 Filed 9–22–98; 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 August 28, 1998, through September 11, 1998. The last biweekly notice was published on September 9, 1998 (63 FR 48256).

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 October 23, 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.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: June 26, 1998.

Description of amendment request: The proposed Technical Specification (TS) amendment would amend various TS pages to correct typographical errors, remove inadvertent replication of information, and update various Bases sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed administrative changes involving typographical errors and updating the Bases reflect plant design, safety limit settings, and plant system operation previously reviewed and approved by the NRC. These changes, therefore, do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes do not involve any potential initiating events that would create a new or different kind of accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

These changes reflect information previously reviewed and approved by the NRC. The proposed changes will make the information in the Technical Specifications consistent with that already approved by the NRC. Therefore, it is concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Cecil O. Thomas.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: April 25, December 23, 1996, August 8, September 5, 1997, March 26, July 31, and August 24, 1998. The August 24, 1998, supplement supersedes the previous no significant hazards consideration determination included in letters dated April 25, 1996, and March 26, 1998 for the EDG AOT.

Description of amendment request: The proposed Technical Specification (TS) amendment would extend the Emergency Diesel Generator (EDG) allowed outage time (AOT) from 72 hours to 14 days. In support of this change the licensee has proposed various TS changes to decrease the consequences of the extended AOT.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of Pilgrim Nuclear Power Station in accordance with the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

An Individual Plant Examination (IPE) for Internal Events was submitted to the NRC in response to Generic Letter 88–20 in September 1992. The supporting probabilistic safety analysis (PSA) model was updated as described in BECo letter 95–127, dated December 28, 1995. The updated PSA model was used to quantify the overall impact of the proposed EDG 14-day AOT on core damage frequency. Part III of BECo No. 2.96.040 provides the results of a comprehensive [probabilistic safety assessment] PSA of the impact of the proposed AOTs for the EDGs and [startup transformer] SUT and [shutdown transformer] SDT. As shown in Part III, there is no significant increase in risk due to the proposed change. Thus, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The existing specification 3.9.B.1 is separated into two segments (a and b) because of the proposed different AOTs for the SUT and SDT transformers. As a result of the PSA, the AOT for the SUT (a) is reduced from 7 days to 72 hours, while the AOT for the SDT (b) remains at 7 days. The reduction of the AOT from 7 days to 3 days is based on the relative risk importance of the SUT support to the balance of plant systems. Similarly, an additional reduction from 72 hours to 48 hours is proposed in the AOT for a simultaneous loss of both the SUT or SDT and an EDG (TS 3.9.B.4) based upon the SUT's or SDT's contribution to risk and that two power sources have been removed from the associated bus. The AOT reductions represent a measurable decrease in risk as assessed in the PSA. Thus, the probability or consequences of an accident previously evaluated are not increased.

The current technical specifications allow one EDG to be out of service for three days based on the availability of the SUT and SDT and the fact that each EDG carries sufficient engineered safeguards equipment to cover all design basis accidents. Additionally, the SDT can provide adequate power for one train of ESF equipment for all operating, transient, and accident conditions. With one EDG out of service and a Loss of Offsite Power (LOOP) condition, the capability to power vital and auxiliary system components remains available via the other EDG. Increasing the EDG AOT to 14 days provides flexibility in the maintenance and repair of the EDGs. The EDG unavailability will be monitored and trended in accordance with the Maintenance Rule. The PSA analyses supports the change to a 14 day AOT for the EDGs based on an insignificant increase in overall risk. Implementation of the proposed change is expected to result in less than a one percent increase in the baseline core damage frequency (2.84E–05/yr), which is considered to be insignificant relative to the underlying uncertainties involved with PSA. An additional condition is added requiring the SBO–DG to remain operable for extending the inoperable EDG AOT from 3 days to 14 days, thereby assuring that one EDG and SBO–DG are available during the extended EDG AOT. Thus, the 14-day EDG AOT does not involve an increase in the probability or consequences of an accident previously evaluated.

The proposed addition of the CRMP does not involve a significant increase in the probability or consequences of an accident previously evaluated. Because the changes are administrative in nature and deal only with risk assessment, they have no bearing on accident initiation or mitigation. Therefore, the changes will not affect the probability or consequences of an accident previously evaluated.

The proposed change does not affect the design or performance of the EDGs, and the change will not result in a significant increase in the consequences or probability of an accident previously analyzed. These changes do not involve a increase in the probability or consequences of an accident previously analyzed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of PNPS in accordance with the proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because of the following:

The proposed amendment will extend the action completion/allowed outage time for an inoperable EDG from 3 days to 14 days. During this extension, the [station blackout diesel generator] SBO–DG is required to be operable and normal breaker configuration is required to be verified to ensure the SBO–DG is capable of energizing the safety bus associated with the inoperable EDG. These actions assure one EDG and SBO–DG are operable during extended EDG AOTs. The EDGs are designed as backup AC power sources for essential safety systems in the event of loss of offsite power. The SBO–DG is designed to cope with a station black out transient. The proposed AOT does not change the conditions, operating configurations, or minimum amount of operating equipment assumed in the safety analysis for accident mitigation. The EDGs, SBO–DG and AC equipment are not accident initiators. No change is being made in the manner in which the EDGs provide plant protection. No new modes of plant operation are involved. An extended AOT for one EDG does not create a new or different kind of accident [than] previously evaluated. The PSA results concluded the risk contribution of the EDG AOT extension is insignificant.

Pilgrim has implemented an EDG reliability program to maintain reliability of EDGs. The SBO–DG is included in the reliability program, and the performance of EDGs and SBO–DG are trended for compliance with Maintenance Rule requirements. Thus, the proposed change does not introduce any new mode of plant operation or new accident precursors, involve any physical alterations to plant configurations, or make changes to system set points that could initiate a new or different kind of accident. Therefore, operation in accordance with the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The AOT for an inoperable SUT is reduced from 7 days to 72 hours based upon the PSA that was performed to quantitatively assess the risk impact of the proposed amendment. Additionally, removal of the SUT from service degrades the reliability of the offsite power system and renders the balance of plant unavailable upon a plant shutdown. The proposed reduction in AOT improves overall AC power source availability because the SUT will potentially be inoperable for shorter time periods. Therefore, reducing the AOT does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed addition of the [Configuration Risk Management Program] CRMP does not create the possibility of a new or different kind of accident from any accident previously evaluated because the CRMP will not affect the manner in which [structures, systems, and components] SSCs are designed, operated, or maintained. The administrative changes proposed will only require a risk assessment for specified plant configurations. Any risk assessments performed as a result of this program will only serve to provide plant personnel with risk insights associated with particular plant configurations. Since the changes will not impact SSCs and all accidents involving SSCs, the proposed change does not create a new kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The operation of PNPS in accordance with the proposed license amendment will not involve a significant reduction in a margin of safety. As shown in Part III [of the application dated April 25, 1996), incorporation of the proposed change involves an insignificant reduction in the margin of safety (less than a one percent increase in the baseline core damage frequency (2.84E–05/yr), which is considered to be insignificant relative to the underlying uncertainties involved with PSA).

Also, the proposed changes do not significantly reduce the basis for any technical specification related to the establishment of, or the maintenance of, a safety margin nor do they require physical modifications to the plant. An additional condition is added requiring the SBO–DG to remain operable, in addition to the operable EDG associated with the redundant train while in the 14-day EDG AOT. The PSA results showed that the risk contribution of extending the AOT for an inoperable EDG is insignificant. Also, the reduction in the AOT for the SUT should improve availability thereby reducing overall risk with no reduction of the safety margin. Moreover, the proposed changes affect neither the way in which the EDGs perform their safety function nor the bases for their LCOs.

The proposed change does not involve a significant reduction in a margin of safety. The proposed administrative change to include a risk management program will not impact how plant SSCs are designed, operated, or maintained. The required risk assessments are intended to provide insights that influence decisions on the acceptability of abnormal plant configurations. These insights work in conjunction with existing inputs into the decision-making process rather than as the sole basis for making decisions. Therefore, the changes will not reduce a margin of safety.

As previously stated, implementation of the proposed changes is expected to result in an insignificant increase in: (1) power unavailability to the emergency buses (given that a loss of offsite power has occurred), and (2) core damage frequency. Implementation of the proposed changes does not significantly reduce 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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Cecil O. Thomas.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: September 1, 1998.

Description of amendment request: The licensee's request proposes to revise Technical Specification 3/4.9.11 ''Water Level—New and Spent Fuel Pools.'' As a result of the proposed amendment, the licensee has also revised the Fuel Handling Building fuel handling accident analysis and the Containment fuel handling accident analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Revising the required spent fuel pool water level will not increase the probability of a fuel handling accident. There is no other physical alteration to any plant system, nor is there a change in the method in which any safety related system performs its function. Harris Nuclear Plant (HNP) has revised the fuel handling accident analyses using the conservative assumptions associated with this change. The revised fuel handling accident analyses demonstrate that dose consequences as a result of a fuel handling accident remain below 25% of the 10 CFR 100 guidelines as described in the NRC Standard Review Plan.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no physical alteration to any plant system, other than revising spent fuel pool water level, nor is there a change in the method in which any safety related system performs its function. HNP has design features to mitigate the consequences of a loss of spent fuel pool water level which are unaffected by this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Revising the required spent fuel pool water level does not involve a significant reduction in the margin of safety. There is no other physical alteration to any plant system, other than revising spent fuel pool water level, nor is there a change in the method in which any safety related system performs its function. HNP has revised the fuel handling accident analyses using the conservative assumptions associated with this change. The revised fuel handling accident analyses demonstrate that dose consequences as a result of a fuel handling accident remain below 25% of the 10 CFR 100 guidelines as described in the NRC Standard Review Plan.

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 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: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Pao-Tsin Kuo.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: August 31, 1998.

Description of amendment request: The proposed amendment would change the Quad Cities Technical Specifications (TS) to reflect an increase in the maximum allowable Main Steam Isolation Valve (MSIV) leakage from 11.5 standard cubic feet per hour (scfh) to 30 scfh per valve when tested at 25 psig, in accordance with Surveillance Requirement 4.7.D.6

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:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specification Surveillance Requirement 4.7.D.6 increases the maximum allowable leakage rate for a single Main Steam Isolation Valve (MSIV) from 11.5 scfh to 30 scfh. This change has no impact on the automatic or manual closure features of the valve including automatic actuations and response times. Closure of the MSIVs is a postulated transient considered in the design basis of the plant. Since the proposed change does not impact the response characteristics of the MSIVs during a postulated transient

condition, the change does not impact the probability of an accident previously evaluated.

The change in allowable MSIV leakage has been evaluated to assess the impact on control room operator dose and offsite dose levels. The radiological assessment was performed with an updated radiological methodology that included significant enhancements, such as credit for suppression pool scrubbing, updated iodine dose conversion factors, and allowance for higher burnup fuel designs. Using this revised methodology, which is consistent with current regulatory requirements, the resulting dose levels from a postulated design basis accident continue to remain below the limits established in 10 CFR 50, Appendix A, General Design Criteria 19 (GDC–19) and 10 CFR 100. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The safety function of the MSIVs is to provide a timely steam line isolation to mitigate the release of radioactive steam and limit reactor inventory loss under certain accident and transient conditions. The MSIVs are designed to automatically close whenever plant conditions warrant a main steam line isolation. The proposed increase in allowable MSIV leakage does not impact the MSIV's ability to perform its underlying safety function, nor does the change involve any physical features of the valves and associated steam lines to create a new or different type of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed increase in allowable MSIV leakage represents a nominal increase in the release of radioactivity during a design basis event. The radiological assessment was performed with an updated radiological methodology that included significant enhancements, such as credit for suppression pool scrubbing, updated iodine dose conversion factors, and allowance for higher burnup fuel designs. Using this revised methodology, which is consistent with current regulatory requirements, the resulting dose levels from a postulated design basis accident continue to remain below the limits established in 10 CFR 50, Appendix A, GDC–19 and 10 CFR 100.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application of amendments: June 2, 1998.

