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Wednesday
April 14, 1999

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WASHINGTON, DC

WHEN: April 20, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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RESERVATIONS: 202–523–4538

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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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1361

Rulemaking Procedures

AGENCY: Northeast Dairy Compact Commission.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the ex parte communication provision of the Commission's rulemaking procedures. The amended rule allows Commission members to discuss the merits of a pending rulemaking proceeding with each other after the close of the comment period. The existing prohibition against ex parte communications between Commission members or Commission staff and interested parties or their representatives, at any time during the rulemaking proceeding, remains in full force with some clarifying amendments to the language of the rule.

DATES: Interim rule effective April 14, 1999. Sworn and notarized written testimony, comments and exhibits may be submitted until 5:00 p.m. on May 14, 1999.

ADDRESSES: Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Dairy Compact Commission (''Commission'') was established under authority of the Northeast Interstate Dairy Compact (''Compact''). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On July 14, 1998, the Commission published an interim procedural rule to establish regulations governing the administrative rulemaking procedures for the Commission, as authorized by Section 11 of the Compact. That rule was based on rulemaking procedures originally adopted by the Commission on November 21, 1996 and incorporated in the Commission's Bylaws.[4]

The Commission determines that two amendments to the current provision prohibiting ex parte communications are warranted. First, the Commission amends subsections (a) and (b) of § 1361.11 to substitute clarifying language. The Commission deletes reference to a ''hearing'' and substitutes the phrase ''rulemaking proceeding,'' in both subsections (a) and (b). In only subsection (a), the Commission also deletes the phrase '' discuss ex parte'' and substitutes the phrase ''communicate, either directly or indirectly, in connection with'' the merits of the rulemaking proceeding. The prohibition against any ex parte communication between Commission members or Commission staff and interested persons or their representatives, during the course of the rulemaking proceeding, remains in full force.

Secondly, the Commission amends § 1361.11(b) to adjust the time period during which the Commission members are prohibited from discussing the merits of the pending rulemaking proceeding with each other. The current provision only allows Commission members to discuss the merits of the rulemaking during the deliberative meeting conducted pursuant to 7 CFR § 1361.8. The amended rule permits Commission members to discuss the issues following the close of the comment period, after the public record is complete. The prohibition against discussing the merits of the proceeding between the date of publication of the official notice of the rulemaking proceeding and the close of the post-hearing comment period remains in force. This amendment will permit the Commission's Committee on Regulations and Rulemaking, as well as state delegations and individual Commissioners, to prepare for the Commission's deliberative meeting held pursuant to § 1361.8.

Accordingly, the Commission amends the current procedural rule to be effective upon publication. The amended rule will apply only to those rulemaking proceedings initiated by publication of official notice after the effective date of the rule.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages comments on these amendments to the Commission's rulemaking procedures. The Commission continues to benefit from the valuable insight and active participation of all segments of the affected community, including consumers, processors and producers in the development and administration of the over-order price regulation and welcomes comments from milk handlers and other interested persons.

Request for Written Comments

Any person may participate in the rulemaking proceeding by submitting written comments or exhibits to the Commission. Comments and exhibits

[1] 62 FR 29626 (May 30, 1997)
[2] 62 FR 62810 (Nov. 25, 1997)
[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).
[4] 63 FR 37755 (July 14, 1998).

may be submitted at any time before 5:00 p.m. on May 14, 1999.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

List of Subjects in 7 CFR Part 1361

Administrative practice and procedure, Rulemaking, Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR Part 1361 as follows:

PART 1361— RULEMAKIMG PROCEDURES

1. The authority citation for part 1361 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1361.11 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1361.11 Ex parte communications.

(a) Following notice of a rulemaking proceeding, pursuant to § 1361.3, and prior to the conclusion of a producer referendum, or the final decision of the Commission, whichever is later, no Compact Commission member or Commission staff person shall communicate, either directly or indirectly, in connection with the merits of the rulemaking proceeding with any person having an interest in the proceeding or with any representative of such person.

(b) Following notice of a rulemaking proceeding, pursuant to § 1361.3, and prior to the close of the comment period, pursuant to § 1361.7, Compact Commission members shall not discuss among themselves the merits of the rulemaking proceeding.

* * * * *

Dated: April 8, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–9273 Filed 4–13–99; 8:45 am]

BILLING CODE 1650–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantees

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This document amends 13 CFR 115.31(a)(2) to conform it to Section 411(c)(3)(B) of the Small Business Investment Act (the ''Act''), as amended by Section 604(d) of the Small Business Reauthorization Act of 1997 (the ''1997 Reauthorization Act''). The 1997 Reauthorization Act added bonds issued on behalf of qualified HUBZone small business concerns to those receiving a 90 percent guarantee under the Surety Bond Guarantee Program. Since this rule only implements the cited statute, it is published in final form without opportunity to comment.

EFFECTIVE DATE: This rule is effective May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Associate Administrator, Office of Surety Guarantees, (202) 205–6540.

SUPPLEMENTARY INFORMATION: This amendment only implements the cited statute to include bonds issued by a Prior Approval Surety on behalf of qualified HUBZone small business concerns among those to be covered by a 90 percent guarantee from SBA. The present regulation already provides a 90 percent guarantee for bonds issued on behalf of small disadvantaged concerns.

This change would affect only qualified HUBZone small business concerns that are already eligible to participate in the Surety Bond Guarantee Program. Publishing a proposed rule for notice and comment is unnecessary because the change to the regulation is minimal and SBA has no discretion.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612.) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this is not a significant regulatory action under E.O. 12866 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612.) This rule only affects those HUBZone small business concerns who may want to participate in SBA's Surety Bond Guarantee Program.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements.

For purposes of E.O. 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of E.O. 12778, SBA certifies that this rule is drafted, to the extent practicable, under the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 115

Surety bond guarantees.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 115 as follows:

PART 115—SURETY BOND GUARANTEES

1. The authority citation for part 115 is revised to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b; Pub. L. 101–574, 104 Stat. 2823 (1990); Pub. L. 105–135.

§ 115.31 [Amended]

2. Amend § 115.31 to revise paragraph (a)(2) to read as follows:

(a) * * *

(2) The bond was issued on behalf of a small business owned and controlled by socially and economically disadvantaged individuals or on behalf of a qualified HUBZone small business concern.

* * * * *

Dated: March 31, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–9268 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–315–AD; Amendment 39–11128; AD 99–08–20]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires a one-time inspection to detect cracking of the bulkhead at fuselage

station (FS) 1363 at butt line 42.5, and repair or additional inspections, if necessary. This amendment adds repetitive inspections to detect cracking of the bulkhead web and bulkhead cap (frame cap) at FS 1363, and repair, if necessary. This amendment is prompted by reports that additional, more extensive, fatigue cracking was found in the bulkhead web and cap. The actions specified by this AD are intended to detect and correct cracking of the bulkhead web and cap, which could result in reduced structural integrity of the fuselage.

DATES: Effective May 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 1999.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 3, 1995 (60 FR 31624, June 16, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. 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, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–12–24, 39–9277 (60 FR 31624, June 16, 1995), applicable to all Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** on September 11, 1998 (63 FR 48655). The action proposed to continue to require a one-time visual inspection to detect cracking of the bulkhead at fuselage station (FS) 1363 at butt line 42.5, and repair or additional inspections, if necessary. The action also proposed to add repetitive visual and eddy current surface scan inspections to detect cracking of the bulkhead web at FS 1363; repetitive visual, eddy current bolt hole, eddy current surface scan, and X-ray inspections to detect cracking of the bulkhead cap at FS 1363; and repair, if necessary. The inspections would be required to be accomplished in accordance with the service bulletins described previously. The action also proposed to provide for modification of the bulkhead web or bulkhead cap, which, if accomplished, introduces a new threshold of 18,000 flight cycles for the repetitive inspections of the modified area.

In addition, the action also proposed that flight with a crack in the bulkhead web is allowed, provided that (1) the crack does not extend beyond a certain area, (2) the crack does not exceed a certain maximum length, (3) the horizontal stiffeners above and below the web crack have no detectable cracks, and (4) inspections of the bulkhead are repeated on a more frequent basis until repair is accomplished.

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

Support for the Proposal

Two commenters support the proposed rule.

Request To Add Approval for Previously Approved Alternative Methods of Compliance

One commenter requests that approval be granted to use previously issued alternative methods of compliance (AMOC) that were issued for AD 95–12–24.

The FAA concurs with the commenter's request. The FAA inadvertently omitted reference to the fact that AMOC's issued for AD 95–12–24 are approved for this AD. Accordingly, the final rule has been revised to add new paragraph (i)(2) to specify that AMOC's approved previously in accordance with AD 95–12–24 are approved as AMOC's for this AD.

Conclusion

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

Cost Impact

There are approximately 236 Model L–1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 95–12–24 take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $113,280, or $960 per airplane.

The new inspections of the bulkhead web that are required by this new AD action will take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections of the bulkhead web required by this AD on U.S. operators is estimated to be $113,280, or $960 per airplane, per inspection cycle.

The new inspections of the bulkhead cap that are required by this AD action will take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections of the bulkhead cap required by this AD on U.S. operators is estimated to be $283,200, or $2,400 per airplane, per inspection cycle.

Should an operator be required to accomplish the repair of cracking in the bulkhead web, it will take between 8 to 32 work hours per airplane (8 work hours for each cracked area) to accomplish the repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary repair of the bulkhead web is estimated to be between $480 to $1,920 per airplane.

Should an operator be required to accomplish the repair of cracking in the bulkhead cap, it will take approximately 200 work hours per airplane to accomplish the repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary repair of the bulkhead cap is estimated to be $12,000 per airplane.

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

Should an operator elect to accomplish the optional modification of the bulkhead web that will be provided by this AD action, it would take approximately 48 work hours to accomplish, at an average labor rate of

$60 per work hour. Based on these figures, the cost impact of the optional modification of the bulkhead web will be $2,880 per airplane.

Should an operator elect to accomplish the optional modification of the bulkhead cap that will be provided by this AD action, it would take approximately 200 work hours to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional modification of the bulkhead cap would be $12,000 per airplane.

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 removing amendment 39–9277 (60 FR 31624, June 16, 1995), and by adding a new airworthiness directive (AD), amendment 39–11128, to read as follows:

99–08–20 Lockheed: Amendment 39–11128. Docket 97-NM–315-AD. Supersedes AD 95–12–24, Amendment 39–9277.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the bulkhead web and cap, which could result in reduced structural integrity of the fuselage, accomplish the following:

Restatement of the Requirements of AD 95–12–24, Amendment 39–9277

(a) Prior to the accumulation of 18,000 total landings, or within 30 days after July 3, 1995 (the effective date of AD 95–12–24, amendment 39–9277), whichever occurs later, perform a visual inspection to detect cracking of the bulkhead at fuselage station (FS) 1363 in the area of the stiffeners at left and right butt line (BL) 42.5; in accordance with the procedures specified in paragraphs 2.A. and 2.B. of Part I of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or in accordance with the procedures specified in paragraphs 2.A. and 2.B. of Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996.

Note 2: This AD does not require that the eddy current inspection referenced in paragraph 2.B. of Part I of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; and referenced in paragraph 2.B. of Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996; be accomplished as a requirement of paragraph (a) of this AD.

(b) Except as provided by paragraph (d) of this AD, if any cracking of the bulkhead is detected below waterline (WL) 117 during any inspection performed in accordance with paragraph (a) of this AD: Prior to further flight, perform the inspections required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD, in accordance with Lockheed Document LCC–7622–373, dated May 9, 1995. Prior to further flight, repair any cracking of the bulkhead cap found during these inspections, in accordance with Lockheed Document LCC–7622–374, dated May 9, 1995.

(1) Perform a bolt hole eddy current inspection to detect cracking of the eight fastener holes at the intersection of the vertical stiffener at BL 42.5 and the bulkhead cap vertical flange; and

(2) Perform a bolt hole eddy current inspection to detect cracking at eight fastener locations in the bulkhead cap lower flange that connect the lower fuselage skin panel to the frame at the BL 42.5 vertical stiffener; and

(3) Perform a visual inspection to detect stress corrosion cracking of the accessible portions of the fillet radius of the bulkhead cap.

(c) Except as provided by paragraph (d) of this AD, if any cracking of the bulkhead is detected at or above WL 117 during any inspection performed in accordance with paragraph (a) of this AD: Prior to further flight, repair the bulkhead cracking in accordance with the procedures specified in Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or in accordance with the procedures specified in Part III of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996.

(d) Continued flight with cracking of the bulkhead is permitted, provided that the conditions specified in paragraph 1.C. of the Planning Information of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or Revision 1, dated July 2, 1996; are met. For flight with cracking, both the visual and eddy current inspections specified in paragraphs 2.B. and 2.C. of Part I of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or specified in paragraphs 2.B. and 2.C. of Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996; must be accomplished prior to returning the aircraft to service. These visual and eddy current inspections must be repeated within 900 landings. Prior to the accumulation of 1,800 total landings, these inspections must be terminated by the installation of the repair specified in Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; or by installation of the repair specified in Part III of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996.

New Requirements of This AD

(e) Prior to the accumulation of 18,000 total landings, or within 6 months after the effective date of the AD, whichever occurs later, perform a visual and eddy current surface scan inspection for cracking of the bulkhead web at FS 1363, in accordance with Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996.

(1) If no cracking of the bulkhead web is detected, except as provided by paragraph (f) of this AD, repeat the visual and eddy current surface scan inspections thereafter at intervals not to exceed 2,000 landings.

(2) If cracking of the bulkhead web is detected, and that cracking is within the

limits specified in Part I of the Accomplishment Instructions of the service bulletin: Accomplish the requirements of either paragraph (e)(2)(i) or (e)(2)(ii) of this AD, in accordance with the service bulletin. Except as provided by paragraph (f) of this AD, repeat the inspections thereafter at intervals not to exceed 2,000 landings after repair of the cracking.

(i) Prior to further flight, repair the cracking. Or

(ii) Repeat the inspections specified in Part I of the Accomplishment Instructions of the service bulletin at intervals not to exceed 900 landings, and repair the cracking within 1,800 landings after the cracking was detected.

(3) If cracking of the bulkhead web is detected, and that cracking is outside the limits specified in Part I of the Accomplishment Instructions of the service bulletin: Prior to further flight, repair in accordance with Part III of the Accomplishment Instructions of the service bulletin. Except as provided by paragraph (f) of this AD, repeat the inspections thereafter at intervals not to exceed 2,000 landings.

(f) For airplanes on which modification of the bulkhead web is accomplished in accordance with Part IV of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996: Repeat the inspections specified in paragraph (e) of this AD within 18,000 landings after accomplishment of the modification, in accordance with the service bulletin.

(g) Prior to the accumulation of 18,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, perform visual, bolt hole eddy current, eddy current surface scan, and X-ray inspections for cracking of the bulkhead cap at FS 1363, in accordance with Lockheed L–1011 Service Bulletin 093–53–272, dated November 12, 1996.

(1) If no cracking of the bulkhead cap is detected, except as provided by paragraph (h) of this AD, repeat the inspections thereafter at intervals not to exceed 2,000 landings, in accordance with the service bulletin.

(2) If any cracking of the bulkhead cap is detected, accomplish the requirements of either paragraph (g)(2)(i) or (g)(2)(ii) of this AD, in accordance with the service bulletin.

(i) Prior to further flight, repair in accordance with Part I of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspections at intervals not to exceed 2,000 landings. Or

(ii) Prior to further flight, replace the bulkhead cap, in accordance with Part II of the Accomplishment Instructions of the service bulletin. Following such replacement, repeat the inspection within 18,000 landings, in accordance with the service bulletin.

(h) For airplanes on which replacement of the bulkhead cap is accomplished in accordance with Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–53–272, dated November 12, 1996: Repeat the inspections specified in paragraph (g) of this AD within 18,000 landings after accomplishment of the replacement, in accordance with the service bulletin.

(i)(1) 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, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(i)(2) Alternative methods of compliance approved previously in accordance with AD 95–12–24, amendment 39–9277, are approved as alternative methods of compliance for this AD.

(j) 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.

Incorporation by Reference

(k) The actions shall be done in accordance with Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996; Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; Lockheed Document LCC–7622–373, dated May 9, 1995; Lockheed Document LCC–7622–374, dated May 9, 1995; and Lockheed L–1011 Service Bulletin 093–53–272, dated November 12, 1996; as applicable.