Description of amendment request: The proposed amendment relocates seismic monitoring equipment requirements from the Technical Specifications to the Technical Requirements Manual (TRM), a document which is controlled under 10 CFR 50.59.

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:

CYAPCO has reviewed the proposed changes to the Technical Specifications in accordance with 10 CFR 50.92 and concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

As a result of the present plant configuration which has the fuel permanently removed from the reactor, the reactor-related accidents previously evaluated (i.e., LOCA, MSLB, etc.) are no longer possible. The accidents previously evaluated that are still applicable to the plant are fuel handling accidents and gaseous and liquid radioactive releases.

There is no significant increase in the probability of a fuel handling accident since refueling operations have ceased. In fact, there is a decrease in probability of a fuel handling accident since the need to move/rearrange fuel assemblies is minimal until they are removed from the spent fuel pool (i.e., for dry cask storage or for transferring to USDOE possession). In addition, the consequences of a fuel handling accident are continuing to decrease since the fuel in the spent fuel pool is continuing to decay.

The radiological consequences of a gaseous or liquid radioactive release are bounded by the fuel handling accident during defueled operation and a spent resin fire during the reactor coolant system decontamination. With the plant defueled and permanently shutdown, the demands on the radwaste systems are lessened since no new radioisotopes are being generated by irradiation or fission. Therefore, there is no increase in the probability or consequences of a gaseous or liquid radioactive release.

The ability of the plant to withstand a seismic event is not affected by this proposed change. The seismic instrumentation does not actuate any protective equipment or serve any direct role in the mitigation of an accident. The equipment will continue to be adequately controlled by the Technical Requirements Manual (TRM) to ensure operability and alert operators to a seismic event, should one occur, so that appropriate actions can be taken. Therefore, there is no increase in the consequences of a seismic event.

This material is being transferred to the TRM. This transfer is in accordance with Generic Letter 95–10, ''Relocation of Selected Technical Specifications Requirements Related to Instrumentation,'' dated December 15, 1995 and is consistent with the NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Volume 1, Revision 1, dated April, 1995. The removed material included in this category is Technical Specification 3/4.3.3.3 and the related tables.

Based on the above, the proposed changes to the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no change in how spent fuel is stored or moved in the spent fuel pool. Therefore, the postulated fuel handling accidents are still bounding and are still considered as credible postulated accidents.

There is no change in the design and construction of plant systems, structures and components with respect to the capability to withstand a seismic event. Therefore, the currently assumed radioactive releases are still bounding.

This material is being transferred to the TRM. This transfer is in accordance with Generic Letter 95–10 and is consistent with NUREG–1431. The removed material included in this category are Technical Specification 3/4.3.3.3 and the related tables.

Based on the above, the proposed changes to the Technical Specifications do 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 capability of the plant to withstand a seismic event or other design basis accident is determined by the design and construction of systems, structures, and components. The instrumentation is used to alert operators to the seismic event and evaluate the plant response. The NRC's Final Policy Statement on Technical Specification Improvements (SECY–93–067) stated that instrumentation to detect precursors to reactor coolant pressure boundary leakage, such as seismic instrumentation, is not included in the first criterion. As discussed above, the seismic

instrumentation does not serve as a protective design feature or part of a primary success path for events which challenge fission product barriers. The NRC staff, in Generic Letter 95–10, has concluded that the seismic monitoring instrumentation does not satisfy the 10 CFR 50.36 criteria and need not be included in the technical specifications.

This material is being transferred to the TRM. This transfer is in accordance with Generic Letter 95–10 and is consistent with NUREG–1431. The removed material included in this category are Technical Specification 3/4.3.3.3.

The proposed changes to the Technical Specifications do not involve a significant reduction in a margin of safety due to the fact that the capability of the plant to withstand a seismic event or other design bases accident is not affected by this proposed change.

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 amendments request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for the licensee: Mr. John A. Ritsher, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts, 02110.

NRC Project Director: Seymour H. Weiss, Director.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: April 9, 1998 (NRC–98–0071).

Description of amendment request: The proposed amendment would revise the ''**'' footnote to Technical Specification (TS) 3.7.1.2, ''Emergency Equipment Cooling Water System,'' Action ''a'' and add a ''*'' footnote to TS 3.8.1.1, ''A.C. Sources—Operating,'' Action ''c'' to make the actions consistent with TS 3.3.7.5, ''Accident Monitoring Instrumentation,'' for the case of inoperable primary containment oxygen monitoring instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will permit operation with both of the primary containment oxygen monitoring instrument channels inoperable for up to 48 hours before requiring entry into a 12 hour shutdown statement, consistent with Technical Specification 3.3.7.5, but less restrictive than the requirements in Technical Specification 3.7.1.2 Action a and Technical Specification 3.8.1.1 Action c, which require entry into the 12 hour shutdown statement immediately if the channel in the remaining division is inoperable, followed by continued shutdown to the COLD SHUTDOWN condition. The shutdown action statement entry conditions for the primary containment oxygen monitoring instrumentation should be no more restrictive in Technical Specification 3.7.1.2 or Technical Specification 3.8.1.1, than they are in Technical Specification 3.3.7.5 for both channels being inoperable. The primary containment oxygen monitoring instrumentation provides the same non-critical function regardless of the reason for the system inoperability. The primary containment oxygen monitors provide the control room operators with indication and alarm of the oxygen concentration in the primary containment, but do not provide any automatic function to mitigate an accident. Because they perform only a monitoring function, the oxygen monitors are not associated with the initiation of any previously evaluated accident; therefore, there is no change in the probability of an accident previously evaluated.

The indication provided by the primary containment oxygen monitors is used by the control room operators to ensure that the oxygen concentration remains within limits and to help make decisions regarding the use of the Combustible Gas Control System, if necessary. Alternate methods using grab samples and laboratory analytical equipment are available for obtaining primary containment oxygen concentration if no primary containment oxygen monitoring instrumentation is available. Additionally, the loss of both oxygen analyzers is not critical for entry into the Emergency Operating Procedures. Entry conditions for the post accident control of hydrogen are based upon the primary containment hydrogen monitor readings, and both channels of primary containment hydrogen monitoring instrumentation are still required to remain operable in accordance with Technical Specification 3.3.7.5. Therefore, this change will not involve a significant increase in the consequences of a previously evaluated accident.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the primary containment oxygen monitors are indication and alarm only instruments which provide information to the control room operators. The proposed change does not introduce a new mode of plant operation, nor does it involve a physical modification to the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed change involves the length of time that both primary containment oxygen monitoring instrument channels may be out of service. It does not increase the out of service time beyond what is already allowed by Technical Specification 3.3.7.5 for both channels being inoperable. The primary containment oxygen monitors are indication and alarm only instruments which do not affect any parameters or assumptions used in the calculation of any safety margin associated with 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, Ellis Reference and Information Center, 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.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 24, 1998.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) to clarify, for St. Lucie Units 1 and 2, component operations to be verified in response to a containment sump recirculation signal. For St. Lucie Unit 1, the proposed amendment would modify the list of equipment that comprises an operable control room emergency ventilation system to more accurately reflect installed equipment. For St. Lucie Unit 2, license conditions related to the movement of spent nuclear fuel between units will be deleted and modified as appropriate to reflect the completion of the Unit 1 spent fuel pool re-rack activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not

involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve accident initiators. The changes to the Unit 1 and Unit 2 Technical Specifications provide additions and clarification to component lists to ensure that explicit terms of the affected specifications are consistent with existing requirements. Other changes to the Unit 2 facility operating license simply delete superseded license conditions that have been previously satisfied and are therefore obsolete. The revisions do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do the changes alter any assumptions or conditions in the plant safety analyses. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability 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 accident previously evaluated.

The proposed amendments are administrative in nature and will not change the physical plant or the modes of operation defined in the facility operating licenses. The changes do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The changes proposed for the Unit 1 and Unit 2 Technical Specifications provide additions and clarification to component lists to ensure that explicit terms of the affected specifications are consistent with existing requirements. Other changes to the Unit 2 facility operating license simply delete superseded license conditions that have been previously satisfied and are therefore obsolete. The revisions do not alter the plant safety analyses or the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of either unit in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

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 requests: September 4, 1998.

Description of amendment requests: The proposed amendments would modify the surveillance requirements and limiting conditions for operation of the technical specifications (TS) for the reactor coolant vent system. Specifically, the proposed amendments would modify the limiting conditions for operation as specified in TS Section 3.1.A.3, Reactor Coolant Vent System, and the surveillance requirements specified in TS Section 4.18, Reactor Coolant Vent System Paths.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect any system that is a contributor to initiating events for previously evaluated anticipated operational occurrences and design basis accidents. Neither do the changes significantly affect any system that is used to mitigate any previously evaluated anticipated operational occurrences and design basis accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not alter the design, function, or operation of any plant component and does not install any new or different equipment, therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

The proposed changes do not alter the initial conditions assumed in deterministic analyses associated with either the RCS [reactor coolant system] boundary or fuel cladding, therefore these changes do not involve a significant reduction in the margins 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 requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 25, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 2.1.2, ''THERMAL POWER, High Pressure and High Flow,'' and the Bases for TS 2.1, ''Safety Limits.'' These changes are being made to implement an appropriately conservative Safety Limit Minimum Critical Power Ratio (SLMCPR) for the upcoming Cycle 9 Hope Creek core and fuel designs.

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 derivation of the revised SLMCPRs for Hope Creek for incorporation into the Technical Specifications, and its use to determine cycle-1 specific thermal limits, have been performed using NRC approved methods. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

There are no significant increases in the consequences of an accident previously evaluated. The basis of the MCPR Safety Limit is to ensure that no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes contained in this submittal result from an analysis of the Cycle 9 core reload using the same fuel types as previous cycles. These changes do not involve any new method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes. Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the Technical Specification bases will remain the same. The new SLMCPRs are calculated using NRC approved methods, which are in accordance with the current fuel design, and licensing criteria. The MCPR Safety Limit remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed Technical Specification 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: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

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.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: March 6, 1998.

Description of amendment requests: The proposed amendment would modify the Technical Specifications (TS) to eliminate reference to shutdown cooling (SDC) system isolation bypass valve inverters. The proposed change would allow the licensee to replace the inverters with transfer switches.

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 staff's evaluation of the three criteria are presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The SDC system isolation bypass valves are not considered as event initiators in the accidents analyzed in the safety analysis report. Therefore, the proposed change in how the valves are aligned to available power supplies does not affect the probability of an accident previously evaluated.

The SDC system isolation bypass valves are realigned post-accident to place the shutdown cooling system in operation. The proposed change will modify the power supply for these valves from an inverter that is supplied from the safety-related DC buses to the safety-related AC buses through a manual transfer switch. This will allow the power supplies for opposite trains' valves for SDC suction supplies to be powered from opposite trains of electrical power. The operations required to actually place SDC in operation from the control room are unaffected. The proposed change does not affect the course of any accident previously analyzed, and therefore the consequences of any accident previously evaluated are unaffected by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SDC system isolation bypass valves are used during accident mitigations, and are not considered as credible accident initiators. Thus, modifying the manner in which power is supplied to the valves will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Current accident analyses assume proper operation of the SDC system to mitigate the consequences of an accident to maintain postulate offsite release below the limits of 10 CFR Part 100. The proposed change only modifies the manner in which power is made available to the valves, while retaining the current design for redundancy and diversity.

The proposed change does not, therefore, affect the current margins of safety.

Based on the above staff analysis, 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: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Tennessee Valley Authority, Docket No. 50–260 and 50–296, Browns Ferry Nuclear Plant Units 2, 3, Limestone County, Alabama

Date of amendment request: September 4, 1998.