(1) The incorporation by reference of Lockheed L–1011 Service Bulletin 093–53–268, Revision 1, dated July 2, 1996, and Lockheed L–1011 Service Bulletin 093–53–272, dated November 12, 1996, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Lockheed L–1011 Service Bulletin 093–53–268, dated April 15, 1993; Lockheed Document LCC–7622–373, dated May 9, 1995; and Lockheed Document LCC–7622–374, dated May 9, 1995, was approved previously by the Director of the Federal Register as of July 3, 1995 (60 FR 31624, June 16, 1995).

(3) Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. 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, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on May 19, 1999.

Issued in Renton, Washington, on April 6, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9130 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 874 and 882

[Docket No. 98N–0405]

Medical Devices; Retention in Class III and Effective Date of Requirement for Premarket Approval for Three Preamendment Class III Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to retain in class III, three preamendment medical devices and to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the suction antichoke device, the tongs antichoke device, and the implanted neuromuscular stimulator. The agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

The SMDA (Pub. L. 101–629) added new section 515(i) (21 U.S.C. 360e(i)) to the act. This section requires FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and

to determine whether each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into three groups as referenced in the May 6, 1994, notice.

In the **Federal Register** of July 30, 1998 (63 FR 40673), FDA published a proposed rule (hereinafter referred to as the July 1998 proposed rule), to retain in class III, the suction antichoke device (§ 874.5350 (21 CFR 874.5350)), the tongs antichoke device (§ 874.5370 (21 CFR 874.5370)), and the implanted neuromuscular stimulator device (§ 882.5860 (21 CFR 882.5860)), and to require the filing of a PMA or PDP for these three preamendment class III devices. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the July 1998 proposed rule the agency's findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring these devices to have an approved PMA or a declared PDP and the benefit to the public from use of the device.

The preamble to the July 1998 proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings, and under section 515(b)(2)(B) of the act, FDA provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the devices was required to be submitted by August 13, 1998. The comment period closed October 28, 1998. The agency did not receive any comments or petitions requesting a change in the classification of these devices.

II. Findings With Respect to Risks and Benefits

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the July 1998 proposed rule. As required by section by section 515(b)(2)(A) of the act, FDA published its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the advisory committees (the panels) for these devices, the Ear Nose and Throat Devices Panel and the Neurological Devices Panel, for the classification of the devices along with any additional information FDA discovered. Additional information can be found in the proposed and final rules classifying these devices in the **Federal Register** of January 22, 1982 (47 FR 3280) and November 6, 1986 (51 FR 40378) for the ear, nose and throat devices; and of November 28, 1978 (43 FR 55640) and September 4, 1979 (44 FR 51726) for the neurological device, respectively.

III. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the July 30, 1998, proposed rule and issuing this final rule to require premarket approval of the generic type of devices by revising §§ 874.5350(c), 874.5370(c), and 882.5860(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before July 13, 1999, for any of these class III preamendment devices that were in commercial distribution before May 28, 1976, or that have been found by FDA to be substantially equivalent to such a device on or before July 13, 1999. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendment device subject to this rule that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of these class III preamendment devices is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (part 812 (21 CFR part 812)) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of these class III preamendment devices. Further, FDA concludes that investigational class III preamendment devices are significant risk devices as defined in § 812.3(m) and advises that, as of the effective date of §§ 874.5350(c), 874.5370(c), and 882.5860(c), the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of these class III preamendment devices. For any of these class III preamendment devices that is not subject to a timely filed PMA or PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device must cease. FDA advises all persons presently sponsoring a clinical investigation involving any of these class III preamendment devices to submit an IDE application to FDA no later than 60 days after the effective date of this final rule to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the final rule, will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule does not contain information collection provisions. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Parts 874 and 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 874 and 882 are amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 874.5350 is amended by revising paragraph (c) to read as follows:

§ 874.5350 Suction antichoke device.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or a notice of completion of a PDP for a device is required to be filed with the Food and Drug Administration on or before July 13, 1999 for any suction antichoke device that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to a suction antichoke device that was in commercial distribution before May 28, 1976. Any other suction antichoke device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

3. Section 874.5370 is amended by revising paragraph (c) to read as follows:

§ 874.5370 Tongs antichoke device.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or a notice of completion of a PDP for a device is required to be filed with the Food and Drug Administration on or before July 13, 1999 for any tongs antichoke device that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to a tongs antichoke device that was in commercial distribution before May 28, 1976. Any other tongs antichoke device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 882—NEUROLOGICAL DEVICES

4. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 882.5860 is amended by revising paragraph (c) to read as follows:

§ 882.5860 Implanted neuromuscular stimulator.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 13, 1999 for any implanted neuromuscular stimulator that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to an implanted neuromuscular stimulator that was in commercial distribution before May 28, 1976. Any other implanted neuromuscular stimulator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: April 7, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9221 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. 98N–0467]

Medical Devices; Effective Date of Requirement for Premarket Approval for Three Class III Preamendments Physical Medicine Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for the following three high priority Group 3 preamendments class III medical devices: The microwave diathermy device for uses other than treatment of select medical conditions, such as relief of pain, muscle spasms, and joint contractures; the ultrasonic diathermy device for uses other than treatment of select medical conditions, such as relief of pain, muscle spasms, and joint contractures; and the ultrasound and muscle stimulator device for uses other than treatment of select medical conditions, such as relief of pain, muscle spasms, and joint contractures. The uses of these three devices do not include use for the treatment of malignancies. The agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act of 1990 added new section 515(i) to the act (21 U.S.C. 360e(i)). This section requires FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into

three groups as referenced in the May 6, 1994, notice.

In the **Federal Register** of July 30, 1998 (63 FR 40677), FDA published a proposed rule (hereinafter referred to as the July 1998 proposed rule) to require the filing of a PMA or a notice of completion of a PDP for the microwave diathermy device (§ 890.5275(b) (21 CFR 890.5275(b))), ultrasonic diathermy device (§ 890.5300(b) (21 CFR 890.5300(b))), and ultrasound and muscle stimulator (§ 890.5860(b) (21 CFR 890.5860(b))), three high priority group 3 physical medicine devices. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefits to the public from use of the device.

The preamble to the July 1998 proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings, and under section 515(b)(2)(B) of the act, FDA provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the devices was required to be submitted by August 13, 1998. The comment period closed October 28, 1998. The agency did not receive any comments or petitions requesting a change in the classification of these devices.

II. Findings with Respect to Risks and Benefits

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the July 1998 proposed rule. As required by section 515(b) of the act, FDA published its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, for the classification of the devices along with any additional information FDA discovered. Additional information can be found in the proposed and final rules classifying the devices in the **Federal Register** on August 28, 1979 (44 FR 50458) and November 23, 1983 (49 FR 53032), respectively.

III. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and issuing this final rule to require premarket approval of the generic type of devices for class III preamendment devices by revising §§ 890.5275(c), 890.5300(c), and 890.5860(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before July 13, 1999, for any of these class III preamendment devices that were in commercial distribution before May 28, 1976, or that have been found by FDA to be substantially equivalent to such a device on or before July 13, 1999. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendment device subject to this rule that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of these class III preamendment devices is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (part 812 (21 CFR part 812)) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of these class III preamendment devices. Further, FDA concludes that investigational class III preamendment devices are significant risk devices as defined in § 812.3(m) and advises that as of the effective date of §§ 890.5275(c), 890.5300(c), and 890.5860(c), the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of these preamendment devices. For any of these class III preamendment devices that is not subject to a timely filed PMA or PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device must cease. FDA advises all persons presently sponsoring a clinical investigation involving any of these class III preamendment devices to submit an IDE application to FDA no later than 60 days after the effective date of this final rule to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule does not contain collection of information provisions. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 890.5275 is amended by revising paragraph (c) to read as follows:

§ 890.5275 Microwave diathermy.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or a notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 13, 1999, for any microwave diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to a microwave diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other microwave diathermy described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

3. Section 890.5300 is amended by revising paragraph (c) to read as follows:

§ 890.5300 Ultrasonic diathermy.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 13, 1999, for any ultrasonic diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to an ultrasonic diathermy described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other ultrasonic diathermy described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

4. Section 890.5860 is amended by revising paragraph (c) to read as follows:

§ 890.5860 Ultrasound and muscle stimulator.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 13, 1999 for any ultrasound and muscle stimulator described in paragraph (b) of this section that was in commercial distribution before May 28, 1976, or that has, on or before July 13, 1999, been found to be substantially equivalent to an ultrasound and muscle stimulator described in paragraph (b) of this section that was in commercial distribution before May 28, 1976. Any other ultrasound and muscle stimulator described in paragraph (b) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: April 7, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9220 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 98N–0728]

Quality Mammography Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing mammography. The purpose of these amendments is to eliminate a conflict between the mammography regulations, which must be followed by all facilities performing mammography, and FDA's electronic product radiation control (EPRC) performance standards, which establish radiation safety performance requirements for x-ray units, including mammographic systems.

DATES: This regulation is effective on April 28, 1999.

FOR FURTHER INFORMATION CONTACT: Roger L. Burkhart, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The Mammography Quality Standards Act (MQSA) (Pub. L. 102–539) was signed on October 27, 1992, to establish national quality standards for mammography. The MQSA required that to provide mammography services legally after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, had to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA.

A specific requirement of MQSA was that quality standards be established for mammographic equipment and practices, including quality assurance and quality control programs. Mammography facilities had to meet these standards to become accredited and certified. The standards were intended to replace the patchwork of Federal, State, and private standards existing in 1992 to ensure that all women nationwide receive uniformly high quality mammography services. Since October 1, 1994, these standards have been provided by interim rules published in the **Federal Register** of December 21, 1993 (58 FR 67558 and 58 FR 67565), and amended in the **Federal Register** of September 30, 1994 (59 FR 49808).

In the **Federal Register** of April 3, 1996 (61 FR 14856, 61 FR 14870, 61 FR 14884, 61 FR 14898, and 61 FR 14908), FDA proposed regulations to replace the interim regulations. Developed with strong congressional encouragement, these proposed regulations reflected FDA's belief that more comprehensive quality standards would further optimize facility performance. After analysis of the extensive public comments received on the proposed regulations, revisions were made and a final rule was published in the **Federal Register** of October 28, 1997 (62 FR 55852). The effective date for most of the final rule is April 28, 1999. A few equipment and equipment quality assurance requirements do not become effective until October 28, 2002.

FDA has subsequently discovered that some mammographic x-ray systems will have difficulty meeting certain of the new requirements because of design features that were used by the manufacturers in order to ensure that their units met the agency's EPRC performance standards for diagnostic x-ray systems. To resolve this conflict, proposed amendments to the MQSA regulations were published in the

Federal Register of November 5, 1998 (63 FR 59750).

II. Need for Amendments

The source of the conflict lies in the requirements for the collimation of the x-ray field and the alignment of that field with the image receptor found in § 900.12(b)(5) and (e)(5)(vii) (21 CFR 900.12(b)(5) and (e)(5)(vii)) of the MQSA final regulations. Two problems exist with these provisions as they appeared in the October 28, 1997, publication.

First, both of these provisions permit the x-ray field ''to extend to or beyond the edges of the image receptor.'' This allowance was made in response to the expressed desire of some mammography facilities to have the capacity to ''blacken'' the film to the edges, a capacity that is particularly useful when automated viewing devices are used. However, the manufacturers of all diagnostic x-ray systems, including mammography systems, must comply with applicable performance standards established by FDA. These performance standards currently require that mammography systems be manufactured with collimation to ensure that the x-ray field does not extend beyond the nonchest wall edges of the image receptor.

It is possible for a mammography system to meet both of these sets of standards as they were originally written. However, FDA has been informed by several manufacturers that in the past, in order to be sure to meet the EPRC standards, their systems were designed so that the x-ray field does not reach the nonchest wall edges of the image receptor. Such systems would not meet the final MQSA regulations as presently written.

Without an amendment to the MQSA regulations, in order to be in compliance, some facilities would have to choose among three courses of action. The first would be to apply for and receive approval of an alternative requirement for alignment under 21 CFR 900.18 of the MQSA regulations that would allow the facility to continue using its system unchanged. The second would be to purchase a retrofit of their system under a variance to the performance standards that has already been approved by FDA for one manufacturer. The third would be to purchase a new system that meets both sets of existing requirements.

FDA proposed solving this first problem by amending § 900.12(e)(5)(vii) so that the x-ray field will be allowed, but not required as at present, to extend to or beyond the nonchest wall sides of the image receptor. This would permit facilities whose systems are not presently capable of ''blackening'' the films to these edges to continue to use those systems without the need of either applying for an alternative requirement or purchasing an expensive retrofit or new unit.

The second problem is that the limit on the extension of the x-ray field beyond all edges of the image receptor to ''within 2 percent of the SID'', discussed on page 62 FR 55852 at 55945 of the preamble of the October 27, 1997, final rule, was erroneously applied in the regulations only to the chest wall side of the image receptor. This omission raises the possibility of an unnecessary radiation hazard to the patient if the x-ray field extends an excessive amount beyond the nonchest wall edges of the image receptor. The agency proposed to remove this radiation hazard concern by amending § 900.12(e)(5)(vii) to apply the 2 percent of the SID extension limit to all edges of the image receptor, in accordance with the intentions expressed in the preamble.

Finally, FDA proposed to simplify the regulations by dropping all mention of alignment from § 900.12(b)(5), thus consolidating all alignment requirements at one location in § 900.12(e)(5)(vii). The portion of § 900.12(b)(5) dealing with the light field remains unchanged.

III. Comments on the Proposed Amendments

FDA invited interested persons to comment on the November 5, 1998, proposed rule by January 4, 1999. FDA received two comments. One comment from a professional organization supported the amendments, noting that they would ''eliminate conflict'' between the two sets of regulations, ''address user concerns,'' and take into account ''cost concerns'' of facilities. The second comment, from a State radiation control agency, simply expressed support for the amendments. In view of these responses, the agency has decided to make the amendments final.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(c) that the action of publication of the MQSA final regulations is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of this rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that this final rule will not have a significant negative economic impact on a substantial number of small entities. This rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year.

FDA had previously estimated (62 FR 55852 at 55968) that the expected average annual benefits from the final regulations would range between $181.7 million and $262.7 million. Average annual compliance costs were estimated at $38.2 million. The compliance cost estimate did not include the possible added costs related to the alignment requirement discussed previously, as the difficulty noted by the manufacturers was not foreseen during the development of the regulations. These added costs would be minimal if an alternative requirement was applied for and received but would be more significant if retrofitting or purchase of a new unit was carried out to meet the requirement. However, FDA's amending of the regulations will eliminate the requirement leading to the possible extra costs and thus eliminate any possible extra cost.

VI. Paperwork Reduction Act of 1995

The agency has determined that this final rule contains no additional collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 900

Electronic products, Health facilities, Mammography, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 900 is amended as follows:

PART 900—MAMMOGRAPHY

1. The authority citation for 21 CFR part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

2. Section 900.12 is amended by revising paragraphs (b)(5) and (e)(5)(vii)(A) to read as follows:

§ 900.12 Quality standards.

* * * * *

(b) * * *

(5) *Light fields.* For any mammography system with a light beam that passes through the x-ray beam-limiting device, the light shall provide an average illumination of not less than 160 lux (15 foot candles) at 100 cm or the maximum source-image receptor distance (SID), whichever is less.

* * * * *

(e) * * *

(5) * * *

(vii) * * *

(A) All systems shall have beam-limiting devices that allow the entire chest wall edge of the x-ray field to extend to the chest wall edge of the image receptor and provide means to assure that the x-ray field does not extend beyond any edge of the image receptor by more than 2 percent of the SID.

* * * * *

Dated: April 7, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9222 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300830; FRL–6071–3]

RIN 2070–AB78

Pyriproxyfen (2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pyriproxyfen in or on pome fruits, walnuts and apple pomace, wet. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300830], 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–300830], 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 be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 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–300830]. 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: Joseph Tavano, 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. 222, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6411, tavano.joseph@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 27, 1998 (63 FR 14926) (FRL–5579–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 7F4882) for tolerance by Valent U.S.A. Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596 This notice included a summary of the petition prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.510 be amended by establishing a tolerance for residues of the insecticide, pyriproxyfen, in or on pome fruits, walnuts and apple pomace, wet at 0.2, 0.02 and 0.8 part per million (ppm) respectively.

I. Background 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 pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of pyriproxyfen on pome fruits, walnuts and apple pomace, wet at 0.2, 0.02 and 0.8 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine are discussed in this unit.

1. *Acute toxicity.* Acute toxicity studies with technical pyriproxyfen: Oral LD_{50} in the rat is >5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category IV; dermal LD_{50} in the rabbitat >2,000 mg/kg - Toxicity Category IV; inhalation LC_{50} in the rat is >1.3 mg/L (highest dose attainable) - Toxicity Category III; primary eye irritation in the rabbit (mild irritatant) - Toxicity Category III; primary dermal irritation in the rabbit (not an irritant: non-irritating to the skin under conditions of test))- Toxicity Category IV. Pyriproxyfen is not a sensitizer.

2. *Subchronic toxicity.* In the subchronic feeding study in rats, the no-observed effect level (NOAEL) was 27.68 mg/kg/day. The lowest oberved effect level (LOAEL) was 141.28 mg/kg/day, based upon higher mean total cholesteral and phospholipids, decreased mean RBCs, hematocrit and hemoglobin counts and increased relative liver weight.

In the subchronic feeding study in dogs, the NOAEL was 100 mg/kg/day and the LOAEL was 300 mg/kg/day. The effects were based on increased absolute and relative liver weight in males and hepatocellular hypertrophy in females. These findings were also observed at 1,000 mg/kg/day and may represent adaptive changes at both 300 mg/kg/day and the limit dose of 1,000 mg/kg/day.

In a 21-day dermal study in rats, the NOAEL for systemic effects was >1,000 mg/kg/day (limit dose). The LOAEL for systemic effects was not established in this study. No dermal or systemic toxicity was observed at any dose tested.

3. *Chronic toxicity/carcinogenicity.* In a 1-year chronic feeding study in dogs, the NOAEL was 100 mg/kg/day. The LOAEL was 300 mg/kg/day based on decreased weight gain, increased absolute and relative liver weight, mild anemia, increased cholesterol and triglycerides.

The oncogenicity study in mice the NOAEL and LOAEL for systemic toxicity in males are 600 ppm and 3,000 ppm, respectively, based on an renal lesions in males. The technical grade test material was given to male and female CD-1 mice in diet for 18 months at 0, 120, 600, or 3,000 ppm. No statistically significant increase in tumor incidence relative to controls were observed in either sex at any dose up to 3,000 ppm HDT.

In the chronic feeding/oncogenicity study in rats, the NOAEL (systemic) was 35.1 mg/kg/day and the LOAEL (systemic) was 182.7 mg/kg/day. The technical grade test material was administered to male and female Sprague-Dawley rats in diet for 24 months at 0, 120, 600, or 3,000 ppm. A decrease of 16.9% in body weight gain in females at 3,000 ppm 182.7 mg/kg/day was basis for the systemic LOAEL.

4. *Developmental toxicity.* In the developmental study in rabbits, the maternal NOAEL/LOAEL for maternal toxicity were 100 and 300 mg/kg/day based on premature delivery/abortions, soft stools, emaciation, decreased activity and bradypnea. The developmental NOAEL was determined to be 300 mg/kg/day and developmental LOAEL was determined to be undetermined; no dose related anomalies occurred in the 4 remaining litters studied at 1,000 mg/kg/day.

In the developmental study in rats, a maternal NOAEL/LOAEL were determined to be 100 mg/kg/day and 300 mg/kg/day, respectively. These findings were based on increased incidences in mortality and clinical signs at 1,000 mg/kg/day with decreased in food consumption, body weight, and body weight gain together with increases in water consumption at 300 and 1,000 mg/kg/day. The developmental NOAEL/LOAEL were 100 mg/kg/day and 300 mg/kg/day based on the increase of skeletal variations at 300 mg/kg/day and above.

5. *Reproductive toxicity.* In a 2-generation reproduction study in rats, the systemic NOAEL was 1,000 ppm (87 mg/kg/day). The LOAEL for sytemic toxicity was 5,000 ppm (453 mg/kg/day). Effects were based on decreased body weight, weight gain and food consumption in both sexes and both generations, and increased liver weights in both sexes associated with liver and kidney histopathology in males. The reproductive NOAEL was 5,000 ppm. A reproductive LOAEL was not established.

6. *Mutagenicity— Studies on gene mutation and other genotoxic effects.* In a Gene Mutation Assay (Ames Test)/Reverse Mutation, finding was determined as negative for induction of gene mutation measured as the reversion to histine protrophy of 5 *S.typhimurium* strains and *E.Coli* WP2 uvra at doses from 10 to 5,000 µg/plate with and without S-9 activation. The highest dose was insoluble. A Gene Mutation assay in Mammalian Cells was found to be negative f or mutagencity in CHO (Chinese hamster ovary) V79 cells with and without metabolic activation yp to cytotoxic doses (300 µg/mL). In a Structural Chromosomal Aberration Assay *in vivo*, findings proved nonclastogenic in CHO cells both with and without S-9 activation up to cytotoxic doses 300 µg/mL. In Other Genotoxicity Assays, an increase in unscheduled DNA synthesis was not induced both with and without activation in HeLa cells exposed up to insoluble doses ranging to 6.4 µg/mL without activation and 51.2 µg/mL with activation.

7. *Metabolism.* The results of the metabolism studies are as follows: Acceptable Rats were orally dosed with ^{14}C-labeled pyriproxyfen at 2 or 1,000 mg/kg and at repeated oral doses 14 daily doses of unlabeled pyriproxyfen at 2 mg/kg followed by administration of a single oral dose of labeled pyriproxyfen at 2 mg/kg. Most radioactivity was excreted in the feces 81-92% and urine 5-12% over a 7 day collection period. Expired air was not detected. Tissue radioactivity levels were very low less than 0.3% except for fat. Examination of urine, feces, liver, kidney, bile and blood metabolites yielded numerous > 20 identified metabolites when compared to synthetic standards. The major biotransformation

reactions of pyriproxyfen include: (1) Oxidation of the 4′ - position of the terminal phenyl group; (2) Oxidation at the 5′ - position of pyridine; (3) Cleavage of the ether linkage and conjugation of the resultant phenols with sulfuric acid.

8. *Neurotoxicity.* Neurotoxicity has not been observed in any of the acute, subchronic, chronic, developmental or reproductive studies performed with pyriproxyfen.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute dietary dose and endpoint was not identified in the database. The Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

2. *Short- and intermediate-term toxicity.* Doses and endpoints were not identified for short and intermediate-term dermal and inhalation exposure. The Agency concludes that there are reasonable certainties of no harm from these exposures.

3. *Chronic toxicity.* EPA has established the RfD for pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine at 0.35 mg/kg/day. This Reference Dose (RfD) is based on a NOAEL of 35.1 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the combined chronic feeding/oncogenicity study in rats where the the LOAEL was 3,000 ppm, based on a 16.9% decrease in body weight gain in females when compared to controls.

4. *Carcinogenicity.* Pyriproxyfen is classified as Category E: not carcinogenic in two acceptable animal studies.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.510) for the residues of pyriproxyfen, in or on a variety of raw agricultural commodities. In todays action tolerances will be established for the residues of pyriproxyfen, in or on the raw agricultural commodities: pome fruits, walnuts and apple pomace, wet at 0.2, 0.02 and 0.8 ppm respectively. Risk assessments were conducted by EPA to assess dietary exposures from pyriproxyfen 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. No acute dietary endpoint and dose was identified in the toxicology data base for pyriproxyfen, therefore the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis from food sources was conducted using the RfD of 0.35 mg/kg/day. The RfD is based on the NOAEL of 35.1 mg/kg/day in male and female rats from the Chronic Feeding/Oncogenicity study in rats and an uncertainty factor of 100 applicable to all population subgroups.

In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% of pome fruits and walnuts having pyriproxyfen tolerances will contain pyriproxyfen residues and those residues will be at the level of the established tolerance. This results in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The existing pyriproxyfen tolerances (published and pending) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD: US. Population (48 states) 0.8%; Hispanics 1.0%; Non-hispanic blacks 0.9%; Non-hispanic other than black or white 1.2%; All infants (< 1 year) 1.1%; Nursing Infants (< 1 year old) 0.8%; Non-Nursing Infants (< 1 year old) 1.2%; Children (1-6 years old) 2.2%; Children (7-12 years old) 1.3%; Females (13+/nursing) 1.0%.

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water*— i. *Acute exposure and risk.* As previously stated, no acute dietary endpoint was identified for assessment of acute dietary risk. Thus the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic exposure and risk.* Following OPP's Interim Approach for Addressing Drinking Water Exposure in Tolerance Decision making issued on 17-NOV-1997, the Generic Expected Environmental Concentration (GENEEC) model and the Screening Conccentration In Ground Water) (SCI-GROW) model were run to produce estimates of pyriproxyfen concentrations in surface and ground water respectively. The primary use of these models is to provide a coarse screen for sorting out pesticides for which OPP has a high degree of confidence that the true levels of the pesticide in drinking water will be less than the human health drinking water levels of comparison (DWLOCs). A human health DWLOC is the concentration of a pesticide in drinking water which would result in unacceptable aggregate risk, after having already factored in all food exposures and other non-occupational exposures for which OPP has reliable data.

For chronic (non-cancer) exposure to pyriproxyfen in surface and ground water, the drinking water levels of concern are 12,000 µg/L for U.S. Population and 3,400 µg/L for children (1-6 yrs). To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to pyriproxyfen in drinking water. DWLOCs were then calculated using default body weights and drinking consumption figures.

Estimated average concentrations of pyriproxyfen in surface and ground water are 0.14 parts per billion (ppb) and 0.006 ppb, respectively. The estimated average concentrations of pyriproxyfen in surface and ground water are less than OPP's level of concern for pyriproxyfen in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account present uses and uses proposed in this action, OPP concludes with reasonable certainty that residues of pyriproxyfen in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

3. *From non-dietary exposure.* Pyriproxyfen is the active ingredient in many registered residential (indoor, non-food) products for flea and tick control. Formulations include foggers, aerosol sprays, emulsifiable concentrates, and impregnated materials (pet collars).

i. *Acute exposure and risk.* An acute dietary dose and endpoint was not identified. Thus the risk from aggregate exposure is considered to be negligible.

ii. *Chronic exposure and risk.* With the exception of the pet collar uses, consumer use of pyriproxyfen typically results in short-term, intermittent exposures. Hence, chronic residential post-application exposure and risk assessments were conducted to estimate the potential risks from pet collar uses.

The risk assessment was conducted using the following assumptions: application rate of 0.58 mg ai/day (product label), average body weight for a 1 to 6 year old child of 10 kg, the active ingredient dissipates uniformly through 365 days (the label instruct to change collar once a year), 1% of the

active ingredient is available for dermal and inhalation exposure per day. The assessment also assumes an absorption rate of 100%. This is a conservative assumption since the dermal absorption was estimated to be 10%.

The estimated chronic term MOE was 61,000 for children, and 430,000 for adults. An adequate MOE is 100. The risk estimates indicate that potential risks from pet collar uses do not exceed the Agency's level of concern.

iii. *Short- and intermediate-term exposure and risk.* The Agency concludes that there is reasonable certainty of no harm from short term and intermediate-term dermal and inhalation occupational and residential exposure due to the lack of significant toxicological effects observed.

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 pyriproxyfen 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, pyriproxyfen 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 pyriproxyfen 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.* An acute dietary dose and endpoint was not identified. Thus the risk from acute aggregate exposure is considered to be negligible.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has calculated that the percentage of the RfD that will be utilized by dietary (food) exposure to residues of pyriproxyfen is 0.8 percent for the U.S. Population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old). See discussion below. Chronic residential exposure to pyriproxyfen from pet collars is estimated to increase total pyriproxyfen exposure only marginally. Despite the potential for exposure to pyriproxyfen in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

This determination is based on a comparison of estimated concentrations of pyriproxyfen in surface and ground water to levels of concern for pyriproxyfen in drinking water. The estimates of pyriproxyfen in surface and ground water are derived from water quality models that use conservative assumptions regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with the pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impact of pyriproxyfen in food and drinking water as part of the aggregate chronic risk assessment process.

3. *Short- and intermediate-term risk.* No significant toxicological effects were observed in the animal studies that could be attributed to short- or intermediate-term exposure. Thus, the risk from short- and intermediate-term exposure is negligible.

4. *Aggregate cancer risk for U.S. population.* Pyriproxyfen is classified as Category E: not carcinogenic in two acceptable animal studies.

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 pyriproxyfen residues.

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

1. *Safety factor for infants and children*— i. In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a 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. *Developmental toxicity studies.* In the rat developmental study, the developmental NOAEL was 100 mg/kg/day and the maternal NOAEL was 100 mg/kg/day. Therefore, there was no prenatal developmental toxicity in the presence of maternal toxicity. Similarly in rabbits, the prenatal developmental NOAEL was 300 mg/kg/day and the maternal NOAEL was 300 mg/kg/day. Therefore, prenatally exposed fetuses were not more sensitive to the effects of pyriproxyfen than maternal animals.

iii. *Reproductive toxicity study.* In the rat reproduction study, the parental NOAEL of 1,000 ppm was identical to the pup NOAEL of 1,000 ppm and decreased body weight was seen in both pup and parental animals. This finding demonstrates that there are no extra sensitivities with respect to pre- and post-natal toxicity between adult and infant animals.

iv. *Pre- and post-natal sensitivity.* The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to in utero and postnatal exposure to pyriproxyfen.

v. *Conclusion.* The 10X factor for infants and children (as required by FQPA) was removed, since there was no special sensitivity for infants and children and the data base is complete. For chronic dietary risk assessment, a UF of 100 is adequate for protection from exposure to pyriproxyfen.

2. *Acute risk.* An acute dietary dose and endpoint was not identified. Thus the risk from acute aggregate exposure is considered to be negligible.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to pyriproxyfen from food will utilize 2.2% 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 pyriproxyfen in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. Short-term and intermediate-term dermal and inhalation risks are judged to be negligible due to the lack of significant toxicological effects observed.

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 pyriproxyfen residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is understood. Acceptable metabolism studies using ^{14}C-labeled pyriproxyfen (phenyl and pyridyl rings) have been performed in apple RACs and cotton RACs. Metabolism of pyriproxyfen in apples proceeds through hydroxylation and cleavage of the phenoxy ether linkage. Primary metabolites formed are further metabolized to more polar products by oxidation or conjugation reactions. Similar metabolic pathways were observed for the metabolism of pyriproxyfen in cotton, goats, and hens.

The HED Metabolism Assessment Review Committee (MARC) has determined that there are no pyriproxyfen metabolites of toxicological or regulatory concern in plants thus, tolerances based on the parent only are appropriate.

There are no poultry feed items associated with pome fruits and walnuts. Therefore, no secondary residues are expected to occur in poultry eggs, fat, meat, and meat byproducts as a result of the proposed uses on pome fruits and walnuts.

Valent submitted data from studies investigating the metabolism of Ph-^{14}C uniformly ring labeled and Py-^{14}C in pyridine ring 2 and 6 positions pyriproxyfen in lactating goats. Two goats were fed 10 ppm of the Ph-^{14}C pyriproxyfen daily for 5 days, while two other goats were fed 10 ppm of the Py-^{14}C pyriproxyfen daily for 5 days, with 1 control goat. Urine, feces and milk samples were obtained twice daily. After sacrifice at 6 hours after last dose, samples of blood, heart, kidneys, liver, loin muscle, rear leg muscle, omental and perirenal fat, gastrointestinal tract and contents were collected for ^{14}C analysis.

The majority (62-76%) of the ^{14}C-pyriproxyfen ingested by goats was excreted in urine and feces, with residue levels in feces being higher than in urine. Approximately 25 to 32% of the administered ^{14}C-pyriproxyfen was found in goat tissues, with the large majority located in the gastrointestinal tract. These studies show that metabolism of phenyl-^{14}C pyriproxyfen in goats proceeds through hydroxylation of the phenoxyphenyl and pyridyl rings, sulfation of the 4′-OH phenoxyphenyl moiety, and cleavage of the ether linkage. Metabolism of pyridyl-^{14}C pyriproxyfen in goats proceeds through hydroxylation of the phenoxyphenyl and pyridyl rings, sulfation of the 4′-OH phenoxyphenyl moiety, cleavage of the ether linkage and oxidation of the side chain. Therefore the nature of the residue in ruminants is adequately understood.