Description of amendment request: The proposed amendment would revise the licensing bases for the Browns Ferry Nuclear Plant (BFN) Units 2 and 3 to credit containment pressure in excess of atmospheric pressure (containment overpressure) in the analysis for Emergency Core Cooling Systems (ECCS) pump required net positive suction head (NPSH) during design basis accident conditions. The proposed licensing bases change would be implemented by a change to the BFN Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

NRC Bulletin 96–03 requested BWR [Boiling Water Reactor] owners implement appropriate measures to minimize the potential clogging of the ECCS suppression chamber strainers by potential debris generated by a LOCA [loss-of-coolant-accident]. TVA's [Tennesse Valley Authority's] proposed resolution of this issue for BFN takes credit for containment overpressure to maintain adequate ECCS pump NPSH. Containment overpressure is a result of the conditions which will exist in the containment following the pipe break inside containment. Therefore, the use of containment overpressure in the analysis of the consequences of the LOCA does not affect the precursors for the LOCA, nor does it affect the precursors for any other accident or transient analyzed in Chapter 14 of the BFN Updated Final Safety Analysis Report (UFSAR). Therefore, there is no increase in the probability of any accident previously evaluated.

The worst radiological consequences for the design basis accidents analyzed in UFSAR Chapter 14 are a result of a circumferential break of one of the recirculation loop lines inside containment. The analysis of the radiological consequences of this event assumes a two percent per day leakage from the containment. The results of this analysis are presented in Section 14.6.3 of the UFSAR and indicate substantial margin when compared to 10 CFR Part 100 limits.

The radiological consequences of the design basis accident are not increased by taking credit for the post-LOCA suppression chamber airspace pressure. Without loss of primary containment, no mechanism exists to increase the accident consequences since current leakage bounds this condition. The initial analysis does not assume differential pressure between the drywell and the suppression chamber even though one exists due to the equilibrium conditions caused by the suppression chamber airspace temperature. Specifically, the suppression chamber airspace pressure credited in the ECCS pump NPSH analyses is provided by an increase in suppression chamber vapor pressure due to the increased pool temperature, including an evaluation of the effects of containment initial conditions and leakage.

By crediting the post-LOCA suppression chamber airspace pressure in the calculation of NPSH, no requirement is created to purposely maintain a higher containment pressure than would otherwise occur; no requirement is incurred to delay operating containment heat removal equipment; no requirement is incurred to deliberately continue any condition of high containment pressure in order to maintain adequate NPSH; and no requirement is incurred for the purposeful addition of nitrogen into the containment to increase the available pressure. Therefore, the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed use of the post-LOCA suppression chamber airspace pressure in the calculation of NPSH for the ECCS pumps does not introduce any new modes of plant operation or make physical changes to plant systems. Rather, the post-LOCA suppression chamber airspace pressure is a byproduct of the conditions that will exist in the containment after a line break inside containment. Therefore, crediting the post-LOCA suppression chamber airspace pressure in the calculation of NPSH does not create the possibility of a new or different accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The integrity of the primary containment and the operation of the ECCS systems limit the offsite doses to values less than those specified in 10 CFR 100 in the event of a reactor coolant system line break inside primary containment. In order for the ECCS pumps to meet their design basis performance requirements, the NPSH available to the pumps throughout the duration of the accident response must meet their specific NPSH requirements. Excess NPSH margin will not improve the performance of the ECCS pumps.

The post-LOCA suppression chamber airspace pressure is a byproduct of the conditions that will exist in the containment after a line break inside containment. The credit taken for this pressure in ECCS NPSH analyses has been performed in such a manner as to assure that the actual containment overpressure will always exceed the value assumed in the analyses. The NPSH margin will exceed that credited in the NPSH analyses and ECCS pump performance will meet applicable requirements. Therefore, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its 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: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: August 5, 1998 (TS 98–008).

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Plant (WBN) Technical Specifications (TS) and associated TS Bases to allow up to 4 hours to make the residual heat removal suction relief valve available as a cold overpressure mitigation (COMS) relief path. This condition will be applicable when entering Mode 4 from Mode 3 during a plant shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The 4 hour allowance to place the RHR [residual heat removal] relief valve in service in the proposed TS change is bounded by the current COMS TS. The COMS TS currently allows cooldown of the unit while in Mode 4 with only one operable relief path for up to 7 days. Operation in this condition is allowed by Action E.1 of LCO [limiting condition for operation] 3.4.12. The 7 day completion time considers the facts that only one of the RCS [reactor coolant system] relief valves is required to mitigate an overpressure transient and that the likelihood of an active failure of the remaining relief path during this 7 day time period is very low. Thus a failure of the single available relief path concurrent with an overpressurization event during the proposed 4 hour time period for alignment and preparation of the RHR system for service is more remote. Therefore, the proposed TS change does not increase the probability of an accident previously evaluated. Further, this change does not result in hardware or procedural changes which will affect the probability of the occurrence of an accident. Considering this, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Action E.1 of LCO 3.4.12 addresses a condition where one relief path is inoperable while in Mode 4. The completion time for Action E.1 is 7 days. The 4 hour period of operation in Mode 4 that will be allowed by the addition of Note 4 to the Applicability statement of LCO 3.4.12 is well within the bounds of the analysis for operation allowed by Action E.1. This 4 hour time allowance for placement of the RHR suction relief valve in service therefore, does not cause the initiation of any accident nor create any new [credible] limiting failure for safety-related systems and components. Since the 4 hour period is only a fraction of the 7 day time period previously authorized for operation with only a single relief path, it is not probable that an accident different from those previously evaluated will be created. Therefore, the change has no adverse effect on the ability of the safety-related systems to perform their intended safety functions.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The Technical Specifications currently allow one of the two required relief valves to be unavailable for 7 days (Condition E of LCO 3.4.12) while in Mode 4. In this condition (one of the two relief valves inoperable), the proposed change would permit a mode change from Mode 3 to Mode 4 while providing 4 hours to place the RHR system into service. Consequently, this change does not reduce the margin of safety since the probability of an event occurring during the 4 hour period is less than the probability of an event occurring during the 7 days permitted by Action E.1. Considering this, the proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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, TN 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET I0H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: August 6, 1998 (TS 98–007).

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Plant (WBN) Technical Specifications (TS) and associated TS Bases to clarify the intent of the surveillance requirements (SRs) for turbine driven auxiliary feedwater (AFW) pump. The proposed revision would allow three SRs to be performed prior to achieving 1092 psig in the steam generator (SG).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment would revise the subject TDAFWP [turbine driven auxiliary feedwater pump] TS surveillance requirements to be consistent with the intent of the current Westinghouse MERITS TS, NUREG 1431, Revision 1. TS 3.3.2 and 3.7.5 would be revised to permit testing of the TDAFWP at SG pressures less than the no-load pressure of 1092 psig [pounds per square inch-gauge]. Under these conditions, the AFW system will continue to satisfy requirements for the analyzed design basis accidents and anticipated operational transients dependent on AFW. The design basis for the AFW system and specifically the TDAFWP will be maintained such that the AFW system and its equipment will continue to perform its safety functions because the TDAFWP test will demonstrate, on recirculation flow near pump shutoff head, the ability to deliver full rated flow to the SGs. The proposed TS change does not result in any modifications to the plant and does not alter any fission barriers or challenge fuel integrity, nor are other safety systems degraded by the subject change. Potential radiological releases are not impacted by this TS change and there are no new release pathways created. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated for WBN.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change does not result in a modification to the plant and has no adverse affect on the ability of any safety-related system to perform its intended function. No new accident scenarios are created and no new failure modes/mechanisms or limiting single failures are created as a result of the proposed change that would prevent the AFW system from performing its safety functions. A lower test pressure than the current value of 1092 psig would have an insignificant impact on the stroke time of the Terry turbine trip and throttle valve, 1–FCV–1–51. Therefore, the proposed TS change will not result in any new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

This TS change does not change an acceptance limit nor does it reduce a margin of safety associated with the acceptance criteria for any WBN accident. The safety analyses performed for WBN is not based on the SG pressure at which the TDAFWP test is conducted. Specifically, the proposed TS change clarifies requirements for the TDAFW pump testing consistent with industry practice. The capability of the SRs to detect any degradation to the TDAFWP is unaffected. The capability of the SRs to demonstrate automatic start and adequate response time of the TDAFWP is not adversely impacted. The test remains a requirement of the TS, but clarifies that the test may be conducted at a SG pressure less than no-load conditions. The proposed TS change does not reduce the margin of safety limits established to protect any fission product barriers. Therefore, the proposed TS change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: May 8, 1998, as supplemented on July 10, 1998.

Description of amendment request: The licensee proposed to change the maximum torus water temperature during normal operation from 100 °F to 90 °F; limit the temperature during testing to 100 °F for no more than 24 hours; and, should temperature exceed 110 °F prevent operation until the temperature is reduced to below 90 °F (changed from 100 °F). *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 operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(a) The proposed change to decrease the normal operating suppression pool temperature limit from 100 °F to 90 °F will assure that the consequences of accidents previously evaluated will not be significantly increased.

A reduction in the normal operating suppression pool temperature limit provides more margin for the suppression pool as a heat sink to absorb energy from the reactor vessel following an accident. The effect of higher calculated suppression pool temperatures following an accident as a result of the effect of increased feedwater addition and decreased [residual heat removal] RHR heat exchanger heat removal does not affect the consequences of accidents previously evaluated.

Certain types of Mark I containment loading conditions are increased at lower suppression pool temperatures, but since the analysis of Mark I loads for Vermont Yankee was based on initial suppression pool temperatures between 70 °F and 90 °F, the proposed decrease in the normal operating limit to 90 °F will not affect the consequences of those particular events.

(b) The proposed change to decrease the normal operating suppression pool temperature limit from 100 °F to 90 °F will not affect the probability of accidents occurring. The accidents and transients described in the [final safety analysis report] FSAR are initiated by failures of components which are not in contact with the suppression pool water, therefore a change in the suppression pool temperature will have no affect on the probability of those accidents occurring.

(c) The proposed change to restrict operation during testing that adds heat to the suppression pool to no more than 24 hours while above the normal operating temperature limit will have no affect on the consequences of accidents previously evaluated since accidents are not assumed to be initiated during these modes of operation. This assumption is made in order to assure that plants have testing flexibility at power. In addition to the time limit placed on pool temperature, the plant enters the appropriate limiting condition for operation whenever the RHR system is placed in the suppression pool cooling mode during power operation.

(d) The proposed change to restrict operation during testing that adds heat to the suppression pool to no more than 24 hours while above the normal operating temperature limit will have no affect on the probability of an accident occurring. The accidents and transients described in the FSAR are initiated by failures of components which are not in contact with the suppression pool water, therefore a change in

the duration of time at any particular suppression pool temperature will have no affect on the probability of those accidents occurring.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to decrease the normal operating suppression pool temperature limit from 100 °F to 90 °F does not change any accident initiators or the types of accidents analyzed. No new modes of equipment operation or physical plant equipment modifications are proposed. The change in predicted peak suppression pool temperature results from more conservatively calculating the effects of currently analyzed accidents. Therefore this change will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to restrict operation during testing that adds heat to the suppression pool to no more than 24 hours with water temperature above the normal operating temperature limit will allow for appropriate testing of safety related equipment to ensure operability. This testing allowance does not create any new initiating events or transients and does not involve any new modes of operation. Therefore, this change does not create the possibility of a new or different kind of accident from those previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed change to decrease the normal operating suppression pool temperature limit from 100 °F to 90 °F assures that the suppression pool can adequately perform its safety function without a significant decrease in the margin of safety. Each of the accidents affected by suppression pool temperature have been evaluated. The evaluation showed that a higher peak suppression pool temperature was predicted based on analysis assumptions that are more conservative tha[n] those used in the current FSAR, but that the increase in peak temperature does not have a[n] impact on containment loads and equipment operability. The principal effect of an increase in peak suppression pool temperature is the reduction of [net positive suction head] NPSH margin for the low pressure [emergency core cooling system] ECCS pumps. Operator action is credited in throttling the ECCS pump flow rates after 10 minutes for the most limiting scenarios in order to assure that available NPSH exceeds required NPSH. Operator action after 10 minutes is consistent with Vermont Yankee's design basis and Emergency Operating Procedures. The proposed reduction in the normal operating suppression pool temperature limit from 100 °F to 90 °F will provide more time for operators to take actions, if required.

Operation of the facility in accordance with the proposed change to restrict operation during testing that adds heat to the suppression pool to no more than 24 hours while above the normal operating temperature limit will not involve a significant reduction in a margin of safety because it restricts the amount of time that the facility can be operated at a suppression pool temperature above the normal operating limit.

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: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Project Director: Cecil O. Thomas.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 10, 1996.

Description of amendment request: The amendment would add to the WNP–2 Facility Operating License No. NPF–21, the authority to store on the WNP–2 site, byproduct, source, and special nuclear materials currently addressed by the WNP–1 Materials License 46–17694–02.

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 proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment does not remove or modify existing requirements or safety limits. The requirements of the [Atomic Energy] Act and 10 CFR Parts 30, 40, and 70 will govern storage of sealed byproduct and neutron sources. Operation of WNP–2 requires possession and use of similar materials, and control of such materials is currently being exercised pursuant to the requirements of the Act and 10 CFR Parts 30, 40, and 70. The additional inventory of radioactive materials is a very small percentage of that already being controlled under Operating License NPF–21. Stored materials such as those proposed are not assumed as an initiator of, or contributor to, a previously analyzed accident. Consequently, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The requirements of the Act and 10 CFR Parts 30, 40, and 70 will govern storage of sealed byproduct and neutron sources. These materials will be stored indefinitely, and will not be put to active use. Operation of WNP–2 requires possession and use of similar materials, and control of such materials is currently being exercised pursuant to the requirements of the Act and 10 CFR Parts 30, 40, and 70. Consequently, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The additional inventory of radioactive materials included in sealed byproduct and neutron sources to be stored is a very small percentage of that already being controlled under Operating License NPF–21. The storage of materials does not impact the normal or emergency operation of the plant. No change to the manner in which the plant is operated is proposed. No modification to the facility is proposed. Consequently the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Project Director: William H. Bateman.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 15, 1996, as supplemented by letter dated December 4, 1997.

Description of amendment request: This amendment would modify the secondary containment and standby gas treatment system (SGTS) technical specifications to more accurately reflect the existing design by revising the secondary containment and SGTS surveillance requirements to reflect a revised flow rate, revising the secondary containment integrity surveillance requirements by establishing an acceptable operating region as a function of secondary containment differential pressure and SGTS system

flow, and deleting the existing requirement to maintain the secondary containment at greater than or equal to 0.25 inch of vacuum water gauge at all times.

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?

Secondary containment and the Standby Gas Treatment (SGT) system are not initiators or precursors to any accident. The SGT system acts as part of secondary containment to minimize and control airborne radiological releases from the plant following a design basis accident. Therefore, operation of WNP–2 in accordance with the proposed changes will not cause a significant increase in the probability of an accident previously evaluated.

The proposed amendment to the Technical Specifications impacts the capability to demonstrate that the secondary containment and SGT system designs will maintain radioactive releases within 10 CFR 100 guidelines and 10 CFR 50, Appendix A, General Design Criteria 19 limits. As a result, a new (current) design basis accident dose analysis was performed using the source term criteria outlined in Regulatory Guide 1.3, ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss of Coolant Accident for Boiling Water Reactors,'' to evaluate the proposed changes. The new analysis provides a conservative representation of the timing and release of radioactivity during a design basis accident.

The proposed amendment also deletes the normal (nonsafety-related) secondary containment ventilation system surveillance requirement to verify every 24 hours that the pressure within secondary containment is less than or equal to 0.25 inch of vacuum water gauge. This surveillance requirement is not necessary as current Technical Specification Limiting conditions for Operation (LCOs) as well as the WNP–2 Final Safety Analysis Report (FSAR) adequately address secondary containment integrity requirements and ensure secondary containment effluent is monitored. Deletion of the surveillance requirement has no impact on the secondary containment drawdown analysis or the design basis dose analysis. Thus, the analyses assumptions and conclusions remain valid.

The secondary containment and SGT system designs must accommodate a post-accident single failure and remain operable. In addition, certain plant specific parameters, such as SGT capacity, secondary containment in-leakage, outside meteorological conditions, secondary containment heat loads, available cooling capacity, emergency diesel start time and loading sequence, and drawdown time for secondary containment must be considered in the design analyses and dose assessments. The current design in conjunction with an assumed secondary containment leakage of 2240 cfm and a drawdown time of 20 minutes provide assurance that the radiological doses for a design basis accident are maintained below the 10 CFR 100 guidelines and 10 CFR 50, Appendix A, General Design Criteria 19 limits.

The dose analysis supporting the proposed amendment to the Technical Specifications includes analytical changes to the SGT flow rate, secondary containment drawdown time, mixing, and bypass leakage, and established a 95% meteorological basis. These analytical changes, in combination, result in a calculated increase in the offsite thyroid dose values and a decrease in the whole body dose values. Although the calculated offsite thyroid dose values are higher than previously calculated, they remain within the 10 CFR 100 guidelines and 10 CFR 50, Appendix A, General Design Criteria 19 limits. In accordance with Standard Review Plan (NUREG–0800), Section 15.6.5, ''Loss-of-Coolant Accidents Resulting From a Spectrum of Postulated Piping Breaks Within the Reactor Coolant Pressure Boundary,'' the radiological consequences of a design basis accident are considered acceptable if they are within the guidelines of 10 CFR 100. Since the offsite thyroid dose values remain within these acceptance criteria, and since there is no increase in the control room thyroid dose values or any of the whole body dose value, the changes are considered acceptable and operation of WNP–2 in accordance with the proposed amendment to the Technical Specifications will not cause 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 accident previously evaluated?

Secondary containment and the SGT system are not initiators or precursors to any accident. The SGT system acts as part of secondary containment to minimize and control airborne radiological releases from the plant following a design basis accident.

The dose analysis supporting the proposed amendment to the Technical Specifications includes analytical changes to the SGT flow rate, secondary containment drawdown time, mixing, and bypass leakage, and establish a 95% meteorological basis. These analytical changes do not alter any safety-related equipment or functions or create any new failure modes. The changes will improve the capability of secondary containment and the SGT system to mitigate the consequences of a design basis accident by ensuring that secondary containment pressure can be drawn down from 0 inches water gauge to at least 0.25 inch of vacuum water gauge during the most adverse environmental conditions. The proposed changes reflect consideration of SGT capacity, secondary containment in-leakage, outside meteorological conditions, secondary containment heat loads, available cooling capacity, emergency diesel start time and loading sequence, and drawdown time for the limiting secondary containment elevation. Required instrumentation have been evaluated to ensure proper operation under normal and accident environmental conditions, including but not limited to pressure, humidity, seismic, temperature, and radiation. The evaluation method is based on American National Standards Institute/Instrument Society of America (ANSI/ISA) Standard S67.04–1988, ''Setpoints for Nuclear Safety-Related Instrumentation,'' and guidelines in ISA draft Recommended Practice RP67.04, ''Methodologies for the Determination of Setpoints for Nuclear Safety-Related Instrumentation.''

The proposed amendment to the Technical Specification does not change plant equipment or functions, but serves to clarify and credit existing design features. Fault tree and single failure analyses were performed to ensure that the SGT system design, including the equipment and components, credited in the licensing basis for the proposed amendment meet the single failure criteria for credible failure modes. The proposed amendment also deletes the normal (nonsafety-related) secondary containment ventilation system surveillance requirement to verify every 24 hours that the pressure within secondary containment is less than or equal to 0.25 inch of vacuum water gauge. Deletion of this surveillance requirement does not invalidate existing analyses or change plant equipment or functions. Thus, no new failure modes are created.

Based on equipment failure and qualification analyses performed and the above conclusions, the proposed amendment to the Technical Specifications does not change any safety-related equipment or functions, or create any new failure modes. Therefore, operation of WNP–2 in accordance with the proposed amendment to the Technical Specifications will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety?

Consistent with the current Bases for the Technical Specifications and the WNP–2 FSAR, secondary containment and the SGT system act to minimize and control airborne radiological releases from the plant to within 10 CFR 100 guidelines and 10 CFR 50, Appendix A, General Design Criteria 19 limits following a design basis accident.

The proposed amendment to the Technical Specifications impacts the capability to demonstrate that the secondary containment and SGT system designs will maintain radioactive releases within 10 CFR 100 guidelines and 10 CFR 50, Appendix A, General Design Criteria 19 limits. As a result, a new (current) design basis accident dose analysis was performed using the source term criteria outlined in Regulatory Guide 1.3 to evaluate the proposed changes. The new analysis provides a conservative representation of the timing and release of radioactivity during a design basis accident.

The proposed amendment also deletes the normal (nonsafety-related) secondary containment ventilation system surveillance requirement to verify every 24 hours that the pressure within secondary containment is less than or equal to 0.25 inch of vacuum water gauge. This surveillance requirement is

not necessary as current Technical Specification LCOs as well as the WNP–2 FSAR adequately address secondary containment integrity requirements and ensure secondary containment effluent is monitored. Deletion of the surveillance requirement has no impact on the secondary containment drawdown analysis or the design basis dose analysis. Thus, it follows that deletion of the surveillance requirement will not impact the offsite and control room dose safety margins established by these analyses.

The dose analysis includes analytical changes which increase SGT system flow rate and secondary containment drawdown time, credit mixing within secondary containment, increase bypass leakage, and establish a 95% meteorological basis. The combined effect of these analytical changes results in an increase in the calculated offsite thyroid dose values. The calculated control room thyroid dose values and all of the whole body dose values are shown to decrease. Although the new thyroid dose values are higher than previously calculated, they remain within the 10 CFR 100 guidelines and 10 CFR 50, Appendix A, General Design Criteria 19 limits. The calculated thyroid dose values at the plant exclusion area boundary (EAB) (1.2 miles) increased from 72 Rem to 114.2 Rem and the calculated thyroid dose at the low population zone (LPZ) (3 miles) increased from 251 Rem to 275.6 Rem.

The LPZ is defined as all land within a 3 mile radius of the plant site and 0 persons reside within this area. The nearest residence is 4.1 miles from the plant site. There are no schools or hospitals within 5 miles of the plant site and the nearest population center is at 12 miles. Considering the low population density in the area immediately surrounding the plant site, the increase in thyroid dose will have a small impact on the health and safety of the public.

Since the offsite thyroid dose values remain within the 10 CFR 100 guidelines and 10 CFR 50, Appendix A, General Design Criteria 19 limits, and since there is a small impact on the health and safety of the public, the increase in the offsite thyroid dose values are considered acceptable and operation of WNP–2 in accordance with the proposed amendnment to the Technical Specifications will not cause 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: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Project Director: William H. Bateman.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, DeWitt County, Illinois Date of Application for Amendment: August 24, 1998

Brief description of amendment request: The proposed amendment concerns the ''ready-to-load'' requirement for the Division 3 diesel generator (DG). The Division 3 DG requires operator action to reset the mechanical governor to meet the ''ready-to-load'' requirement.

Date of publication of individual notice in **Federal Register**: September 10, 1998 (63 FR 48529).

Expiration date of individual notice: October 13, 1998.

Local Public Document Room location: Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 28, 1998.

Brief description of amendment request: The proposed amendment would modify Technical Specification 4.0.5 to state that the inservice testing requirement for exercise testing in the closed direction for specified Unit 1 containment isolation valves shall not be required until the next plant shutdown to Mode 5 of sufficient duration to allow the testing or until the next refueling outage scheduled in March 1999.