Should future crop uses increase the maximum dietary burden in animals to the point that tolerances are needed in animal commodities, the residue of concern will be pyriproxyfen and the free and sulfate forms of 4′-OH-PYR.

B. Analytical Enforcement Methodology

The proposed enforcement methods for residues of pyriproxyfen on plant commodities has not been subjected to a complete Agency method validation at this time. The EPA validation laboratory at Beltsville is currently being relocated, and consequently, the laboratory is not operational at this time. The method trial requests have been received and a validation is scheduled. In the interim, EPA has conducted a preliminary review of the apple and walnut methods that indicates that they appears to be suitable for enforcement purposes pending the outcome of the actual method validation. Given that the registrant has provided concurrent fortification data to demonstrate that the methods are adequate for data collection purposes and has provided the Agency with a successful Independent Laboratory Validation, coupled with EPA's preliminary review, EPA concludes that the methods are suitable as enforcement methods to support tolerances associated with a conditional registration only. As a condition of the registration, the Agency will require successful method validations and the registrant will be required to make any necessary modifications to the methods resulting from the laboratory validation.

C. Magnitude of Residues

Adequate residue data were provided to support tolerances of 0.2 ppm forpome fruits and 0.02 ppm for walnuts.

Processing data provided for apples indicated concentration of residues in wet apple pomace. Based on the available field trial data the highest average field trial (HAFT) for apples is 0.16 ppm for residues of pyriproxyfen. The maximum pyriproxyfen residues in apple pomace based on the HAFT and the average concentration factor 4.9x would be 0.78 ppm. Therefore, the proposed tolerance of 0.8 ppm for pyriproxyfen residues in/on wet apple pomace is adequate.

There are no processed commodities associated with pears and walnuts andtherefore no tolerances for processed commodities are required.

A feeding study on lactating dairy cows was submitted. Using proposed tolerances for animal feed items, the calculated maximum theoretical dietary burdens for beef and dairy cattle are 1.69 and 1.29 ppm, respectively. Based on the dietary burdens, the dosing levels of 3, 9, and 30 ppm in the study represent 2x, 5x, and 18x the maximum theoretical dietary burden to beef cattle, and 2x, 7x, and 23x the maximum theoretical dietary burden to dairy cattle. Typically, tolerances are required on all animal commodities having detectable residue levels at a 10x dosing rate or below. For the computed MTDB of 1.69 ppm in beef cattle, this would include the 3 and 9 ppm dosing levels. The only commodity having detectable pyriproxyfen residues at these levels was fat: 0.01 - 0.03 ppm. Since the MTDB calculation is based on a nutritionally unbalanced diet and includes contributions from some animal feed items that are used only regionally, the Agency will not require the establishment of pyriproxyfen tolerances in fat at this time. However, should future new uses include additional animal feed items, tolerances on animal commodities will be needed.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances for pyriproxyfen residues in/on pome fruits or walnuts. Therefore, international harmonization is not an issue at this time.

E. Rotational Crop Restrictions

The Agency has determined that rotational crop studies are not required for uses of pesticides on pome fruits or walnuts

IV. Conclusion

Therefore, the tolerances are established for residues of pyriproxyfen in pome fruits, walnuts and apple pomace, wet at 0.2 , 0.02, and 0.8 ppm, respectively.

V. Objections and Hearing Requests

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

Any person may, by June 14, 1999, 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 under the ''ADDRESSES'' section (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 regulation. 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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James 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, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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 regulation under docket control number [OPP–300830] (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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official 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 section 408(d) of the FFDCA 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 specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 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 officials 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.

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 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: March 30, 1999.

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. 321(q), 346a, and 371.

2. In § 180.510, paragraph (a), by alphabetically adding the following commodities to the table to read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues.

(a) * * *

Commodity	Parts per million
Apple, pomace, wet	0.8
* * * * *	* *
Pome fruits	0.2
Walnuts	0.02

* * * * *

[FR Doc. 99–9061 Filed 4-13-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300839; FRL–6073–9]

RIN 2070–AB78

Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hyrazide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of tebufenozide in or on Leafy and Brassica(cole) Vegetables and Fruiting Vegetables. Rohm and Haas Company requested these tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300839], 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 withthe Hearing Clerk identified by the docket control number, [OPP–300839], 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 be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 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–300839]. 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: Joseph Tavano, 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. 222, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6411, tavano.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 18, 1999 (64 FR 8090) (FRL–6059–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 7F4824) for tolerances by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.482 be amended by establishing tolerances for residues of the insecticide tebufenozide, in or on leafy greens crop subgroup, leaf petioles crop subgroup, head and stem Brassica crop subgroup, leafy Brassica Greens crop subgroup and fruiting vegetables(except cucurbits) at 10.0, 2.0, 5.0, 10.0, and 1.0 part per million (ppm) respectively.

I. Background 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 tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydride and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of tebufenozide on leafy greens crop subgroup, leaf petioles crop subgroup, head and stem Brassica crop subgroup, leafy Brassica Greens crop subgroup and fruiting vegetables (except) cucurbits) at 10.0, 2.0, 5.0, 10.0. and 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-dimethylbenzoyl) hyrazide are discussed in this unit.

1. *Acute toxicity studies with technical grade.* Oral LD_{50} in the rat is > 5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category III; inhalation LC_{50} in the rat is >4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit >5mg - Toxicity Category IV. Tebufenozide is not a sentizer.

2. *In a 21-day dermal toxicity study, Crl.* CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day Limit-Dose or the formulation 23.1% a.i. product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested (HTD) 1,000 mg/kg/ during the 21 day study. Based on these results, the no-observed effect level (NOAEL) for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A lowest-observable-effect level (LOAEL) for systemic toxicity and dermal irritation was not established.

A 1-year dog feeding study with a LOAEL of 250 ppm (9 mg/kg/day for male and female dogs) based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

An 18-month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

A 2-year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group) Tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 milligrams/kilogram/day (mg/kg/day) and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

In a prenatal developmental toxicity study conducted in New Zealand white rabbits (20/group) Tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

In a 1993 2-generation reproduction study in Sprague-Dawley rats tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/

day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

In a 1995 2-generation reproduction study in rats Tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm, (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992, ^{14}C labeled in one of three positions (A-ring, B-ring or *N*-butylcarbon). The extent of absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioacculmulation. Absorption and excretion were rapid.

A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the Bring and an ethyl group on the A ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be leaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72 hour period, biliary excretion accounted for 30% female to 34% male of the administered dose while urinary excretion accounted for ≈ 5% of the administered dose and the carcass accounted for <0.5% of the administered dose for both male and female. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass was 35% female to 39% male. The majority of the radioactivity in the bile (20% female to 24% male of the administered dose) was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount 67% (male) to 70% (female) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified i.e. - unabsorbed compound nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primary by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (male and/or female). Bile also contained the previously undetected (in the pharmacokinetics study) ''A'' Ring ketone and the ''B'' Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for >5% of the total administered dose. Total bile radioactivity accounted for ≈ 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

B. Toxicological Endpoints

1. *Acute toxicity*. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of Tebufenozide at 0, 500, 1,000, or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. Thus the risk from acute exposure is considered negligible.

2. *Short- and intermediate-term toxicity*. No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit- Dose) as well as a formulated (23% a.i) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21 day period (MRID 42991507). The HIARC noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or

rabbit studies. This risk is considered to be negligible.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide at 0.018 mg/kg/day. This RfD is based on a NOAEL of 1.8 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the chronic toxicity study in dogs where the NOAEL was 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at 8.7 mg/kg/day. EPA determined that the 10 x factor to protect children and infants (as required by FQPA) should be removed. Therefore, the RfD remains the same at: 0.018 mg/kg/day. An UF of 100 is supported by the following factors.

i. Developmental toxicity studies showed no increased sensitivity in fetuses when compared to maternal animals following in utero exposures in rats and rabbits.

ii. Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offspring.

iii. There are no data gaps.

4. *Carcinogenicity*. Tebufenozide has been classified as a Group E, ''no evidence of carcinogenicity for humans,'' chemical by EPA.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. In today's action tolerances will be established for the residues of tebufenozide in or on the raw agricultural commodities: leafy greens crop subgroup, leaf petioles crop subgroup, head and stem Brassica crop subgroup, leafy Brassica greens crop subgroup and fruiting vegetables(except cucurbits) at 10.0, 2.0, 5.0, 10.0 and 1.0 ppm respectively. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: 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; 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. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Estimates of percent crop treated were used for the following crops. In all cases the maximum estimate was used.

Almonds: Average <1% Maximum <1%

Apples: Average 1% Maximum 2%

Beans/Peas, Dry Average 0% Maximum 1%

Cotton Average 1% Maximum 4%

Sugarcane Average 3% Maximum 5%

Walnuts Average 10% Maximum 16%

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. 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 the PCT, the Agency is reasonably certain that that the percentage of the food treated is not likely to be underestimated. The 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 tebufenozide may be applied 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. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No Neuro or systemic toxicity was observed in rats given a single oral administration of Tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of Tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligible.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this exposure assessment, HED has made very conservative assumptions -- 100% of Brassica (cole) and leafy vegetables and fruiting vegetables and all other commodities having tebufenozide tolerances will contain tebufenozide residues and those residues would be at the level of the tolerance, and some percent crop treated (%CT) data for selected commodities -- which result in an overestimate of human dietary exposure. Previous chronic tebufenozide analyses conducted for Section 18 actions included %CT data on spinach and cole crops. These values were reset to 100% CT as a result of this petition for permanent tolerances. Thus, in making a safety determination for this tolerance, HED is taking into account this conservative exposure assessment.

With Brassica (cole) and leafy vegetables and fruiting vegetables as new tolerances, the existing tebufenozide tolerances (published and including the necessary Section 18 tolerances) result in a Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

Population Subgroup	%RfD
U.S. Population - 48 States	30
All Infants (<1 year)	29
Nursing Infants (<1 year)	20
Non-Nursing Infants (<1 year)	33
Children (1-6 years)	44
Children (7-12 years)	35
U.S. Population - Spring Season	30
U.S. Population - Winter Season	30
Northeast Region	31
Weastern Region	33
Pacific Region	34
Non-Hispanic Blacks	32
Non-Hispanic Other Than Black or White	36
Females (13+/ nursing)	32
Males (20+ years)	26

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

subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States); and, (4) other population subgroups of particular regulatory interest.

2. *From drinking water*— i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions There is no established Maximum Contaminant Level (MCL) for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. Therefore, potential residue levels for drinking water exposure were calculated using Generic Expected Environmental Concentration (GENEEC) (surface water) and Screening Concentration In Ground Water (SCI-GROW) (ground water) for the human health risk assessment. Due to the wide range of aerobic soil half-life ($t_{1/2}$) values, GENEEC and SCI-GROW were run based on aerobic half-lives of 66 (California Loam) and 729 (worst case soil with low microbial activity) days. Because of the wide range of half-life values a range of potential exposure values were calculated. In each case the worst case upper bound exposure limits were then compared to appropriate chronic water levels of concern (DWLOC). In each case the calculated exposures based on model data were below the DWLOC.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there is no chronic, short- or intermediate-term exposure scenario.

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 tebufenozide 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, tebufenozide 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 tebufenozide 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.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 30% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old) at 44 percent of the RfD and is discussed below. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's DWLOC. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

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. Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risks do not exist.

4. *Aggregate cancer risk for U.S. population.* Since, tebufenozide has been classified as a Group E, ''no evidence of carcinogenicity for humans,'' this risk does not exist.

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 tebufenozide 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 tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a 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. *Developmental toxicity studies.* Developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits.

iii. *Reproductive toxicity study.* Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offsprings.

iv. *Pre- and post-natal sensitivity.* The toxicology data base for tebufenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of

rats or rabbits to in utero and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

v. *Conclusion*. There is a complete toxicity database for tebufenozide and exposure data is complete and reasonably accounts for potential exposures.

2. *Acute risk*. Since no acute toxicological endpoints were established, no acute aggregate risk exists.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 44% 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 tebufenozide in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. Short and intermediate term risks are judged to be negligible due to the lack of significant toxicological effects observed.

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 tebufenozide residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues of tebufenozide in/on plants is adequately understood. The residue of concern for both regulatory (tolerance expression) and risk assessment purposes is the parent compound, tebufenozide *per se*. Since there are no animal feed items associated with leafy and Brassica (cole) leafy vegetables and fruiting vegetables, a discussion of the qualitative nature of the residue in animals is not germane to this action.

B. Analytical Enforcement Methodology

The HPLC/UV (designated as TR 34-95-66, TR 34-93-119 and TR-34-94-41 all virtually identical) method used for determining residues of tebufenozide in/on leafy and Brassica (cole) leafy vegetables and fruiting vegetables (except cucurbits) is adequate for collection of residue data. Adequate method validation and concurrent method recovery data have been submitted for this method. The validated limit of quantitation (LOQ) and limit of detection (LOD) are 0.02 ppm and 0.006 ppm, respectively, for residues of tebufenozide in/on tomatoes, tomato processed commodities, and peppers. The LOQ is 0.01 ppm for residues of tebufenozide in/on lettuce, spinach, cabbage, and mustard greens, and the LOQ for celery is 0.05 ppm. The LOD is 0.003 ppm for all leafy vegetable matrices tested.

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, (703) 305–5229.

C. Magnitude of Residues

Adequate residue data were provided to support the tolerances for leafy greens crop subgroup at 10.0 ppm, leaf petioles crop subgroup at 2.0 ppm, head and stem Brassica crop subgroup at 5.0 ppm, leafy Brassica greens crop subgroup at 10.0 ppm and fruiting vegetables (except cucurbits) at 1.0 ppm. There are no currently regulated processed food or feed items derived from Brassica (cole) and leafy vegetables and fruiting vegetables. Since there are no animal feed items associated with Brassica (cole) and leafy vegetables and fruiting vegetables, no secondary residues in animals are expected. There are no food handling uses for tebufenozide.

D. International Residue Limits

There are currently no CODEX listings for tebufenozide residues in or on the commodities subject to todays action, therefore there are no harmonization issues for these crops.

E. Rotational Crop Restrictions

Crops which the label allows to be treated directly can be planted at any time. The following crops can be planted 30 days after application: root/tuber/bulb vegetables and cucurbits. All other crops can not be planted within 12 months of application. The latter would include legume vegetables, cereal grains, grasses and non-grass animal feeds.

IV. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in leafy greens crop subgroup, leaf petioles crop subgroup, head and stem Brassica crop subgroup, leafy Brassica greens crop subgroup and fruiting vegetables (Except cucurbits) at 10.0, 2.0, 5.0, 10.0 and 1.0 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 as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, 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 under the ''ADDRESSES'' section (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 regulation. 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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James 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, 1921Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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 regulation under docket control number [OPP–300839] (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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official 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 section 408(d) of the FFDCA 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 specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 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 officials 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.

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 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: March 30, 1999.

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. 321(q), 346a, and 371.

2. In § 180.482, in paragraph (a), by alphabetically adding the following commodities to the table:

§ 180.482 Tebufenozide; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	* * *
Fruiting Vegetables (Except cucurbits).	1.0
Head and stem Brassica crop subgroup.	5.0
Leafy Brassica greens crop subgroup.	10.0
Leafy greens crop subgroup	10.0
Leaf petioles crop subgroup	2.0
* * * *	* * *

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[FR Doc. 99–9060 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300833; FRL–6073–3]

RIN 2070–AB78

Cyprodinil; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of cyprodinil in or on strawberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on strawberries This regulation establishes a maximum permissible level for residues of cyprodinil in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on May 31, 2000.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300833], 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-300833], 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@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300833]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, 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. 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9362; schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), is establishing a tolerance for residues of the fungicide cyprodinil, in or on strawberries at 5.0 part per million (ppm). This tolerance will expire and is revoked on May 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preeamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

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

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

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

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

II. Emergency Exemption for Cyprodinil on Strawberries and FFDCA Tolerances

According to the Applicant, gray mold caused by *Botrytis cinerea* is one of the most severe problems limiting strawberry production in Florida. Gray mold affects both flowers and fruit, resulting in marketable yield losses. Historically, gray mold has been controlled with bloom sprays of Rovral (iprodione) then weekly applications of captan until harvest. This schedule has provided good control of gray mold, especially for relatively resistant varieties, such as Oso Grande.

However, a shift toward the usage of certain varieties of strawberries which have specific desirable attributes (i.e., production, pest resistance or tolerance, etc.) but are more susceptible to gray mold, the development of gray mold strains with resistance to iprodione, and limitation of iprodione use on strawberries recently instituted as part of the iprodione reregistration has resulted in a situation where growers expect heavy losses without the requested product, Switch (which contains the active ingredients cyprodinil and fludioxonil). EPA has authorized under FIFRA section 18 the use of cyprodinil on strawberries for control of gray mold in Florida. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of cyprodinil in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on May 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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

III. Aggregate Risk Assessment and Determination of Safety

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) .

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 cyprodinil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of cyprodinil on strawberries at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

B. Toxicological Endpoint

1. *Acute toxicity.* No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

2. *Short-and intermediate-term toxicity.* A no observed adverse effect level (NOAEL) of 25 milligrams/kilogram/day (mg/kg/day) was selected from the 21-day dermal rat study. The effect observed at the lowest adverse effect level (LOAEL) of 125 mg/kg/day

in this study was hunched posture in females.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for cyprodinil at 0.03 mg/kg/day. This RfD is based on a NOAEL of 2.7 mg/kg/day and an uncertainty factor of 100. The NOAEL was taken from the chronic rat study; at the LOAEL of 35.6 mg/kg/day, effects observed were histopathological alterations in the liver *spongiosis hepatis* in males.

4. *Carcinogenicity.* Cyprodinil is classified as a ''not likely'' human carcinogen, based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.532) for the residues of cyprodinil, in or on a variety of raw agricultural commodities. Mention any tolerances of special relevance and meat, milk, poultry and egg tolerances, if applicable. Risk assessments were conducted by EPA to assess dietary exposures and risks from cyprodinil 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. In this case, an acute risk assessment was not conducted. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

ii. *Chronic exposure and risk.* Tolerance level residues and 100% crop treated were assumed to calculate dietary exposure for the U.S. population and population subgroups from residues on published and proposed uses. Chronic exposure from food uses of cyprodinil represents 6% of the RfD for the U.S. population and 21% of the RfD for nursing infants (< 1 yr), the subgroup most highly exposed.

2. *From drinking water.* Cyprodinil is considered to be persistent in water and mobile in most soils; under most conditions though, cyprodinil will have a low potential for movement into groundwater at high concentrations. There is potential for cyprodinil to contaminate surface water as runoff and as a sorbed species through erosion of soil particles. There is no established Maximum Contaminant Level (MCL) for residues of cyprodinil in drinking water. No health advisory levels for cyprodinil in drinking water have been established.

The Agency has calculated drinking water levels of comparison (DWLOCs) for chronic exposure to cyprodinil in surface and groundwater. A DWLOC is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. Toxicity endpoints, default body weight (70 kg for males, 60 kg for females, and 10 kg for nursing infants < 1 year old) and default drinking water consumption estimates (2 L/day for adults, 1 L/day for nursing infants) are used to calculate the actual DWLOCs. The DWLOC represents the concentration level in surface water or groundwater at which aggregate exposure to the chemical is not of concern.

Using the SCI-GROW screening model, the Agency calculated an Estimated Environmental Concentration (EEC) of cyprodinil in groundwater for use in human health risk assessments. This value represents an upper bound estimate of the concentration of cyprodinil that might be found in groundwater assuming the maximum application rate allowed on the label of the highest use pattern.

The Agency used the PRZM-EXAMS model to estimate EECs for cyprodinil in surface water. PRZM-EXAMS is a more refined Tier II assessment. The EECs from these models are compared to the DWLOCs to make the safety determination.

i. *Acute exposure and risk.* This risk assessment was not conducted. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

ii. *Chronic exposure and risk.* Using the SCI-GROW model, the maximum long-term estimated concentration in groundwater is not expected to exceed 0.04 parts per billion (ppb). The chronic estimated concentration in surface water, using the PRZM-EXAMS model, is 51 ppb. The DWLOC for the U.S. population was calculated to be 995 ppb; the DWLOC for the most sensitive subgroup, nursing infants < 1 yr. old, was 236 ppb. As concentrations of cyprodinil in groundwater and surface water do not exceed the calculated DWLOCs, the Agency concludes with reasonable certainty that chronic exposure to cyprodinil in drinking water is not of concern.

3. *From non-dietary exposure.* Cyprodinil is currently not registered for use on any sites that would result in non-occupational, non-dietary exposure; therefore, such exposure is not expected and not incorporated into EPA's aggregate risk assessment.

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 cyprodinil 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, cyprodinil 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 cyprodinil has a common mechanism of toxicity with other substances. For more 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.* This risk assessment was not conducted. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to cyprodinil from food will utilize 6% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is nursing infants less than 1 year of age (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. Estimated chronic environmental concentrations of cyprodinil in surface water and groundwater do not exceed chronic DWLOCs calculated by the Agency;

therefore, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

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 registered uses of this chemical that would result in non-dietary, non-occupational exposure. This risk assessment was not conducted.

4. *Aggregate cancer risk for U.S. population.* Cyprodinil is classified as a ''not likely'' human carcinogen, based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential. This risk assessment is not required.

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 cyprodinil 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 cyprodinil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a 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 MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rat developmental study, the maternal NOAEL was 200 mg/kg/day, based on decreased body weight, body weight gain, and food consumption at the LOAEL of 1,000 mg/kg/day. The developmental NOAEL was 200 mg/kg/day, based on increased incidence of skeletal variations (primarily absent or reduced ossification of the metacarpal) and on decreased mean fetal weight at the LOAEL of 1,000 mg/kg/day. In the rabbit developmental toxicity study, the maternal NOAEL was 150 mg/kg/day, based on decreased body weight gain at the LOAEL of 400 mg/kg/day. The developmental NOAEL was 150 mg/kg/day and the LOAEL was 400 mg/kg/day, based on increased incidence of 13th rib.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental NOAEL was 81 mg/kg/day, based on decreased parental female premating body weight gain at the LOAEL of 326 mg/kg/day. The Agency considers significant increases in kidney and liver weight at the 326 mg/kg/day dose as supportive evidence of toxicity. The reproductive/developmental NOAEL was 81 mg/kg/day and the LOAEL was 326 mg/kg/day, based on decreased F1 and F2 pup weight during lactation and continuing into adulthood for F1 rats.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for cyprodinil is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

v. *Conclusion.* There is a complete toxicity database for cyprodinil and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. The Agency determined that for cyprodinil, the 10x factor to account for enhanced sensitivity of infants and children should be removed.

2. *Acute risk.* This risk assessment was not conducted. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to cyprodinil from food will utilize 21% of the RfD for nursing infants less than one year old, the infant and children subgroup most highly exposed. 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. Because the chronic DWLOCs are not exceeded by estimated chronic environmental concentrations in groundwater or surface water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* There are no residential uses for this chemical; this risk assessment is not required.

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 cyprodinil residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is understood based on metabolism studies in stone fruit, pome fruit, wheat, tomatoes and potatoes. The residue of concern is parent cyprodinil only. There are no animal feed items associated with the strawberry use; data on the nature of the residue in animals are not required for the section 18 action or the establishment of this tolerance.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC) is available to enforce the tolerance expression; OPP concludes that the method will be suitable for enforcement purposes once revisions recommended by the Analytical Chemistry Laboratory (ACL) are incorporated. 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, (703) 305–5229.

C. Magnitude of Residues

Residues of cyprodinil are not expected to exceed 5.0 ppm in strawberries as a result of the proposed section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican residue limits established for

cyprodinil on strawberries. Therefore, no compatibility problems exist for the proposed tolerance.

E. Rotational Crop Restrictions

No rotational crop study was submitted with the petition for use of cyprodinil on strawberries. As strawberries are considered to be a rotated crop, treated crop acreage shall be rotated to strawberries only.

V. Conclusion

Therefore, the tolerance is established for residues of cyprodinil in strawberries at 5.0 ppm.

VI. Objections and Hearing Requests

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

Any person may, by June 14, 1999, 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 under the ''ADDRESSES'' section (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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James 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, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300833] (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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. 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 specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 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 officials 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.

IX. 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 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: April 2, 1999.

Donald Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a, and 371.

2. In §180.532, by revising paragraph (b) to read as follows:

§180.532 Cyprodinil; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide cyprodinil (4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Strawberries	5.0	5/31/00

* * * * *

[FR Doc. 99–9059 Filed 4-13-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300829; FRL 6072–2]

RIN 2070–AB78

Fluthiacet-methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of fluthiacet-methyl in or on soybean seed. Novartis Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300829], 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–300829], 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 be submitted electronically by sending electronic mail (e-mail) to: opp-

docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300829]. 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; tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 1997 (62 FR 14426) (FRL–5595–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) 6F4614, for tolerance by Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the herbicide, fluthiacet-methyl, acetic acid [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester, in or on soybeans at 0.01 part per million (ppm).

I. Background 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 fluthiacet-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of fluthiacet-methyl on soybean seed at 0.01 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. A rat acute oral study with a LD_{50} greater than (>) 5,000 milligrams (mg)/kilogram (kg) for males and females.

2. A 90-day rat feeding study with a no observed adverse effect level (NOAEL) of 100 ppm 6.19 mg/kg/day for males and 6.80 mg/kg/day for females and a lowest observed adverse effect level (LOAEL) of 3,500 ppm 216 mg/kg/day for males and 249 mg/kg/day for females based on decreased body weight gains as well as effects on hematology, clinical chemistry, urinalysis parameters, liver weights and microscopic pathology.

3. A 90-day mouse feeding study with a NOAEL of 10 ppm (1.3 mg/kg/day for males and 1.6 mg/kg/day for females) and a LOAEL of 500 ppm (66 mg/kg/day for males and 83 mg/kg/day for females) based on effects on the erythropoietic system and the liver.

4. A 6-week dog dietary study with a NOAEL of 236 mg/kg/day for males and 77.7 mg/kg/day for females and a LOAEL of 709 mg/kg/day for males and 232 mg/kg/day for females based on decreased body weight gain.

5. A 28-day rat dermal study with a NOAEL of 1,000 mg/kg/day, the highest dose tested (HDT).

6. A 1-year dog chronic feeding study with a NOAEL of 57.6 mg/kg/day in males and 30.3 mg/kg/day for females and a LOAEL of 582 mg/kg/day for males and 145 mg/kg/day for females based on effects observed in the erythropoietic system and the liver.

7. A rat chronic feeding/carcinogenicity study with a NOAEL for systemic toxicity of 50 ppm (2.1 mg/kg/day in males and 2.5 mg/kg/day in females) and a LOAEL for systemic toxicity of 3,000 ppm (130 mg/kg/day in males and 154 mg/kg/day in females) based on decreased body weights, liver toxicity, pancreatic toxicity and microcytic anemia in males; and liver toxicity, uterine toxicity and slight microcytic anemia in females. In males only at 3,000 and 5,000 ppm (130 and 219 mg/kg/day, respectively) there was an increase in the trend toward pancreatic exocrine adenomas and pancreatic islet cell adenomas.

8. A mouse carcinogenicity study with a NOAEL for systemic toxicity of 1 ppm (0.1 mg/kg/day in males and females) and a LOAEL for systemic toxicity of 10 ppm (1.0 mg/kg/day in males and 1.2 mg/kg/day in females) based on non-neoplastic liver findings. In males (and possibly females) at 100 (10 mg/kg/day for males and 12 mg/kg/day for females) and 300 ppm (32 mg/kg/day for males and 37 mg /kg/day for females) there was an increase in the number of mice with hepatocellular adenomas, carcinomas and/or adenomas/carcinomas.

9. A 2-generation rat reproduction study with a parental systemic NOAEL of 25 ppm (1.59 mg/kg/day for males and 1.73 mg/kg/day for females) and a systemic LOAEL of 500 ppm (31.8 mg/kg/day for males and 35.2 mg/kg/day for females) based on reduction in male body weights/gains and hepatic pathology; and the reproductive NOAEL of 500 ppm (31.8 mg/kg/day for males and 37.1 mg/kg/day for females) and the reproductive LOAEL of 5,000 ppm (313 mg/kg/day for males and 388 mg/kg/day for females) based on decreases in mean litter body weights.

10. A rat developmental study with a maternal NOAEL and reproductive NOAEL equal to or greater than 1,000 mg/kg/day HDT.

11. A rabbit developmental study with a maternal and developmental NOAEL of 1,000 mg/kg/day HDT and with a developmental NOAEL of 300 mg/kg/day and with a developmental LOAEL of 1,000 mg/kg/day based on slight non-significant increased incidence of irregularly shaped sternebrae attributed to a delay in fetal development.

12. An acute rat neurotoxicity study with a NOAEL of 2,000 mg/kg HDT.

13. A rat subchronic neurotoxicity study with a systemic NOAEL of 10 ppm (0.576 mg/kg/day) in males and 20,000 ppm (1,354 mg/kg/day), HDT in females and a systemic LOAEL of 10,000 (556 mg/kg/day) in males based on decreased body weight and food consumption and with a neurotoxicity NOAEL of 20,000 ppm (1,128 mg/kg/day for males and 1,354 mg/kg/day for females), HDT.

14. Fluthiacet-methyl was negative for mutagenic/genotoxic effects in bacterial or cultured mammalian cells and did not cause DNA damage in bacterial or primary rat hepatocytes. *In vitro* cytogenetic assays performed with two different mammalian cell lines demonstrated that fluthiacet-methyl is clastogenic both in the presence and absence of S9 activation. Although the test substance is negative for micronuclei induction in mouse bone marrow, a significant increase in micronuclei is seen in stimulated rat liver cells following *in vivo* exposure.

15. Based on the results of the rat metabolism studies, fluthiacet-methyl was absorbed rapidly at both the low and high dose for both male and female rats. Repeated oral dosing had no effect on extent of absorption. Tissue levels of ^{14}C-fluthiacet-methyl derived radioactivity in the single and repeated low dose groups did not exceed 0.018 ppm for any tissue. At the single high dose, female rats showed higher levels of ^{14}C-fluthiacet-methyl derived radioactivity in tissues than males except for muscle, brain, fat and plasma. Excretion in males was predominantly in feces for all dose groups, with between 67–87% of administered radioactivity excreted by this route. In females, the percentage of administered radioactivity in urine across all dose groups 40–48% was approximately equivalent to the percent excreted in feces 39–52%. The greater fecal excretion in males was based on a greater percentage excretion in bile for males 37% vs. females 19%.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA could not identify any toxicological effects that could be attributable to a single oral exposure (dose) in any of the available toxicological studies.

2. *Short- and intermediate-term toxicity*. EPA could not identify any toxicological effects that could be attributable to short- or intermediate-term dietary exposure .

3. *Chronic toxicity*. EPA has established the RfD for fluthiacet-methyl at 0.001 mg/kg/day. This Reference Dose (RfD) is based on the NOAEL of 0.1 mg/kg/day in the mouse carcinogenicity study and using an uncertainty factor of 100 (10x for inter-species extrapolation, 10x for intra-species variability). The LOAEL in this study, 1.0 and 1.2 mg/kg/day for males and females, respectively, was based on non-neoplastic liver findings (centrilobular necrosis, centrilobular cell degeneration, histiocytic pigmentation and karyomegaly).

4. *Carcinogenicity*. The Health Effects Division Cancer Assessment Review Committee has classified fluthiacet-methyl in accordance with the Agency's *Proposed Guidelines for Carcinogen Risk Assessment* (April 10, 1996) as ''likely to be a human carcinogen.'' Evidence for carcinogenicity was demonstrated by the presence of pancreatic tumors (exocrine adenomas, islet cell adenomas and combined islet cell adenomas + carcinomas) in male rats and liver tumors (adenomas and combined adenomas + carcinomas) in male and female mice. The Committee recommended a linear low-dose approach (Q_1*) for human characterization and determined that extrapolation should be based on the combined hepatocellular tumors (adenomas and carcinomas) in male mice.