Date of publication of individual notice in **Federal Register**: September 9, 1998 (63 FR 48254)

Expiration date of individual notice: September 24, 1998.

Local Public Document Room location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: June 30, 1998.

Description of amendment request: The proposed amendment would transfer operating authority for the Perry Nuclear Power Plant, Unit No. 1, from The Cleveland Electric Illuminating Company and Centerior Service Company to a new operating company, called the FirstEnergy Nuclear Operating Company. The proposed action has been submitted pursuant to 10 CFR 50.80 and 10 CFR 50.90.

Date of publication of individual notice in **Federal Register**: August 4, 1998 (63 FR 41600).

Expiration date of individual notice: September 3, 1998.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: June 29, 1998, as supplemented July 14, 1998.

Brief description of amendment request: This amendment would reflect the approval of the transfer of the authority to operate Davis-Besse Nuclear Power Station, Unit 1, under the license to a new company, FirstEnergy Nuclear Operating Company.

Date of publication of individual notice in **Federal Register**: August 4, 1998.

Expiration date of individual notice: September 3, 1998.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

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.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 31, 1996.

Brief description of amendment: This amendment changes Technical Specification 3/4.7.5 by reducing the maximum allowable water temperature for the Ultimate Heat Sink from 95°F to 94°F and increasing the minimum main reservoir level from 205.7 feet mean sea level to 215 feet mean sea level.

Date of issuance: September 8, 1998.

Effective date: September 8, 1998.

Amendment No: 80.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: December 4, 1996 (61 FR 64382).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: May 16, 1997, as supplemented June 29, 1998. The June 29, 1998, supplemental letter provided clarifying information only, and did not change the initial no significant hazards consideration determination.

Brief description of amendment: This amendment changes Technical Specification 3/4.6.2.3 by reducing the Containment Fan Coolers cooling water flow rate requirement from 1425 gallons per minute (gpm) to 1300 gpm.

Date of issuance: September 8, 1998.

Effective date: September 8, 1998.

Amendment No: 81.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: March 25, 1998 (63 FR 14485).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 14, 1998, as supplemented by letter dated July 17, 1998.

Brief description of amendments: The amendments change the Braidwood, Unit 1, Technical Specification limits on Reactor Coolant System Dose Equivalent Iodine-131 from 0.35 microcuries/gram to 0.05 microcuries/gram for the remainder of Cycle 7.

Date of issuance: September 3, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 95 and 95.

Facility Operating License Nos. NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 11, 1998 (63 FR 11914). The July 17, 1998, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Duke Energy Corporation, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: August 6, 1998.

Brief description of amendment: The amendment deletes Surveillance Requirement 4.8.1.1.2.i.2, regarding diesel fuel oil system pressure testing, from the unit Technical Specifications for Unit 1 on the basis that the staff had previously approved alternative surveillance based on Code Case N–498–1 of the American Society of Mechanical Engineers.

Date of issuance: September 9, 1998.

Effective date: As of the date of issuance.

Amendment No.: 171.

Facility Operating License No. NPF–35: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (63 FR 43962 dated August 17, 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 September 16, 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 Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated September 9, 1998.

Attorney for licensee: Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, North Carolina.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duke Energy Corporation (DEC), et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 14, 1998.

Brief description of amendments: The amendments revise Technical Specification Section 4.6.5.1.b.2 regarding surveillance requirements for the ice condenser. One current requirement specifies that a visual inspection of flow passages be performed once per 9 months to ensure that there is no significant ice and frost accumulation (less than 0.38 inch). DEC proposed to relax the visual inspection frequency of the lower plenum support structures and turning vanes to once per 18 months, while the remaining parts of the ice condenser will continue to be inspected at 9-month intervals.

Date of issuance: September 10, 1998.

Effective date: As of the date of issuance.

Amendment Nos.: Unit 1—172; Unit 2—163.

Facility Operating License Nos. NPF–35 and NPF–52: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (63 FR 45872 dated August 27, 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 September 28, 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 amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated September 10, 1998.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 14, 1998.

Brief description of amendments: The amendments revise Surveillance Requirement 4.6.5.1.b.3 of the Technical Specifications, relaxing the visual inspection interval of the ice condenser lower plenum and turning vanes from the current 9-month to 18-month intervals.

Date of issuance: September 10, 1998.

Effective date: As of the date of issuance.

Amendment Nos.: Unit 1–180; Unit 2–162.

Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (63 FR 45870 dated August 27, 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 September 28, 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 amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated September 10, 1998.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: March 11, 1993, as supplemented August 26, October 26, November 29, and December 6, 1993, October 3, 1995, February 27, May 2, and September 3, 1997, and May 7, 1998.

Brief description of amendments: The amendments completely revise the current Technical Specifications related to the electrical distribution system and incorporate new requirements for system operation, limiting conditions for operation, and surveillance requirements.

Date of Issuance: September 4, 1998.

Effective date: As of the date of issuance, to be implemented coincident with implementation of the Improved Technical Specifications.

Amendment Nos.: Unit 1–232; Unit 2–232; Unit 3–231.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63975).

The May 2, 1997, and May 7, 1998, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 28, 1998.

Brief description of amendment: The amendment proposed to revise the Improved Technical Specification 5.6.2.8 to change the scope and frequency of volumetric and surface inspections for the reactor coolant pump flywheels. The amendment approves the requested change to reflect the frequency and scope of these inspections as specified in Topical Report WCAP–14535A.

Date of issuance: August 31, 1998.

Effective date: August 31, 1998.

Amendment No.: 170.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 29, 1998 (63 FR 40555)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application foramendment: June 29, 1998, as supplemented July 27, 1998.

Brief description of amendment: The amendment reduces the scope of a

previous amendment request dated February 22, 1996. It retains the provision to delete the requirement that the biennial inspection of the emergency diesel generators (EDGs) be performed during shutdown, permits skipping diesel starting battery capacity test for recently installed batteries, and increases the minimum loading during diesel testing from 20% to 80%. In addition, there are wording changes to enhance clarity and a typograhpical error is corrected.

Date of Issuance: September 8, 1998.

Effective date: September 8, 1998, to be implemented within 30 days.

Amendment No.: 197.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 29, 1998 (63 FR 40556). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan.

Date of application for amendments: February 22, 1996.

Brief description of amendments: The amendments revise the Technical Specifications to reference NRC Regulatory Guide 1.9, Revision 3, rather than NRC Regulatory Guide 1.108, Revision 1, for the determination of a valid diesel generator test.

Date of issuance: September 2, 1998.

Effective date: September 2, 1998, with full implementation within 45 days.

Amendment Nos.: 222 and 206.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 10, 1996 (61 FR 15990).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: June 10, 1998.

Brief description of amendments: The amendments defer the implementation date of Amendments Nos. 216/200 to become effective when modifications are completed but not later than December 31, 2000.

Date of issuance: August 31, 1998.

Effective date: August 31, 1998, with full implementation not later than December 31, 2000.

Amendment Nos.: 221 and 205.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the licenses.

Date of initial notice in **Federal Register**: July 31, 1998 (63 FR 40940).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 22, 1995, as supplemented on May 13, 1998.

Brief description of amendments: The amendments revise Technical Specifications 3.4.1.4 and 3.9.8.2 by deleting footnotes and associated information regarding service water system header operation to allow residual heat removal system operation to be consistent with current regulations and the Standard Technical Specifications—Westinghouse Plants (NUREG–1431).

Date of issuance: September 8, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment Nos.: 214 and 194.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 30, 1995 (60 FR 45183).

The May 13, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination, and was within the scope of the original application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: July 22, 1998.

Brief description of amendments: The amendments revise the technical specifications to extend the allowed outage time (AOT) for off-site circuits and for the emergency diesel generator.

Date of issuance: September 9, 1998.

Effective date: September 9, 1998, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2–141; Unit 3–133.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 31, 1998 (63 FR 40941).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of application for amendment: June 2, 1995, revised March 6, 1997, as supplemented April 11, May 13, and August 20, 1997, and March 13, 1998. (TS–353).

Brief description of amendment: Revises Technical Specifications (TS) to permit implementation of upgrade of power range neutron monitor instrumentation. Other changes also have been incorporated to thermal limits specifications to implement average power range monitor and rod block monitor TS improvements, and maximum extended load line limit analyses.

Date of issuance: September 3, 1998.

Effective date: September 3, 1998.

Amendment No.: 213.

Facility Operating License No. DPR–68: Amendment revises the TS. .

Date of initial notice in **Federal Register**: August 16, 1995 (60 FR

42609). The revision dated March 6, 1997; the proposal for the same changes to be made to the Improved Standard TS format dated April 11, 1997; and the supplemental information dated May 13 and August 20, 1997, and March 13, 1998, did not affect the staff's original finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

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 97–04).

Brief description of amendments: The amendments change the Technical Specifications (TS) by relocating the snubber requirements from Section 3.7.9 of the TS, and its bases, to the Sequoyah Nuclear Plant Technical Requirements Manual. This change does not alter the requirements for operability or surveillance testing of the snubbers. This amendment also deletes License Condition 2.C.(19), for Unit 1 only. This condition is a one-time snubber-related action that was completed and no longer needs to be included in the SQN Operating License.

Date of issuance: August 28, 1998.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: Unit 1–235 ; Unit 2–225.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.

Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 17235).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: December 23, 1997.

Brief description of amendment: This amendment revised Technical Specification (TS) Section 4.4.5, ''Reactor Coolant System—Steam Generators—Surveillance Requirements (SRs).'' SR 4.4.5.8 was modified to provide flexibility in the scheduling of steam generator inspections during refueling outages.

Date of issuance: September 2, 1998.

Effective date: September 2, 1998.

Amendment No.: 226.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4327).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 30, 1998.

Brief description of amendment: The licensee proposes to delete the calibration requirements for emergency core cooling actuation instrumentation—core spray (CS) subsystem and low pressure coolant injection (LPCI) system auxiliary power monitor since the relays operate from a switched input and functional testing is sufficient to demonstrate the relay pickup/dropout capability.

Date of Issuance: September 1, 1998.

Effective date: September 1, 1998, to be implemented within 30 days.

Amendment No.: 162.

Facility Operating License No. DPR–28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 29, 1998 (63 FR 40563).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 1, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 17th day of September 1998.

For The Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25281 Filed 9–22–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23439; 812–10976]

The Austria Fund, Inc., The Spain Fund, Inc., and Alliance Capital Management L.P.; Notice of Application

September 17, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicants request an order under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 under the Act to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains in any one taxable year pursuant to a distribution policy with respect to common stock.

APPLICANTS: The Austria Fund, Inc. (''Austria Fund''), The Spain Fund, Inc. (''Spain Fund''), and Alliance Capital Management L.P. (''Alliance'') on behalf of each other existing and each future closed-end management investment company that is advised by Alliance or by an entity controlling, controlled by or under common control with Alliance (collectively, the ''Funds'').

FILING DATE: The application was filed on January 20, 1998 and amended on September 16, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney-Adviser, at (202) 942–0574, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Austria Fund and Spain Fund (the ''Foreign Funds'') are closed-end investment companies registered under the Act and organized as Maryland corporations. Alliance, a Delaware limited partnership and an investment adviser registered under the Investment Advisers Act of 1940, is the investment adviser to the Foreign Funds. Austria Fund's and Spain Fund's investment objectives are to seek long-term capital appreciation by investing primarily in equity securities of Austrian companies and Spanish companies, respectively. Common shares of the Foreign Funds are listed on the New York Stock Exchange, and currently trade at a discount from net asset value.

2. Each of the Foreign Funds has adopted a distribution policy with respect to its common stock under which the Fund will make quarterly distributions to its shareholders in an amount equal to 2.5% of the Fund's net asset value, determined as of the beginning of the quarter, for each of the first three calendar quarters of each year (''Distribution Policy''). Each Foreign Fund's fourth calendar quarter distribution for each year will be equal to 2.5% of each Foreign Fund's net asset value determined as of the beginning of that quarter. Each Fund's Distribution Policy may in the future provide for as many as twelve monthly distributions per year equal to a fixed percentage of the Fund's net asset value.