C. Exposures and Risks

1. *From food and feed uses*. The proposed tolerance in or on the raw agricultural commodity: soybean seed at 0.01 ppm is the first to be established for residues of the herbicide, fluthiacet-methyl, acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester. There is no reasonable expectation of residues of fluthiacet-methyl occurring in meat, milk, poultry, or eggs from its use on soybeans. Risk assessments were conducted by EPA to assess dietary exposures from fluthiacet-methyl as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: 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; 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. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

A chronic exposure analysis for soybeans was conducted assuming 25% of the soybean crop is treated. EPA estimates that 25% of the total soybeans crop acres will not be exceeded by this new broadleaf herbicide within the next 5 years.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. EPA finds that the PCT information is reliable and has a valid basis. Before the petitioner can increase production of product for treatment of greater than 25% of total soybean acres, permission from the Agency must be obtained. The 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 fluthiacet-methyl in a particular area.

i. *Acute exposure and risk*. EPA could not identify any toxicological effects that could be attributable to a single oral exposure (dose) in any of the available

toxicological studies. This risk assessment is not needed.

ii. *Chronic exposure and risk.* The Reference Dose (RfD) for fluthiacet-methyl is 0.001 mg/kg/day. This value is based on the systemic NOAEL of 0.1 mg/kg/day in the mouse carcinogenicity study with a 100-fold safety factor to account for interspecies extrapolation (10x) and intraspecies variability (10x).

A Dietary Exposure Evaluation Model (DEEM) chronic exposure analysis was conducted using tolerance levels for soybeans assuming that 25% of the crop is treated to estimate dietary exposure for the general population and 22 subgroups. The chronic analysis showed that exposures from the tolerance level residues in or on soybeans for non-nursing infants less than 1 years old (the subgroup with the highest exposure) would be 0.6% of the RfD. The exposure for the general U.S. population would be 0.1% of the RfD.

A lifetime dietary carcinogenicity exposure analysis was conducted for fluthiacet-methyl using the proposed tolerances along with the assumption of 25 percent of the crop treated and a Q* of 2.07×10^{-1} $(mg/kg/day)^{-1}$. A lifetime risk exposure analysis was also conducted using the DEEM computer analysis. The estimated cancer risk (2.06×10^{-7}) is less than the level that the Agency usually considers negligible for cancer risk estimates.

2. *From drinking water.* Drinking water estimated concentrations (DWECs) for surface water were calculated by generic expected environmental concentration (GENEEC) computer models to be an average of 0.3 parts per billion (ppb). The DWECs for ground water based on the computer model screening concentration in ground water (SCI-GROW) were calculated to be an average of 0.002 ppb.

3. *From non-dietary exposure.* There are no non-food uses of fluthiacet-methyl 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 fluthiacet-methyl 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, fluthiacet-methyl 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 fluthiacet-methyl 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.* EPA could not identify any toxicological effects that could be attributable to a single oral exposure (dose) in any of the available toxicological studies.

2. *Chronic risk.* Using the DEEM chronic exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fluthiacet-methyl from food will utilize 0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure, non-nursing infants less than 1 year old, utilize 0.6% of the RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. The drinking water level of comparisons (DWLOCs) for chronic exposure to fluthiacet-methyl in drinking water calculated for the U.S. population was 35 ppb and for non-nursing infants less than 1 year old the DWLOC was 10 ppb. The estimated average concentration in surface water for fluthiacet-methyl is 0.3 ppb and for ground water is 0.002 ppb. EPA's chronic drinking water levels of comparison are well above the estimated exposures for fluthiacet-methyl in water for the U.S. population and the subgroup of concern. Conservative model estimates (GENEEC and SCI-GROW) of the concentrations of fluthiacet-methyl in surface and ground water indicate that exposure will be minimal.

3. *Short- and intermediate-term risk.* EPA could not identify any toxicological effects that could be attributable to short or intermediate-term dermal or inhalation exposure. No systemic effects were observed in available dermal studies. In addition, no endpoints for short or intermediate-term exposure could be identified from available oral studies. A short- and intermediate-term risk assessment is not needed.

4. *Aggregate cancer risk for U.S. population—combined food and water.* A lifetime dietary carcinogenicity exposure analysis for fluthiacet-methyl estimated the cancer risk to be 2.06×10^{-7}, a level that the Agency usually considers negligible for cancer risk estimates. A DWLOC for cancer was calculated as 0.133 ppb. The estimated concentration in surface water and groundwater for fluthiacet-methyl for chronic exposure are 0.1 ppb (0.3 ppb (the 56-day concentration)/3) and 0.002 ppb, respectively. The model exposure estimates are less than the cancer DWLOC.

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 fluthiacet-methyl residues.

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

1. *Safety factor for infants and children—In general.* In assessing the potential for additional sensitivity of infants and children to residues of fluthiacet-methyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a 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.

In the prenatal developmental study with rabbits, *in utero* exposure did not result in maternal toxicity at 1,000 mg/kg/day. Developmental toxicity, however, was seen at this dose as a non-statistical increase in irregular sternebrae (an effect attributed to a delay in fetal development, a variation which is reversible). The occurrence of developmental toxicity at a dose at which no maternal toxicity was noted indicates an apparent susceptibility. EPA; however, determined that the apparent susceptibility is not convincing for the following reasons:

a. The increased incidence of irregular sternebrae was not statistically significant when compared to concurrent controls.

b. The increase occurred primarily at the limit-dose (1,000 mg/kg/day).

c. It was the only anomaly observed in the study (i.e., a single variation).

d. The dose response was not strong since there was only a small increase in the litter incidences between the low-dose (5 mg/kg/day) and the high-dose (1,000 mg/kg/day), with the mid- and high-dose groups having 8 litters with this variation.

e. This endpoint is considered appropriate to establish a LOAEL, but not appropriate for risk assessments.

Based on these factors, the Agency concluded that there is no increased susceptibility in the rabbit study.

The Agency concluded that an extra safety factor to protect infants and children is not needed based on the following considerations:

The available hazard assessment studies indicated no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to fluthiacet-methyl, and exposure assessments do not indicate a concern for potential risk to infants and children, based upon the very low application rates and quick dissipation of fluthiacet-methyl; the dietary exposure estimates using field study data result in an overestimate of dietary exposure; modeling data are used for ground and surface source drinking water exposure assessments resulting in estimates considered to be upper-bound concentrations; and there are currently no registered residential uses for fluthiacet-methyl.

2. *Conclusion*. There is a complete toxicity database for fluthiacet-methyl and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in soybeans, rotational crops, and livestock is adequately understood. The residues of concern for the tolerance expression are parent per se. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use of fluthiacet-methyl on soybeans.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas-liquid chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, 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, (703) 305–5229.

C. 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 of fluthiacet-methyl on soybeans. Residues of fluthiacet-methyl in all treated and untreated samples of soybeans, hulls, meal, crude oil, refined oil and aspirated grain fractions were less than the method level of quantification (LOQ). The nature of the residue in plants is adequately understood for the purposes of these tolerances

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex), Canadian, or Mexican Maximum Residue Levels (MRLs) for fluthiacet-methyl at this time.

E. Rotational Crop Restrictions

No tolerances for inadvertent residues of fluthiacet-methyl are required in rotational crops.

IV. Conclusion

Therefore, the tolerance is established for residues of fluthiacet-methyl in soybeans seeds at 0.01 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 as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 14, 1999, 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 under the ''ADDRESSES'' section (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 regulation. 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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James 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, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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 regulation under docket control number [OPP–300829] (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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 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 officials 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.

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 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: March 31, 1999.

Susan B. Hazen,

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. 321(q), 346a, and 371.

2. Section 180.551 is added to read as follows.

§180.551 Fluthiacet-methyl; tolerances for residues.

(a) *General.* A tolerance is established for residues of the herbicide, fluthiacet-methyl, acetic acid [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester, in or on the food commodity:

Commodity	Parts per million
Soybean seed	0.01

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

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

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

[FR Doc. 99–9057 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300831; FRL–6072–3]

RIN 2070–AB78

Cyromazine; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the insecticide cyromazine and its metabolites in or on lima beans at 5.0 part per million (ppm) for an additional 2–year period.This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on lima beans. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective April 14, 1999. Objections and requests for hearings must be received by EPA, on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300831], 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–300831], 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@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300831]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, 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. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367; ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 10, 1997 (62 FR 65030) (FRL–5758–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the combined residues of cyromazine and its metabolites in or on lima beans at 5.0 ppm, with an expiration date of December 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of cyromazine on lima beans for this years growing season due to the continuing emergency situation in California. Insect pressure from the leafminer has increased over the past several years due to the rapid increase in the insect's resistance to currently registered insecticides and the resulting increase in insect populations. With the end of the California drought, overwintering has occurred in leafminer populations and mild weather has added to the resistance population with outbreaks increasing in the summer and carrying through the end of the harvest season.

The damage caused by the leafminer in lima beans begins in the leaf tissue of the plant. The adult leafminers lay eggs in the leaf tissue, and then the eggs hatch and the larvae eat the leaf tissue underneath the epidermis and cuticle, leaving tracks or mines. These mines damage or kill the plant leaf, which in

turn reduces photosynthesis, and greatly diminishes yield or kills the plant outright.

There are few registered alternatives for control of leafminer in lima beans. In general, the registered alternatives (including Dimethoate, Lannate, Orthene, and Saf T Soaps) provide such a low level of control due to resistance and poor fit (programmatically) that they often have a negative impact on leafminer populations. This is primarily because these insecticides kill beneficials that control leafminers. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of cyromazine on lima beans for control of leafminers in California.

EPA assessed the potential risks presented by residues of cyromazine in or on lima beans. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 10, 1997 (62 FR 65030) (FRL–5758–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lima beans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by June 14, 1999, 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 under the ''ADDRESSES'' section (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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James 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, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300831] (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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. 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 specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 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 officials 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.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: March 30, 1999.

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. 321(q), 346a, and 371.

§180.414 [Amended]

2. In §180.414, by amending the table in paragraph (b) by revising the date for Beans, lima from ''12/31/98'' to read ''12/31/01''.

[FR Doc. 99–9058 Filed 4-13-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300771A; FRL–6071–6]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances for Emergency Exemptions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of January 20, 1999, a document establishing time-limited tolerances for residues of imidacloprid in/on legume vegetables (Crop Group 6) and strawberries, in connection with issuance of emergency exemptions for these uses. The levels given for tolerances were listed correctly throughout most of the document, but were inadvertently transposed in the last table. This document corrects this error by listing the tolerances levels correctly.

DATES: This correction becomes effective January 20, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a document on January 20, 1999 (64 FR 3037) (FRL–6051–6), establishing time-limited tolerances for residues of imidacloprid in/on legume vegetables (Crop Group 6, 40 CFR 180.41(c)(6)) and strawberries. This action was in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on legumes and strawberries. This regulation established maximum permissible levels for residues of imidacloprid in/on these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on June 30, 2000. In publishing these tolerances, the tolerance levels for these commodities were listed correctly throughout the document, but were inadvertently transposed in the final table. The correct tolerance levels are 0.1 ppm in/on strawberries, and 1.0 ppm in/on legume vegetables. This document will correct the tolerance levels.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is a technical corection to the **Federal Register** and 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: March 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

In FR Doc. 99–1253, published on January 20, 1999 (64 FR 3037), make the following correction:

§ 180.472 [Corrected]

On page 3044, in the third column, in § 180.472, in paragraph (b), the table is corrected to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	* *	*
Legume vegetables	1.0	6/30/00
Strawberry	0.1	6/30/00
* *	* *	*

* * * * *

[FR Doc. 99–9225 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300835; FRL–6073–5]

RIN 2070–AB78

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of (*N*-(phosphonomethyl)glycine) resulting from the use of the isopropylamine salt of glyphosate or the monoammonium salt of glyphosate in or on barley, grain; barley, bran; beets, sugar, dried pulp; beets, sugar, roots; beets, sugar, tops; canola, meal; canola, seed; grain crops (except wheat, corn, oats, grain sorghum, and barley); and legume vegetables (succulent and dried) crop group (except soybeans). The residues from treatment of sugar beets and canola include residues in or on sugarbeet and canola varieties which have been genetically altered to be tolerant of glyphosate. Entries for grain crops and sugar beets will replace current entries. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 14, 1999. Objections and requests for hearings must be received by EPA on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300835], 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–300835], 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 be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300835]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5697; tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 20, 1998 (63 FR 8635) (FR–5768–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of pesticide petitions (PP) 2E4118 and 7F4886 for tolerance by Monsanto Company, 700 14th Street, Suite 1100, Washington, DC 20005 address. This notice included a summary of the petition prepared by Monsanto Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.364 be amended by establishing tolerances for residues of the herbicide (*N*-(phosphonomethyl)glycine), in or on the imported raw agricultural commodities barley, grain at 20 parts per million (ppm); barley bran and pearled barley at 60 ppm; cereal grains group (except wheat, corn, oats, grain sorghum, and barley) at 0.1 ppm; canola, seed at 10 ppm; canola, meal at 25 ppm; legume vegetables (succulent or dried) group (except soybeans) at 5 ppm (PP 2E4118) and in or on the commodies beets, sugar, tops (leaves) at 10 ppm; beets, sugar, roots at 10 ppm; and beets, sugar, pulp, dried at 25 ppm (PP 7F4886).

The correct tolerance expression for glyphosate is (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate. The correct terminology for cereal grains; beets, sugar, tops (leaves); and beets, sugar, pulp, dried ; is grain crops; beet, sugar, tops; and beets, sugar, dried pulp, respectively. The Agency is correcting the terminology with this rule. During the course of the review the Agency determined that available data support tolerances of 20 ppm for barley bran, 15 ppm for canola, meal and that a tolerance for barley, pearled is not necessary. Concentration in barley, pearled is not expected.

The Agency is amending the proposal to read that 40 CFR 180.364 be amended by establishing tolerances for residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or the raw agricultural commodities barley, grain at 20 ppm; barley, bran at 30 ppm; grain crops (except wheat, corn, oats, grain sorghum, and barley) at 0.1 ppm; canola, seed at 10 ppm; canola, meal at 15 ppm; beets, sugar, tops at 10 ppm; beets, sugar, roots at 10 ppm; and beets, sugar, dried pulp at 25 ppm; and legume vegetables (succulent and dried) group (except soybeans) at 5.0 ppm.

I. Background 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 glyphosate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate on barley, bran at 20 ppm; barley, grain at 30 ppm; beets sugar, dried pulp at 25 ppm; beets, sugar, roots at 10 ppm; beets, sugar, tops at 10 ppm; canola, meal at 15 ppm; canola, seed at 10 ppm; grain crops (except wheat, corn, oats, grain sorghum, and barley) at 0.1 ppm; and legume vegetables (succulent and dried) group (except soybeans) at 5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and Toxicity Category IV. Technical glyphosate is not a dermal sensitizer.

2. A 21-day dermal toxicity study rabbits were exposed to glyphosate at levels of 0, 10, 1,000, or 5,000 milligrams/kilogram/day (mg/kg/day). The systemic no observed adverse effect level (NOAEL) was 1,000 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 5,000 mg/kg/day based on decreased food consumption in males. Although serum lactate dehydrogenase was decreased in both sexes at the high dose, this finding was not considered to be toxicologically significant.

3. A 1-year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a (NOAEL) of 500 mg/kg/day.

4. A 2-year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

5. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) (males) and 34 mg/kg/day (HDT) (females) and a systemic NOAEL of 31 mg/kg/day (HDT)(males) and 34 mg/kg/day (HDT) (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

6. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 1, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females) (HDT) and a systemic NOAEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver weight) at 940 mg/kg/day (males) (HDT) and 457 mg/kg/day (females) based on decreased body weight gain 1,183 mg/kg/day (females) (HDT).

7. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental (fetal) NOAEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternebrae, and decrease in fetal body weight at 3,500 mg/kg/day, and a maternal NOAEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head, and deaths at 3,500 mg/kg/day (HDT).

8. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a developmental NOAEL of 175 mg/kg/day (insufficient litters were available at 350 mg/kg/day to assess developmental toxicity); a maternal NOAEL of 175 mg/kg/day based on increased incidence of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day (HDT).

9. A multi-generation reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with the parental NOAEL/LOAEL 30 mg/kg/day (HDT). The only effect observed was an increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) in the high-dose male F3b pups. Since the focal tubular dilation of the kidneys was not observed at the 1,500 mg/kg/day level (HDT) in the rat reproduction study discussed below, but was observed at the 30 mg/kg/day level (HDT) in the 3-generation rat reproduction study the latter was a spurious rather than glyphosate-related effect. Therefore, the parental and reproductive (pup) NOAELs are 30 mg/kg/day.

10. A 2-generation reproduction study with rats fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a systemic NOEL of 500 mg/kg/day based on soft stools in Fo and F1 males and females at 1,500 mg/kg/day (HDT) and a reproductive NOEL 1,500 mg/kg/day (HDT).

11. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice (all negative).

B. Toxicological Endpoints

1. *Acute toxicity*. No toxicological endpoint attributable to a single dose was identified in oral studies including the rat and rabbit developmental studies. There are no data requirements for acute or subacute neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses and glyglyphosate lacks a leaving group.

2. *Short- and intermediate-term toxicity*. No short or intermediate dermal or inhalation endpoints were identified. In a 21-day dermal toxicity study with rabbits, no systemic or dermal toxicity was seen following repeated applications of glyphosate at 0, 100, 1,000, or 5,000 mg/kg/day. The NOAEL was 1,000 mg/kg/day and the LOAEL was 5,000 mg/kg/day based decreased food consumption in males. In addition, the use of 3% dermal absorption rate (estimated) in conjunction with the oral NOAEL of 175 mg/kg/day established in the rabbit development study yields a dermal equivalent dose of greater than 5,000 mg/kg/day.

Based on the low toxicity of the formulation product (Toxicity Category III and IV) and the physical characteristics of the technical product there is minimal concern for potential inhalation exposure or risk. The acute inhalation study was waived for technical glyphosate. Some glyphosate end-use products are in Toxicity Category I or II for eye or dermal irritation. The Reregistration Eligibility Decision Document for Glyphosate (Sept, 1993) indicates that the Agency is not adding any additional personal protective equipment (PPE) requirements to labels of end-use products, but that it continues to recommend the PPE and precautionary statements required for end-use products in Toxicity Categories I and II.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for glyphosate at 2.0 mg/kg/day. This RfD is based on the maternal NOAEL of 175 mg/kg/day from a rabbit developmental study and a 100-fold safety factor.

4. *Carcinogenicity*. Glyphosate has been classified as a Group E chemical-no evidence of carcinogenicity in two acceptable animal species.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.364) for the residues of (*N*-(phosphonomethyl)glycine and its metabolite aminomethylphosphonic acid resulting from the application of the Isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate, in or on a variety of raw agricultural commodities. Tolerances are established on kidney of cattle, goats, hogs, horses, and sheep at 4.0 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.5 ppm; and liver and kidney of poultry at 0.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate 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 not performed because no endpoints attributable to single dose were identified in the oral studies including rat and rabbit developmental studies. There are no data requirements for acute and subchronic neurotoxicity studies and no evidence of neurotoxicity in any of the toxicity studies at very high doses. The Agency concludes with reasonable certainty that glyphosate dose not elicit an acute toxicological response. An acute dietary risk assessment is not needed.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis was conduced using the (RfD) of 2.0 mg/kg/day based on the maternal NOAEL of 175 mg/kg/day from a developmental study and an uncertainty factor of 100 (applicable to all population groups) the Dietary Exposure Evaluation Model (DEEM) analysis assumed tolerance levels residues and 100% of the crop treated. These assumptions resulted in the following theoretical maximum residue contributions and % RfDs for certain population subgroups. The TMRC for the US population (48 states) was 0.029960 or 1.5% of the RfD, 0.026051 or 1.3% of the RfD for nursing infants (less than on 1 year old), 0.065430 or 3.3% of the RfD for non-nursing infants less than 1 year old; 0.064388 or 3.2% of the RfD for children (1-6 years old); 0.043017 or 2.2% of the RfD for children (7-12 years old); 0.030928 or 1.5% of the RfD for females (13+/nursing); 0.030241 or 1.5% of the RfD for non-Hispanic whites; and 0.030206 or 1.5% of the RfD for non-Hispanic blacks.

iii. *Chronic risk-carcinogenic.* Glyphosate has been classified as a group E chemical no evidence of carcinogenicity in two acceptable animal species.

2. *From drinking water.* Generic expected environmental concentration (GENEEC) and Screening concentration and ground water (SCI-GROW) models were run to produce estimates of glyphosate concentrations in surface and ground water, respectively. The drinking water exposure for glyphosate from the ground water screening model, SCI-GROW, yields a peak and chronic Estimated Environmental Concentration (EEC) of 0.0011 ppb in ground water. The GENEEC values represent upper-bound estimates of the concentrations that might be found in surface water due to glyphosate use. Thus, the GENEEC model predicts that glyphosate surface water concentrations range from a peak of 1.64 ppb to a 56 day average of 0.19 ppb. The model estimates are compared to drinking water level of comparison (DWLOC (chronic). The DWLOC (chronic) is the theoretical concentration of glyphosate in drinking water so that the aggregate chronic exposure (food+water+ residential) will occupy no more than 100% of the RfD. Glyphosate is registered for residential products, however, a residential exposure assessment is not required since there are no endpoints selected for either dermal or inhalation exposure. The Agency‘s default body weights and consumption values used to calculate DWLOCs are as follows: 70 kg/2L (adult male), 60 kg/2L (adult female), and 10 kg/1L (child).

i. *Acute exposure and risk.* An acute dietary endpoint and dose was not identified in the toxicology data base. Adequate rat and rabbit developmental studies did not provide a dose or endpoint that could be used for acute dietary risk purposes. Additionally, there were no data requirements for acute or subchronic rat neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

ii. *Chronic exposure and risk.* The DWLOC (chronic) (non-cancer) risk is calculated by multiplying the chronic water exposure (mg/kg/day) x (body weight) divided by the consumption (L) x 10^{-3} mg/ug. The DWLOCS are 69,000 µg/L for the U.S. population in 48 states, males (13+), non-Hispanic whites, and non-Hispanic blacks; and 19,000 for non-nursing infants (less than 1 year old) and children (1-6 years). The GENEEC and SCI-GROW estimated that average concentrations of glyphosate in the surface and ground water are less than the DWLOC (chronic). Therefore, taking into account present uses and uses proposed in this action, the Agency concludes with reasonable certainty that no harm will result from chronic aggregate exposure to glyphosate.

3. *From non-dietary exposure.* Glyphosate is currently registered for use on the following residential non-food sites: Around ornamentals, shade trees, shrubs, walk, driveways, flower beds and home lawns. Based on the registered uses of glyphosate, the potential for residential exposures exists. However, based on the low acute toxicity and lack of other toxicological concerns, glyphosate does not meet the Agency‘s criteria for residential data requirements. Exposures from residential uses are not expected to pose undue risks or harm to public health.

i. *Acute exposure and risk.* There are no acute toxicological concerns for glyphosate. Glyphosate has been the subject of numerous incident reports, primarily for eye and skin irritation injuries, in California. Some glyphosate end-use products are in Toxicity Categories I and II for eye and dermal irritation. The Reregistration Eligibility Decision Document for Glyphosate (SEP-1993) indicates the Agency is not adding additional personal protective equipment (PPE) requirements to labels of end-use products, but that it continues to recommend the PPE and precautionary statements required for end-use products in Toxicity Categories I and II.

ii. *Chronic exposure and risk.* Although there are registered residential uses for glyphosate, glyphosate does not meet the Agency’s criteria for residential data requirements, due to the lack of toxicological concerns. Incidental acute and/or chronic dietary exposures from residential uses of glyphosate are not expected to pose undue risks to the general population, including infants and children.

iii. *Short- and intermediate-term exposure and risk.* EPA identified no toxicological concerns for short-intermediate- and long-term dermal or inhalation routes of exposures. The Agency concludes that exposures from residential uses of glyphosate are not expected to pose undue risks.

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 glyphosate 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, glyphosate 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 glyphosate 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*. There was no acute dietary endpoint identified, therefore there are no acute toxicological concerns for glyphosate.

2. *Chronic risk*. Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glyphosate from food will utilize 1.5% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (less than 1 year) and children (1-6) as 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 glyphosate 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 glyphosate residues.

3. *Short- and intermediate-term risk*. Short-and intermediate-term dermal and inhalation risk is not a concern due to the lack of significant toxicological effects observed with glyphosate under these exposure scenarios.

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.

4. *Aggregate cancer risk for U.S. population*. Glyphosate has been classified as a Group E chemical, with no evidence of carcinogenicity for humans in two acceptable animal studies.

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 glyphosate 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 glyphosate, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a 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*. The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and postnatal exposure to glyphosate.

iii. *Conclusion*. There is a complete toxicity database for glyphosate and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Based on these data, there is no indication that the developing fetus or neonate is more sensitive than adult animals. No developmental neurotoxicity studies are being required at this time. A developmental neurotoxicity data requirement is an upper tier study and required only if effects observed in the acute and 90-day neurotoxicity studies indicate concerns for frank neuropathy or alterations seen in fetal nervous system in the developmental or reproductive toxicology studies. The Agency believes that reliable data support the use of the standard 100-fold uncertainty factor, and that a tenfold (10x) uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk*. There are no acute toxicological endpoints for glyphosate. The Agency concludes that establishment of the proposed tolerances would not pose an unacceptable aggregate risk.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glyphosate from food will utilize 3.0.% 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 glyphosate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. Short-term and intermediate-term dermal and inhalation risk is not a concern due to the lack of significant toxicological effects observed with glyphosate under these exposure scenarios.

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 glyphosate residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The qualitative nature of the residue in plants is adequately understood. Studies with a variety of plants including corn, cotton, soybeans, and wheat indicate that the uptake of glyphosate or its metabolite, aminomethylphosphonic acid (AMPA), from soil is limited. The material which is taken up is readily translocated. Foliarly applied glyphosate is readily absorbed and translocated throughout the trees or vines to the fruit of apples, coffee, dwarf citrus (calamondin), pears and grapes. Metabolism via *N*-methylation yields *N*-methylated glycines and phosphonic acids. For the most part, the ratio of glyphosate to AMPA is 9 to 1 but can approach 1 to 1 in a few cases (e.g., soybeans and carrots). Much of the residue data for crops reflects a detectable residue of parent (0.05 - 0.15 ppm) along with residues below the level of detection (<0.05 ppm) of AMPA. The terminal residue to be regulated in plants is glyphosate *per se*.

The qualitative nature of the residue in animals is adequately understood. Studies with lactating goats and laying hens fed a mixture of glyphosate and AMPA indicate that the primary route of elimination was by excretion (urine and feces). These results are consistent with metabolism studies in rats, rabbits, and cows. The terminal residues in eggs, milk, and animal tissues are glyphosate and its metabolite AMPA; there was no evidence of further metabolism. The

terminal residue to be regulated in livestock is glyphosate *per se*.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant commodities. These methods include GLC (Method I in *Pesticides Analytical Manual (PAM) II*; the limit of detection is 0.05 ppm) and High performance liquid chromotography (HPLC) with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A GC/MS method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL).

Adequate analytical methods are available for residue data collection and enforcement of the proposed tolerances of glyphosate in or on barley, bran, barley, grain; cereal grains (except wheat, corn, oats, grain sorghum, and barley); canola seed, canola meal, and legume vegetables group.

C. Magnitude of Residues

The available crop field trial residue data support the establishment of tolerances in barley, bran at 30 ppm; barley, grain at 20 ppm; beets, sugar, dried pulp at 25 ppm; beets, sugar, roots at 10 ppm; beets, sugar, tops at 10 ppm; canola, meal at 15 ppm; canola, seed at 10 ppm; and legume vegetable (succulent and dried) group (except soybeans) at 5 ppm. These entries for sugar beets will replace the current entry for beets, sugar at 0.2 ppm.

The available data support deleting the current entry for grain crops (except wheat, corn, oats, and grain sorghum) at 0.01 ppm and replacing it with grain crops (except wheat, corn, oats, grain sorghum and barley) at 0.1 ppm.

D. International Residue Limits

Codex Maximum residue levels (MRLs) exist for barley, dry peas, dry beans, and canola seed at 20, 5, 2, and 10 ppm respectively. Canadian MRLs exist for barley, barley milling fractions, pes, beans, and lentils at 10, 15, 5, 2 and 4 ppm respectively. Mexican MRLs exist for barley, peas, and beans at 0.1, 0.2, and 0.2 ppm, respectively. The Mexican and Canadian MRLs are lower than needed to cover residues form the proposed use pattens in the U.S. The tolerances to be established for group (excluding soybeans), barley, grain, and canola seed agree with Codex MRLs in place. The legume vegetable group tolerance includes tolerances for peas, beans, and lentils. The crop group tolerance on legume vegetables is necessary to cover use patterns in the Unitied States.

No Codex, Canadian or Mexican MRLs exist for sugar beets or canola meal, therefore harmonization is not an issue.

E. Rotational Crop Restrictions

Glyphosate labels currently bear is a 30-day minimum plant back interval for crops on which the use of glyphosate is not registered.

IV. Conclusion

Therefore, the tolerance is established for residues of (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the raw agricultural commodities barley, grain to 20 ppm; barley bran at 30 ppm; beets, sugar, dried pulp at 25 ppm; beets, sugar, roots at 10 ppm; beet, sugar, tops at 10 ppm; canola, meal at 15 ppm; canola, seed at 10 ppm; grain crops (except wheat, corn, oats, grain sorghum, and barley) at 0.1 ppm; and legume vegetables (succulent and dried) group (except soybeans) at 5 ppm. The entries for grain crops and beets, sugar replace current entries for these commodities.

V. Objections and Hearing Requests

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

Any person may, by June 14, 1999, 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 under the ''ADDRESSES'' section (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 regulation. 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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James 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; tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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 regulation under docket control number [OPP–300835] (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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the 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 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 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 officials 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.

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 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: March 30, 1999.

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. 321(q), 346a, and 371.

2. Section 180.364 is amended, by removing from the table in paragraph (a)(1), the commodities ''beets, sugar'' and ''grain crops (except wheat, corn, oats, and grain sorghum)'' and by alphabetically adding new paragraph (a)(3) to read as follows:

§180.364 Glyphosate; tolerances for residues.

(a) * * *

(3) Tolerances are established for residues of glyphosate, (*N*-(phosphonomethyl)glycine) resulting from the applicaiton of the isopropylamine salt of glyphosate and/or the monoammium salt of glyphosate in or on the following food commodities.

Commodity	Parts per million
Barley, bran	30
Barley, grain	20
Beets, sugar, dried pulp	25
Beets, sugar, roots	10
Beets, sugar, tops	10
Canola, meal	15
Canola, seed	10
Grain crops (except wheat, oats, grain sorghum and barley).	0.1
Legume vegetables (succculent and dried) group (except soybeans).	5

* * * * *

[FR Doc. 99–9317 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300842; FRL–6075–2]

RIN 2070–AB78

Dimethomorph; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide dimethomorph in or on squash, cantaloupe, watermelon, and cucumber at 1 part per million (ppm) for an additional 1½–year period.This tolerance will expire and is revoked on September 30, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on squash, cantaloupe, watermelon, and cucumber. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective April 14, 1999. Objections and requests for hearings must be received by EPA, on or before June 14, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300842], 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–300842], 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 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300842]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of February 18, 1998 (63 FR 8134) (FRL–5767–8), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber at 1.0 ppm, with an expiration date of March 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of dimetomorph on squash, cantaloupe, watermelon, and cucumber for this years growing season due to the continued need for control of crown rot (*Phytophthora capsici*) in Georgia. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of dimethomorph on squash, cantaloupe, watermelon, and cucumber for control of crown rot in Georgia.

EPA assessed the potential risks presented by residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of February 18, 1998 (63 FR 8134) (FRL–5767–8). Based on that data and information considered, the Agency

reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1½–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on September 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on squash, cantaloupe, watermelon, and cucumber after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by June 14, 1999, 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 under the ''ADDRESSES'' section (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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James 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, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300842] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. 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 special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, 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 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 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 officials 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.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: April 2, 1999.