3. If, with respect to any fixed distribution by any Fund under its Distribution Policy, the Fund's net investment income and net realized short-term capital gains are less than the amount of the distribution, the difference would be treated as having been distributed from net realized long-term capital gains, and if the amount of net realized long-term capital gains is not sufficient, from other Fund assets as a return of capital. Each Fund's final distribution for each calendar year will include any remaining net investment income and net realized short-term capital gains deemed, for federal income tax purposes, undistributed during the year, as well as any net long-term capital gains realized during the year.

4. Applicants request an order to permit each Fund to make periodic distributions of long-term capital gains in any one taxable year, so long as each Fund maintains in effect a distribution policy with respect to its common stock calling for a fixed number of distributions of a fixed percentage of each Fund's net asset value.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that the limitation on the number of net long-term capital gains distributions in rule 19b–1 under the Act prohibits applicants from including available net long-term capital gains in certain of its fixed distributions. As a result, applicants must fund these fixed distributions with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to cover a fixed distribution). Applicants further assert that, in order to distribute all of its long-term capital gains within the limits on the number of long-term capital gains distributions in rule 19b–1, applicants may be required to make certain of its fixed distributions in excess of the fixed percentage called for by their Distribution Policy.

3. Applicants believe that the concerns underlying section 19(b) and rule 19b–1 are not present in applicants' situation. Applicants note that one of these concerns is that shareholders might not be able to distinguish frequent distributions of capital gains and dividends from investment income. Applicants state that each Fund's Distribution Policy will be described in each Fund's communications to its shareholders, including each Fund's annual reports. In addition, applicants state that the Funds will send information statements that comply with rule 19a–1 under the Act to their shareholders. Applicants also state that a statement showing the amount and source of distributions received during the year is included with each Fund's IRS Form 1099–DIVA reports of distributions for that year sent to each Fund's shareholders who received distributions during the year (including shareholders who sold shares during the year).

4. Applicants note that another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper sales practices, including in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend''), when the distribution would result in an immediate corresponding reduction in a Fund's net asset value and would be, in effect, a return of the investor's capital. Applicants believe that this concern does not apply to closed-end investment companies, such as the Funds, that do not continuously distribute shares. Applicants state that the condition to the requested relief would further assure that the concern about selling the dividend would not arise in connection with a rights offering by a Fund.

5. Applicants further state that any transferable rights offering by a Fund will comply with all relevant SEC and staff guidelines. In making the findings required by these guidelines, a Fund's board of directors will consider, among other things, the brokerage commissions and compensation to be paid to underwriters and dealers in connection with the offering. Applicants also state that any Fund conducting a rights offering will include a representation in the underwriting agreement requiring the underwriter to comply with the provisions of the National Association of Securities Dealers, Inc. rules governing the fairness of compensation and that an underwriter will take steps to ensure that any dealers participating in the offering comply with the provisions of those rules.

6. Applicants state that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. Applicants assert that this concern is not present because it will continue to make fixed distributions regardless of whether capital gains are included in any particular distribution.

7. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested exemption meets the standards set forth in section 6(c) of the Act and would be in the best interests of the Funds and their shareholders.

Applicants' Condition

Applicants agree that the order granting the requested relief shall terminate with respect to a Fund upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by a Fund of its shares other than: (1) a rights offering to shareholders of the Fund, provided that (a) if the rights are exercisable between the date a dividend to the Fund's shareholders is declared and the record date of the dividend, each offeree is provided prominent disclosure of the tax effect if the offeree exercises the rights and a portion of the dividend consists of long-term capital gains, and (b) the Fund has not engaged in more than one rights offering during any given calendar year; and (2) an offering in connection with a merger, consolidation, acquisition, or reorganization of a Fund; unless applicants have received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25369 Filed 9–22–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40445; International Series Release No. 1157; File No. SR–DTC––98–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of a Proposed Rule Change Relating to the Enhancement of the Current Link With Deutsche Borse Clearing AG

September 16, 1998.

Pursant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'''),[1] notice is hereby given that on September 15, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will open a free of payment omnibus account at Deutsche Borse Clearing AG (''DBC''), which currently has a participant account at DTC, in order to create a two-way interface between DTC and DBC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to facilitate the efficient processing of cross-border securities transactions between participants of DTC and DBC. Under the proposed rule change, DTC will open an omnibus account at DBC in order to create a two-way interface between DBC and DTC. This will enable efficient inventory positioning by participants of DTC and DBC that is needed to settle securities transactions at either DTC or DBC.[3] The two-way interface would allow, but would not require, DTC positions in DBC-eligible issues to be held in DTC's account at DBC.

Under the existing link between DTC and DBC, DBC has an omnibus account at DTC which enables DBC to effect book-entry transactions with other DTC participants. The current link allows DBC and its participants to use the custody, book-entry, and delivery services of DTC for transactions involving securities eligible in both systems. The current link allows a DTC participant to settle, on a free of payment basis, a cross-border transaction with a DBC counterparty by making a book-entry delivery from its participant account at DTC to the DBC omnibus account at DTC and by identifying the DBC participant account to which the delivered securities should be credited. However, the current link limits book-entry deliveries from a DBC participant to a DTC counterparty by requiring that the securities be physically held at DTC. A DBC participant is therefore not able to deliver by book-entry means positions held in its account at DBC.

DTC anticipates that once German ordinary shares are made DTC-eligible, the existing link between DTC and DBC will be inadequate. A DBC participant attempting to deliver such shares in settlement of a trade with a DTC counterparty may have sufficient position in its account at DBC, but unless DBC has sufficient position in its account at DTC, settlement could not occur through the existing link. The DBC participant would be required to physically withdraw the securities from DBC in order to make a physical deposit at DTC. Unless participants of DTC and DBC are able to interconnect their respective inventories at the two depositories via book-entry movements, same-day delivery of securities may not be possible. As a result, a participant may incur certain expenses associated with its failure to deliver. Additionally, the costs and risks associated with physically withdrawing and transporting certificates for purposes of redepositing them at DTC, which involves reregistration and forwarding of certificates to the U.S., can be significant.

The proposed enhancement (*i.e.*, opening a DTC free of payment omnibus account at DBC and thereby creating a two-way interface) would substitute book-entry movements for physical movement of securities when west-bound movements of securities occur between DBC and DTC and would eliminate costs and risks associated with physical movement. A DBC participant would be able to settle, on a free of payment basis, a cross-border

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Currently, the only DTC-eligible German issues are in the form of American Depositary Receipts or Global Depositary Receipts. However, DTC anticipates that the securities of DaimlerChrysler AG, the successor company formed by the proposed merger of Daimler-Benz Aktiengesellschaft and Chrysler Corporation, will be made DTC-eligible prior to November 1998.

transaction with a DTC counterparty by making a book-entry delivery from its participant account at DBC to the DTC omnibus account at DBC and by identifying the DTC participant account to which the delivered shares should be credited. The receiving DTC participant could then redeliver on a free or versus payment basis within DTC. There would be no need for transporting physical certificates to DTC.

Under the proposal, DBC would, if required, provide subcustody services such as income collection, maturity presentments, and reorganization processing on securities held in DTC's omnibus account at DBC in accordance with DBC procedures as DTC currently does on securities held by DTC on behalf of DBC. Whether DTC is holding its underlying inventory in Germany or in the U.S., DTC services to participants would be the same as currently provided.

According to DTC, the primary benefits of opening an omnibus account at DBC are: (i) avoidance of failed transactions on the trade settlement date as a result of delays resulting from the current link;[4] (ii) elimination of most physical movements of German securities between DBC, DTC, and U.S. and German transfer agents and the costs and risks associated with such movements; and (iii) reduction of costs to DTC and DBC participants related to (i) and (ii). The realization of these benefits is consistent with DTC's objectives of providing efficient book-entry clearance and settlement facilities and of reducing risk to DTC participants by immobilizing certificates.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[5] and the rules and regulations thereunder because the proposed enhancements will reduce risks and associated costs to participants of DTC and DBC by streamlining the processing of cross-border securities transactions between U.S. and German entities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition 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 from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–19 and should be submitted by October 14, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25370 Filed 9–22–98; 8:45 am]

BILLING CODE 8010–01–M

[4] As noted above, DTC anticipates that this will become a problem once German securities are made DTC-eligible.

[5] 15 U.S.C. 78q–1(b)(3)(A).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40442; File No. SR–PCX–98–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to OptiMark Pricing

September 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 8, 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 PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to change its Schedule of Fees and Charges for Exchange Services by adding OptiMark transaction charges. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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. PCX 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

Background. OptiMark is an electronic communications and information system operated by OptiMark Services, Inc., to support trading services offered by the Exchange. The OptiMark System is a computerized, screen-based trading service intended for use by Exchange

[1] 15 U.S.C. 78s(b)(1).

members and their customers to provide automatic order formulation, matching, and execution capabilities in the equity securities listed or traded on the Exchange. The OptiMark System is intended to be used in addition to the Exchange's traditional floor facilities to buy and sell securities on the PCX by allowing PCX members and their customers to submit ranges of trading interest anonymously from their computer terminals. The OptiMark System would then identify specific orders capable of execution and all orders matching by the system would be automatically executed on the Exchange.

Proposed fees. The Exchange proposes to charge a fee of $1.19 per 100 shares on OptiMark transactions for OptiMark customers who are regular PCX members and a fee of $1.25 per 100 shares on OptiMark transactions for OptiMark customers who are ASAP Members on the PCX.[2]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(4),[4] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)[5] and subparagraph (e)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX.

All submissions should refer to File No. SR–PCX–98–43 and should be submitted by October 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25410 Filed 9–22–98; 8:45 am]

BILLING CODE 8010–01–M

[2] ASAP Members are authorized broker-dealers who have ''automated system access privileges.'' The ASAP Member must be a broker-dealer registered under Section 15 of the Act. *See* Rule 1.14, ''Automated System Access Privileges (ASAP).''

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Oxnard Airport, Oxnard, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the county of Ventura, California, for Oxnard Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the Noise Exposure Maps for Oxnard Airport, Oxnard, California is September 10, 1998.

FOR FURTHER INFORMATION CONTACT: Charles B. Lieber, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Oxnard Airport, Oxnard, California are in compliance with applicable requirements of Federal Aviation Regulations (FAR) Part 150, effective September 10, 1998.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and supporting documentation submitted by the county of Ventura. The specific maps under consideration are Exhibit 1, ''1998 Noise Exposure Map'' and Exhibit 2, ''2003 Noise Exposure Map'' in the submission. The FAA has determined that these maps for Oxnard

Airport are in compliance with applicable requirements. This determination is effective on September 10, 1998. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix (A) of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutory required consultation has been accomplished.

Copies of the Noise Exposure Maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 1500 Aviation Boulevard, Hawthorne, California 90261

Mr. Rodney L. Murphy, Director of Airports, County of Ventura, 555 Airport Way, Camarillo, California 9310

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on September 10, 1998.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 98–25470 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Camarillo Airport, Camarillo, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the county of Ventura, California, for Camarillo Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the Noise Exposure Maps for Camarillo Airport, Camarillo, California is September 10, 1998.

FOR FURTHER INFORMATION CONTACT: Charles B. Lieber, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Camarillo Airport, Camarillo, California are in compliance with applicable requirements of Federal Aviation Regulations (FAR) Part 150, effective September 10, 1998.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction and additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and supporting documentation submitted by the county of Ventura. The specific maps under consideration are Exhibit 1, ''1998 Noise Exposure Map'' and Exhibit 2, ''2003 Noise Exposure Map'' in the submission. The FAA has determined that these maps for Camarillo Airport are in compliance with applicable requirements. This determination is effective on September 10, 1998. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix (A) of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150,

that the statutory required consultation has been accomplished.

Copies of the Noise Exposure Maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261

Mr. Rodney L. Murphy, Director of Airports, County of Ventura, 555 Airport Way, Camarillo, California 9310

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on September 10, 1998.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 98–25471 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Tasks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignments for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of new tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Transport Standards Staff (ANM–110), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; phone (425) 227–1255; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Tasks

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization tasks:

Task 5: Power Plant Fire Mitigation Requirements

Specific Tasks—Phase I

1. Rule Harmonization

(a) JAR 25.1183 has a (c) paragraph that adds the requirement for components to be fireproof where, if damaged, fire could spread or essential services could be adversely affected.

(b) FAR/JAR 25.1187, 25.1189(a) and 25.1193(c) are considered equivalent—no harmonization is required.

2. Advisory Material (AC/AMJ) Harmonization

(a) FAR 25.1187—Drainage and Ventilation of Fire Zones. FAA regulation requires the provisions for flammable fluid drainage, including the drainage path and drainage capacity, be demonstrated to be effective under anticipated conditions. Draft AC 25.1187, published for comments, describes the methodology to be used. FAA and JAA agreement on an acceptable means of demonstrating compliance is required. The Advisory Material to be developed should provide guidance on an acceptable means of demonstrating compliance for ''drainage of flammable fluids''.

(b) FAR 25.1189(a)—Shutoff Means. This paragraph requires shutoff valves to prevent a hazardous quantity of flammable fluid entering a fire zone following detection of a fire. The central issue to be resolved is associated with FAA/JAA agreement of the definition of ''hazardous quantity'' of flammable fluid. The working group should provide guidance to the FAA and JAA to define what is considered a ''Hazardous Quantity of Flammable Fluid'' when showing compliance to this regulation.

(c) FAR 25.1193(c)—Cowling and Nacelle Skin. FAA requires the nacelle be fireproof for 360 degrees, unless aerodynamic testing shows that fire exiting the nacelle poses no additional hazards to the airframe. JAA reportedly accepts 90 degrees (45 degrees from pylon centerline) without additional testing. JAA NPA proposes to provide guidance (JAA PNPA 25E–266). FAA and JAA should document current practices for use by Task Group consideration towards development of harmonized guidance regarding this subject. The Guidance Material to be developed should provide guidance on an acceptable means of demonstrating that the extent of fire proof cowling assures ''no additional hazard to the airframe'' for all types of transport category airplane engine installations.

The FAA expects ARAC to submit its recommendation(s) resulting from Phase I by November 30, 2000.

Specific Tasks—Phase II

1. Rule Harmonization

(a) Harmonize the definitions of the terms ''fire resistant'' and ''fire proof'' in FAR 1 and JAR 1.

2. Advisory Material (AC/AMJ) Harmonization

(a) Draft additional advisory material for 25.903(d)(1) related to minimizing the hazard associated with engine case burnthrough.

(b) Validate and harmonize the Fire Test Guidance Material in Paragraph 8 of AC 20–135 (may be transferred to be included in burnthrough advisory material).

(c) Validate and Harmonize the FAR/JAR Advisory Material for Engine Case Burnthrough and/or Related Engine Fire Test Guidance material such as an ISO standard.

The FAA expects ARAC to submit its recommendation(s) resulting from Phase II by April 1, 2001.

Task 6: Prohibition of Inflight Operation for Turbopropeller Reversing System and Turbojet Thrust Reversing System Intended for Ground Use Only

Recommend harmonized changes to FAR/JAR 25.1155 which would require a means to prevent the flight crew of turbine powered airplanes from inadvertently or intentionally placing the propellers into beta, deploying the thrust reverser while inflight, or otherwise commanding reverse thrust, unless the airplane has been certified for such operation. In addition to the harmonized rule recommendation, harmonized advisory material may also need to be developed in order to further standardize compliance with the recommended rule.

The FAA expects ARAC to submit its recommendation(s) resulting from this task by July 31, 2001.

Task 7: Powerplant Inflight Restarting

Review FAR 25.903(e) and corresponding JAR requirement related to inflight restarting and generate an amended harmonized requirement that provides a minimum engine restart capability within the airplane operating envelope following loss of all engine thrust. In addition, provide harmonized advisory material that defines the acceptable methods of compliance to the amended regulations. Both of these tasks should take into account and address:

1. Review of the service history.
2. Review of inherent starting capability of the engines at the time the original 25.903(e) rule was promulgated.
3. Alternative design means for restarting main engines.

The FAA expects ARAC to submit its recommendation(s) resulting from this task by July 31, 2001.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the resulting recommendation(s) are one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

Working Group Activity

The Powerplant Installation Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.
3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.
4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Powerplant Installation Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on September 17, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–25469 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 22, 1998, from 8:00 a.m. to 1:00 p.m. in the Bessie Coleman Conference Room, Federal Aviation Administration Headquarters building at 800 Independence Avenue SW, in Washington, DC. This will be the twenty-eighth meeting of the COMSTAC.

The agenda for the meeting will include reports from the COMSTAC Working Groups; a legislative update on Congressional activities involving commercial space transportation; an activities report from FAA's Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]); and a special presentation on state government support of commercial space launch activities by commercial spaceport operators. The meeting is open to the public; however, space is limited.

Meetings of the Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support Working Groups will be held on Wednesday, October 21, 1998. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 267–8308.

Dated: September 17, 1998.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 98–25468 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant.

2. Extensive public comment under review.
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on September 9, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11540–N	Convenience Products, Fenton, MO	1	10/30/1998
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	10/30/1998
11687–N	Tri Tank Corp, Syracuse, NY	4	10/30/1998
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	10/30/1998
11761–N	Vulcan Chemicals, Birmingham, AL	4	10/30/1998
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	10/30/1998
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	10/30/1998
11783–N	Peoples Natural Gas, Rosemount, MN	4	10/30/1998
11815–N	Union Pacific Railroad Co. et al, Omaha, NE	4	10/30/1998
11817–N	FIBA Technologies, Inc., Westboro, MA	4	10/30/1998
11821–N	Wyoming Department of Transportation, Cheyenne, WY	4	10/30/1998
11862–N	The BOC Group, Murray Hill, NJ	4	10/30/1998
11883–N	Brownie Tank Mfg., Co., Minneapolis, MN	4	10/30/1998
11884–N	Degussa Corporation, Ridgefield Park, NJ	4	10/30/1998
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	10/30/1998
11927–N	Alaska Marine Lines, Inc., Seattle WA	4	10/30/1998
11934–N	UtiliCorp United, Inc., Omaha, NE	4	10/30/1998
11938–N	Steel Shipping Container Institute, Washington, DC	4	10/30/1998
11947–N	Patts Fabrication & Services, Odessa, TX	4	11/30/1998
11954–N	Republic Environmental Systems (PA), Inc., Hatfield, PA	4	11/30/1998
11982–N	Webasto Thermosystems, Inc., Madison Heights, MI	4	11/30/1998
11983–N	Degussa Corporation, Ridgefield Park, NJ	4	11/30/1998
12003–N	Degussa Corporation, Ridgefield Park, NJ	4	11/30/1998
12004–N	Alfa, SA, Portugal	1,4	11/30/1998
12020–N	Rhone-Poulenc, Inc., Shelton, CT	4	11/30/1998
12022–N	Taylor-Wharton Co., Harrisburg, PA	4	9/30/1998
12029–N	NACO Technologies, Lombard, IL	4	11/30/1998
12032–N	Physical Acoustics Quality Services, Lawrenceville, NJ	4	11/30/1998
12033–N	PPG Industries, Inc., Pittsburgh, PA	4	11/30/1998
12044–N	Reagent Chemical & Research, Inc., Houston, TX	4	11/30/1998
12052–N	Engineered Carbons, Inc., Borger, TX	4	11/30/1998

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	09/30/1998
6610–M	ARCO Chemical Company, Newtown Square, PA	4	09/29/1998
7887–M	Kosdon Enterprises, Ventura, CA	4	09/30/1998
8556–M	Air Products and Chemicals, Inc., Allentown, PA	4	09/30/1998
9064–M	Propack, Inc., Essington, PA	4	09/30/1998
9266–M	ERMEWA, Inc., Houston, TX	4	09/30/1998
9421–M	Taylor-Wharton Co., Harrisburg, PA	4	10/30/1998
9706–M	Taylor-Wharton Co., Harrisburg, PA	4	10/30/1998
9819–M	Halliburton Energy Services, Inc., Duncan, OK	4	10/30/1998
10047–M	Taylor-Wharton Co., Harrisburg, PA	4	10/30/1998
10138–M	Betz Dearborn, Inc., Trevose, PA	4	10/30/1998
10365–M	U.S. Enrichment Corporation, Bethesda, MD	4	10/30/1998
10429–M	Baker Performance Chemicals, Inc., Houston, TX	4	10/30/1998
10458–M	Marsulex, Inc., Sudbury, Ontario, CN	4	11/30/1998
10996–M	Kosdon Enterprises, Ventura, CA	4	10/30/1998
11167–M	ECO-Pak Specialty Packaging, Elizabethton, TN	4	10/30/1998
11270–M	The Specialty Chemicals Div. of B.F. Goodrich Co., Cleveland, OH	4	11/30/1998
11378–M	Astrotech Space Operations, Inc., Titusville, FL	4	10/30/1998

MODIFICATIONS TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11516–M	Falcon Safety Products, Somerville, NJ	4	09/30/1998

PARTIES TO EXEMPTION APPLICATIONS WITH MODIFICATION

Application No.	Applicant	Reason for delay	Estimated date of completion
11352–PM	PepsiCo., Inc., Arlington, TX	4	11/30/1998

[FR Doc. 98–25419 Filed 9–22–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–26: OTS No. 8215]

Northfield Federal Savings, Baltimore, Maryland; Approval of Conversion Application

Notice is hereby given that on September 16, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Northfield Federal Savings, Baltimore, Maryland, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: September 17, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–25356 Filed 9–22–98; 8:45 am]

BILLING CODE 6720–01–P

federal register

Wednesday
September 23, 1998

Part II

Department of Education

Applications Invitation for Designation as Eligible Institutions for Fiscal Year 1999 for the Part A Strengthening Institutions and Hispanic-Serving Institutions (HSIs) Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.031H]

Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 1999 for the Part A Strengthening Institutions and Hispanic-Serving Institutions (HSIs) Programs

Purpose of Program

Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions and HSI Programs authorized, respectively, under Part A of Title III of the Higher Education Act of 1965, as amended (HEA). An institution that is designated as an eligible institution under those programs may apply for grants under those programs, and may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work Study (FWS) Programs. These latter two programs are student financial assistance programs authorized under Title IV of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Strengthening Institutions or HSI Program.

If an institution is interested in obtaining eligibility for purposes of receiving a new grant under the Strengthening Institutions or HSI Program, it must submit its application to the Department by February 15, 1999. If an institution is interested solely in obtaining a waiver under the FSEOG and FWS Programs, it must submit its application by May 28, 1999. Accordingly, if an institution is interested in applying both for a grant and a waiver, it must submit its application by February 15, 1999 to be eligible for the grant competition.

Early Applications

If an institution submits its application to the Department by December 11, 1998, the Department will notify the applicant of its eligibility status by January 20, 1999. An applicant that believes it failed to be designated as an eligible institution because of errors in its application or because it submitted insufficient information may submit an amended application to the Department. The applicant must submit that application by February 15, 1999 to be eligible for the grant competition. It has until May 28, 1999 to submit an amended application for a FSEOG or FWS waiver request.

If an applicant submits its initial application after December 11, 1998 but before January 20, 1999, the Department does not guarantee that it will be able to review that application and notify the applicant in time to allow revisions to the application by the February 15, 1999 deadline.

Because of the direct benefits to institutions that are able to revise unapproved applications, the Department strongly recommends that institutions apply by the December 11, 1998 deadline.

Deadline for Transmittal of Applications: February 15, 1999 for applicants who wish to compete for new grants under the Strengthening Institutions and HSI Programs; May 28, 1999 for applicants who wish to apply only for FSEOG and FWS waivers; and December 11, 1998 for early application reviews.

Applications Available: October 30, 1999.

Eligibility Information: To qualify as an eligible institution under the HSI Program, an institution must first qualify as an eligible institution under the Strengthening Institutions Program. To qualify as an eligible institution under the Strengthening Institutions Program, an applicant must (1) be accredited or preaccredited by a nationally recognized accrediting agency; (2) be legally authorized by the State in which it is located to be a junior or community college or to provide a bachelor's degree program; and (3) have a high enrollment of needy students. In addition, its education and general (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in the Strengthening Institutions Program regulations, 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education web site on the World Wide Web: http:/ www.ed.gov/offices//OPE/OHEP

Enrollment of Needy Students: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 1996–97 must be more than the median for its category of comparable institutions provided in the table set forth below in this notice.

Educational and General Expenditures Per Full-Time Equivalent Student: An institution should compare its average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table set forth below in this notice. If the institution's average E&G expenditure for the 1996–1997 base year is less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

Table

The following table identifies the relevant median Federal Pell Grant percentages and the average E&G expenditures per FTE student for the 1996–97 base year for the four categories of comparable institutions:

Student	Median Pell Grant percentage	Average E&G FTE
2-year Public Institutions	26.9	$8,132
2-year Non-Profit Private Institutions	39.1	12,322
4-year Public Institutions	28.7	17,067
4-year Non-Profit Private Institutions	27.1	24,756

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 607.3(b) and 607.4(c) and (d). *Institutions requesting a waiver of the needy student requirement must include the detailed information described in the instructions for completing the application.*

The waiver authority provided in 34 CFR 607.3(b)(2) and (3), refers to ''low-income'' students and families. The regulations define ''low-income'' as an

amount that does not exceed 150 percent of the amount equal to the poverty level in 1996–97 base year as established by the U.S. Bureau of the Census, 34 CFR 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

1997–98 BASE YEAR LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia, and outlying jurisdictions	Alaska	Hawaii
1	12,075	15,105	13,890
2	16,275	20,355	18,720
3	20,475	25,605	23,550
4	24,675	30,855	28,380
5	28,875	36,105	33,210
6	33,075	41,355	38,040
7	37,275	46,605	42,870
8	41,475	51,855	47,700

For family units with more than eight members, add the following amount for each additional family member: $2,800 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $3,500 for Alaska; and $3,220 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 24, 1998 (63 FR 9235–9238).

In reference to the waiver option specified in 34 CFR 607.3(b)(4) of the regulations, information about ''metropolitan statistical areas'' may be obtained by requesting the *Metropolitan Statistical Areas, 1993*, order number PB93–192664, from the National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. There is a charge for this publication.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 82, 85, and 86; and the regulations applicable to the eligibility process include the Strengthening Institutions Program regulations in 34 CFR part 607.

For Applications or Information Contact: Ellen M. Sealey, Margaret A. Wheeler, or Anne S. Young, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, SW, (Portals CY–80) Washington, DC 20202–5335. Telephone (202) 708–8866, 708–9926, and 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting the FIRS. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057, 1059c, and 1065a.

Dated: September 14, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–25366 Filed 9–22–98; 8:45 am]

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federal register

Wednesday
September 23, 1998

Part III

Department of Education

Business and International Education Program (CFDA 84.153A) and Centers for International Business Education Program (CFDA 84.220A): Applications Invitation for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.153A and 84.220A]

Business and International Education Program (CFDA 84.153A) and Centers for International Business Education Program (CFDA 84.220A); Notice Inviting Applications For New Awards For Fiscal Year (FY) 1999

Purpose of Program: (a) The Business and International Education Program provides grants to enhance international business education programs and expand the capacity of the business community to engage in international economic activities. (b) The Centers for International Business Education Program provides grants to eligible applicants to pay the Federal share of the cost of planning, establishing, and operating centers for international business.

Eligible Applicants: (a) Institutions of higher education that have entered into agreements with business enterprises, trade organizations, or associations engaged in international economic activity are eligible to apply for a grant under the Business and International Education Program. (b) Institutions of higher education and combinations of institutions of higher education may apply for a grant under the Centers for International Business Education Program.

Applications Available: September 28, 1998.

Deadline for Transmittal of Applications:

November 13, 1998—(84.153A)
November 16, 1998—(84.220A)

Deadline for Intergovernmental Review:

January 12, 1999—(84.153A)
January 15, 1999—(84.220A)

Available Funds: The Congress has not yet enacted a FY 1999 appropriation for the Department of Education. However, the Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimated amount of funds available for this program is based on the President's FY 1999 budget.

Estimated Range of Awards:

$50,000–$90,000—(84.153A)
$150,000–$310,000—(84.220A)

Estimated Average Size of Awards:

$74,000—(84.153A)
$264,462—(84.220A)

Estimated Number of Awards:

22—(84.153A)
13—(84.220A)

Project Period:

24 months—(84.153A)
36 months—(84.220A)

Note: The Department is not bound by any estimates in this notice.

SUPPLEMENTARY INFORMATION: Business and International Education Program grantees shall pay a minimum of 50 percent of the cost of projects for each fiscal year.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86 apply to the Business and International Education Program and the Centers for International Business Education Program; (b) Specific regulations for the Business and International Education Program in 34 CFR parts 655 and 661; and (c) Because there are no program specific regulations for the Centers for International Business Education Program, applicants are encouraged to read the authorizing statute at section 612 of part B, title VI, of the Higher Education Act of 1965, as amended by section 601 of Pub. L. 102–325. In addition, reauthorization of the Higher Education Act of 1965 is currently pending before the Congress. Some changes to the Centers for International Business Education Program are being proposed. Applicants should review any changes finally enacted for either of these programs.

Selection Criteria

The Secretary selects from the criteria in 34 CFR 75.209 and 75.210 to evaluate applications for the Centers for International Business Education Program. Under 34 CFR 75.201, the Secretary announces in the application package the selection criteria and factors, if any, for this competition and the maximum weight assigned to each criterion.

FOR APPLICATIONS OR INFORMATION CONTACT: For the *Business and International Education Program (84.153A)* contact Sarah T. Beaton and for the *Centers for International Business Education Program (84.220A)* contact Susanna C. Easton. Both of these individuals may be contacted by mail at International Education and Graduate Program Service, U.S. Department of Education, 600 Independence Avenue, S.W., Suite 600C, Portals Building, Washington, DC 20202–5247. Telephone and E-mail for Sarah Beaton: (202) 401–9778; Sarah__Beaton@ed.gov. Telephone and E-mail for Susanna C. Easton: (202) 401–9780; Susanna__Easton@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1130–1130b.

Dated: September 17, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–25445 Filed 9–22–98; 8:45 am]

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Agricultural Marketing Service

Nectarines and peaches grown in—

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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

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Regulated areas, movement from; published 9-23-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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Black and blue rockfish; correction; published 9-23-98

ENERGY DEPARTMENT

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Flufenacet; published 9-23-98

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Water programs:

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Federal Aviation Administration

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Income taxes:

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Agricultural Marketing Service

Peanuts, domestically produced; comments due by 10-2-98; published 8-3-98

Peanuts, imported; comments due by 9-30-98; published 8-31-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:

Field study; definition; comments due by 9-29-98; published 7-31-98

Plant-related quarantine, foreign:

Wood chips from Chile; comments due by 9-28-98; published 7-28-98

User fees:

Veterinary services; embryo collection center approval fees; comments due by 9-28-98; published 7-28-98

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

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Grapes; comments due by 10-2-98; published 9-2-98

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Diseases and conditions identifiable during post-mortem inspection; HACCP-based concepts; comments due by 9-28-98; published 7-29-98

In-plant slaughter inspection models study plan; HACCP-based concepts; comments due by 9-28-98; published 7-29-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:

Electric program standard contract forms; comments due by 9-28-98; published 8-27-98

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:

Alternative fuel transportation program—

P-series fuels definition; comments due by 9-28-98; published 7-28-98

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California; comments due by 10-2-98; published 9-2-98

Maryland; comments due by 10-2-98; published 9-2-98

New Jersey; comments due by 9-30-98; published 8-31-98

North Dakota; comments due by 9-28-98; published 8-27-98

Pennsylvania; comments due by 10-2-98; published 9-2-98

Drinking water:

National primary drinking water regulations—

Pesticides and microbial contaminants; analytical methods; comments due by 9-29-98; published 7-31-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Azoxystrobin; comments due by 9-28-98; published 9-11-98

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 9-28-98; published 7-28-98

National priorities list update; comments due by 9-28-98; published 8-27-98

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Lead-based paint activities—

Training programs accreditation and contractors certification; fees; comments due by 10-2-98; published 9-2-98

Training programs accreditation and contractors certification; fees; comments due by 10-2-98; published 9-2-98

Lead-based paint; identification of dangerous levels of lead; comments due by 10-1-98; published 7-22-98

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Class V wells; requirements for motor vehicle waste and industrial waste disposal wells and cesspools in ground water-based source protection areas; comments due by 9-28-98; published 7-29-98

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Radio stations; table of assignments:

North Carolina; comments due by 9-28-98; published 8-14-98

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Prohibited and excessive contributions; ''soft money''; comments due by 10-2-98; published 9-10-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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Calcium bis[monoethyl(3,5-di-tert-butyl-4-hydroxybenzyl)-phosphonate]; comments due by 9-28-98; published 8-27-98

Food for human consumption:

Food labeling—

Dietary supplements; effect on structure or function of body; types of statements definition; comments due by 9-28-98; published 8-26-98

Medical devices:

Investigational plans; modifications, changes to devices, clinical protocol, etc.; comments due by 9-28-98; published 7-15-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

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Migratory bird hunting:

Baiting and baited areas; comments due by 10-1-98; published 5-22-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Pennsylvania; comments due by 9-30-98; published 8-28-98

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal and metal and nonmetal mine safety and health:

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Classified information, access and protection; conformance to national policies; comments due by 10-2-98; published 8-3-98

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New enrollments or enrollment changes; standardized effective dates; comments due by 9-30-98; published 8-31-98

SECURITIES AND EXCHANGE COMMISSION

Investment companies:

Investment advisers to investment companies; exemption expansion; comments due by 9-30-98; published 7-28-98

Practice and procedure:

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TRANSPORTATION DEPARTMENT

Coast Guard

Merchant marine officers and seamen:

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Flight plan requirements for helicopter operations under instrument flight rules; comments due by 10-2-98; published 9-2-98

Airworthiness directives:

Aerospatiale; comments due by 9-28-98; published 8-27-98

Boeing; comments due by 10-2-98; published 8-3-98

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Mooney Aircraft Corp.; comments due by 9-30-98; published 7-22-98

Raytheon; comments due by 9-28-98; published 8-13-98

Airworthiness standards:

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Raytheon Aircraft Co. model 3000 airplane; comments due by 9-28-98; published 8-27-98

Class C and Class D airspace; informal airspace meetings; comments due by 10-1-98; published 6-10-98

Class D airspace; comments due by 9-28-98; published 8-27-98

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TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazardous materials transportation—

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TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Omnibus Consolidated Appropriations Act of 1997; implementation:

Misdemeanor crime of domestic violence conviction; prohibited from shipping, receiving or possessing firearms and ammunition, etc.; comments due by 9-28-98; published 6-30-98

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:

Kerosene and aviation fuel taxes and tax on heavy vehicles; comments due by 9-29-98; published 7-1-98

Income taxes:

Euro currency conversion; tax issues guidance for U.S. taxpayers conducting business with European countries replacing their currencies; cross reference; comments due by 10-1-98; published 7-29-98