Donald Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a), and 371.

§ 180.493 [Amended]

2. In § 180.493, by amending paragraph (b) by revising the date for the commodities cantaloupe, cucumber, squash, and watermelon ''3/31/00'' to read ''9/30/01''.

[FR Doc. 99–9318 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300834; FRL–6073–4]

RIN 2070–AB78

Oxyfluorfen; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on strawberries at 0.05 part per million (ppm) for an additional 2-year period. This tolerance will expire and is revoked on April 15, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective April 14, 1999. Objections and requests for hearings must be received by EPA, on or before June 14,1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300834], 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–300834], 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@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300834]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, 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.284, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463; madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 25, 1997 (62 FR 20111) (FRL–5713–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of oxyfluorfen in or on strawberries at 0.05 ppm, with an expiration date of April 15, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received requests from Ohio, Oregon and Washington to extend the use of oxyfluorfen on strawberries for the 1999 growing season as a result of changes in herbicide registrations during the last 10 years. Growers have lost use of the herbicides chloroxuron and diphenamid. More recently, the registered application rate of terbacil was reduced to half of its previous rate as a result terbacil no longer provides effective control of broadleaf weeds. The States predict that without the use of oxyfluorfen, yield losses will increase each year during the planting cycle. The planting cycle typically lasts 5 years. The crop is planted in year one and harvest takes place in each of years two through five. The States claim that yields will decrease incrementally each year and the normal 5 year rotation will have to be reduced to a 4 year rotation since by the fifth year the crop will be overrun with weeds and harvest will not be feasible. Mechanical cultivation can be used to control weeds between the rows however it is not effective for weeds in the rows. Weeds in the rows can significantly reduce yields and/or result in strawberry fields that must be abandoned prematurely. Hand weeding is effective yet is cost prohibitive for most growers. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of oxyfluorfen on strawberries for control of broadleaf weeds in strawberries.

EPA assessed the potential risks presented by residues of oxyfluorfen in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 25, 1997 (62 FR 20111) (FRL–5713–1). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on April 15, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by June 14, 1999, 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 under the ''ADDRESSES'' section (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). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James 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 ı2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the

requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300834] (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.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit 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 record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. 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 specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (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 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 officials 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.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: April 2, 1999.

Donald Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a, and 371.

§180.381 [Amended]

2. In §180.381, by amending paragraph (b) by revising the date for Strawberries to read ''4/15/01.''

[FR Doc. 99–9319 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule: correction.

SUMMARY: On April 8, 1999, the Legal Services Corporation (''Corporation'') published an amended appendix to its rule on financial eligibility setting out the maximum income levels for individuals eligible for legal assistance. This document corrects the year in the Appendix title.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, Office of General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; 202–336–8817.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income. On April 8, 1999 (64 FR 17108), the Legal Services Corporation (''Corporation'') published an amended appendix to its rule on financial eligibility setting out the maximum income levels for individuals eligible for legal assistance. The year in the Appendix heading was incorrectly listed as ''1998.'' It should be ''1999.'' This document corrects the year in the Appendix heading so that it reads ''Legal Services Corporation 1999 Poverty Guidelines.''

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set out in the preamble, 45 CFR part 1611 is amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

Appendix A—[Corrected]

2. The heading of Appendix A of Part 1611 is corrected to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 1999 POVERTY GUIDELINES [1]

* * * * * * *

[1] The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

Dated: April 8, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–9246 Filed 4–13–99; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1832

Electronic Funds Transfer (EFT)

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to specify that the clause at FAR 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, is to be used for NASA contracts instead of the clause at FAR 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration. This rule also establishes that the use of a nondomestic EFT mechanism is authorized and provides direction as to the action that is to be taken when such a mechanism is used for a contract. In addition, this rule specifies that the payment office is to be the designated office for the receipt of EFT information for all NASA contracts.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, NASA Headquarters, Code HK, Washington, DC 20546, telephone: (202) 358–0444, email: *joseph.lecren@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAR EFT coverage was revised on March 4, 1999 (64 FR 10538–10544). Included were changes to the solicitation provision and contract clauses coverage at FAR 32.1110. FAR 32.1110(a) requires that the clause at either FAR 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or FAR 52.232–34, Payment by Electronic Funds

Transfer—Other than Central Contractor Registration, be inserted in contracts depending on whether the Central Contractor Registration (CCR) database will be used. NASA has chosen not to use the CCR. The NFS rule states that the clause at FAR 52.232–34 is to be used. Another FAR change occurs at 32.1110(b), which states that the clause at FAR 52.232–33 or 52.232–34 needs to clearly address the use of a nondomestic EFT mechanism if the agency head has authorized their use. The NFS rule establishes that the use of a nondomestic EFT mechanism has been authorized and specifies the action to be taken with the clause at FAR 52.232–34. Furthermore, FAR 32.1110(c) requires the clause at 52.232–35 be inserted in contracts if agency procedures permit the submission of EFT information to other than the payment office. The NFS rule requires that the payment office be the designated office for the receipt of EFT information for all NASA contracts.

Impact

Regulatory Flexibility Act

This rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1832

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR part 1832 is amended as follows:

PART 1832—CONTRACT FINANCING

1. The authority citation for 48 CFR part 1832 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1832.11—[Added]

2. Subpart 1832.11 is added to read as follows:

Subpart 1832.11—Electronic Funds Transfer

1832.1110 Solicitation provision and contract clauses. (NASA supplements paragraphs (a), (b), and (c)).

(a)(1) NASA does not use the Central Contractor Registration. Use the clause at FAR 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(b) In accordance with FAR 32.1106(b), the use of a nondomestic EFT mechanism is authorized. When a nondomestic EFT mechanism is used, the contracting officer shall replace the paragraph at FAR 52.232–34(c) with a description of the EFT mechanism that will be used for the contract.

(c) The payment office shall be the designated office for receipt of contractor EFT information for all NASA contracts.

[FR Doc. 99–9311 Filed 4–13–99; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 040999A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels using Trawl Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the portion of the 1999 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using trawl gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 11, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the portion of the TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI as 38,475 metric tons (mt). See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the portion of the TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 34,475 mt, and is setting aside the remaining 4,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the 1999 TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing allowance established for catcher vessels will soon be reached. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient Pacific cod to support bycatch needs in other anticipated groundfish fisheries throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: April 9, 1999.

Gary C. Matlock,

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

[FR Doc. 99–9306 Filed 4–9–99; 4:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 71
Wednesday, April 14, 1999

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Reauthorization Act of 1997 made a number of changes to the Small Business Investment Act of 1958, as amended. For the Small Business Investment Company (SBIC) Program, the changes include provisions affecting capital requirements, Leverage eligibility, and the timing of tax distributions by SBICs that have issued Participating Securities. This proposed rule would implement these statutory provisions; in addition, it would prohibit political contributions by SBICs and would modify regulations governing the refinancing of real estate by SBICs, portfolio diversification requirements, takedowns of Leverage, and in-kind distributions by Participating Securities issuers.

DATES: Submit comments on or before May 14, 1999.

ADDRESSES: Address comments to Don A. Christensen, Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205–7583.

SUPPLEMENTARY INFORMATION: This proposed rule would implement the provisions of Subtitle B of Pub. L. 105–135 (December 2, 1997), the Small Business Reauthorization Act of 1997, which relate to small businesses investment companies (SBICs). This rule would also establish regulations prohibiting political contributions by SBICs and would modify regulations governing the refinancing of real estate by SBICs, portfolio diversification requirements, procedures for drawing down Leverage from SBA, and in-kind distributions by SBICs that have issued Leverage in the form of Participating Securities.

Private Capital

Section 213 of Pub. L. 105–135 amended the statutory definition of private capital to include certain funds invested in a Licensee by a federally chartered or Government-sponsored corporation established prior to October 1, 1987. Under the revised definition, private capital may include funds obtained from the business revenues of such entities; appropriated Government funds are specifically excluded. Proposed § 107.230(b)(3) would implement this change by incorporating the statutory language in the regulatory definition of Private Capital. In this context, SBA's view is that ''business revenues'' means earnings that are generated by a corporation through activities of a commercial nature and that are reflected in the retained earnings of the corporation.

Definition of ''Associate''

SBA is proposing a technical correction in the definition of ''Associate'' in § 107.50. Under paragraph (8)(i) of the current definition, a business concern becomes an Associate of an SBIC if it has one or more officers who have a business or personal relationship with the SBIC of a type listed in subparagraphs (1) through (6) of the definition. This provision does not explicitly encompass business concerns organized as partnerships or limited liability companies, which may be managed by persons who are not designated as officers. To clarify the applicability of paragraph (8)(i) to all concerns, regardless of their form of organization, the proposed rule would replace ''officer'' with ''officer, general partner, or managing member.''

Leverageable Capital

An SBIC's Leverageable Capital is a subset of its Private Capital. It is used to determine the maximum amount of SBA Leverage funds which the SBIC may have outstanding. The current definition of Leverageable Capital in § 107.50 excludes ''Qualified Non-private Funds [as defined in § 107.230(d)] whose source is Federal funds.'' SBA has determined that the Act does not require this exclusion and is proposing to remove it.

Internet Access and Electronic Mail

As the SBIC program grows in size and sophistication, SBA is seeking ways to improve administrative efficiency. The Agency is particularly interested in improving its ability to communicate with Licensees electronically. Many SBICs are already using the Internet to obtain updated regulations and software from SBA and to submit financial statements and other required information. To further promote the use of this highly efficient means of communication, proposed § 107.504(a) would require all SBICs to have Internet access and Internet electronic mail no later than June 30, 1999.

To improve the organization of the regulations, the proposed rule also would consolidate three current sections into a single section. Current §§ 107.504, 107.505, and 107.508 would become § 107.504 (a), (b), and (c), respectively. These sections require an SBIC to maintain an office accessible to the public and to have certain office equipment to facilitate communications with SBA. Except for the proposed new requirement for Internet access and electronic mail, there would be no substantive change in these provisions.

Political Contributions

It has come to SBA's attention that a few SBICs have made contributions to organizations formed to promote the election of political candidates or the advancement of a political or legislative agenda. In at least one case, an SBA examiner cited an SBIC's contribution to an organization of this type as an ''activity not contemplated by the Act.'' SBA has upheld this interpretation of the Act and would apply it even where the SBIC has no outstanding Leverage at the time of the contribution.

The Act states that the purpose of the SBIC program is ''to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization. . . .'' 15 U.S.C. 661. Under a longstanding interpretation of this statutory provision, SBA does not permit activities by an SBIC that do not contribute to the growth, expansion, and modernization of a small business. Since SBA is concerned that an SBIC's political contributions can have, at best,

only a remote and speculative connection to the growth, expansion, and modernization of small businesses, SBA is proposing this rule to confirm that such activities are not permissible.

SBA believes that a regulation on political contributions by Licensees is necessary to prevent any confusion on this subject in the future. In proposing this regulation, SBA does not seek to limit impermissibly any form of constitutionally protected speech. However, restrictions on the use of SBIC funds for political contributions appear to be required by the Act.

U.S. taxpayers support SBICs and their investors through the use of Government-guaranteed Leverage and various tax benefits. SBICs and their investors are also the recipients of assorted governmental benefits of a non-tax nature, including exemption from certain provisions of banking and other statutes. SBA believes that it is appropriate to require that, in exchange for these benefits, SBICs use their funds only for the purposes referred to in 15 U.S.C. 661. This also would eliminate any possibility that a particular contribution by an SBIC could be misperceived as having been endorsed by SBA.

Proposed § 107.505 would prohibit contributions by an SBIC to any political campaign, party, or candidate, or to any political action committee. The proposed regulation is written broadly enough to cover all political contributions, including so-called ''soft money'' contributions, that are used by organizations to support activities other than the influencing of federal elections. Nothing in the proposed rule would affect the right of investors in and managers of SBICs to make political contributions with their own funds, outside of the SBIC.

SBA encourages comment from the SBIC industry and, in particular, from the legal community on this proposed change.

Financing of Smaller Enterprises

Since April 1994, SBICs have been required to direct a certain percentage of their investment activity to businesses that fall significantly below the maximum size permitted for a Small Business. These businesses are referred to as ''Smaller Enterprises.'' This proposed rule includes three changes related to the financing of Smaller Enterprises; one implements a provision of Pub. L. 105–135, the second is a technical correction, and the third is an editorial change.

Section 215(b) of Pub. L. 105–135 increased the maximum amount of SBA Leverage for which an SBIC could be eligible (see the section of this preamble entitled ''Maximum Amount of Leverage''). The statute further required that 100 percent of any Leverage over $90 million the previous limit, be invested in Smaller Enterprises. Proposed § 107.710(d) would implement this financing requirement, which is in addition to the Smaller Enterprise financing requirements in § 107.710(b) and (c). For example, an SBIC is required under current § 107.710(b) to make at least 20 percent of its total cumulative investments in Smaller Enterprises. If the SBIC has $100 million of outstanding Leverage at the end of its fiscal year, it must meet the 20 percent standard and have at least $10 million of additional investments in Smaller Enterprises in its portfolio.

Current § 107.710(c), which was effective February 5, 1998, implemented a provision of Pub. L. 104–208 that required certain SBICs to make at least 50 percent of their total investments in Smaller Enterprises. The Licensees to whom the provision applies are those licensed on or before September 30, 1996, that issued Leverage after that date, and whose Regulatory Capital is ''less than $10 million if such Leverage was Participating Securities'' or ''less than $5 million if such Leverage was Debentures.'' The regulation does not make clear which standard applies to an SBIC that has issued both Participating Securities and Debentures. Proposed § 107.710(c)(1) would clarify that the $10 million threshold applies to a Licensee that has issued any amount of Participating Securities, while the $5 million applies to a Licensee that has issued Debentures only.

Finally, in proposed § 107.710(f), the cross-reference to certain paragraphs in § 107.1120 would be revised to reflect proposed revisions in that section.

Real Estate Refinancing

Current § 107.720(c)(2) permits SBICs to provide financing to a Small Business for the purpose of acquiring or refinancing real estate only under certain conditions. Specifically, the Small Business must either be acquiring real property or building or renovating a building. The regulation does not permit refinancing of real estate currently owned and occupied by the Small Business. SBA believes that Small Businesses should be able to obtain financing from SBICs for this purpose, just as they currently can refinance other debt. Accordingly, proposed § 107.720(c)(2)(iii) would allow proceeds to be used to refinance debt obligations on property that is owned and occupied by a Small Business, provided it uses at least 67 percent of the usable square footage for an eligible business purpose. The occupancy requirement is the same as that applied to a building that is being built or renovated by a Small Business.

Co-Investment With Associates

Section 107.730(d)(3) sets forth circumstances under which an SBIC's co-investment with an Associate is presumed to be on terms that are equitable to the SBIC, so that no specific demonstration of fairness is required. Under current § 107.730(d)(3)(iv), this presumption applies to co-investments by two non-leveraged SBICs, or by a non-leveraged SBIC and its non-SBIC Associate. The proposed rule would modify this provision by removing the term ''non-leveraged'' and referring instead to Licensees that ''have no outstanding Leverage and do not intend to issue Leverage in the future.'' Thus, the provision would apply only to an SBIC that intends to operate permanently as a non-leveraged company. SBA is proposing this change to protect its interests in all cases where the Agency may have either current or future financial exposure.

Portfolio Diversification Requirement (''Overline'' limit)

In a final rule published on February 5, 1998 (63 FR 5859), SBA made certain changes to § 107.740, under which a leveraged SBIC may not have more than 20 percent of its Regulatory Capital invested in or committed to a single Small Business or group of related businesses without SBA's prior written approval (for SSBICs, the limit is 30 percent of Regulatory Capital). The changes addressed the problem faced by an SBIC that reduced its Regulatory Capital in a manner permitted by the regulations, and then found that one or more of its existing investments exceeded its reduced overline limitation. The solution to this problem was to base a Licensee's maximum permitted investment in or commitment to a Small Business on its Regulatory Capital at the time the investment or commitment is made.

When this regulatory change was proposed, SBA received several comments suggesting that SBA should make further changes. The commenters argued that an SBIC, particularly a limited life partnership that expects to return capital to investors as investments are harvested, should be permitted to base its overline limit on its original Regulatory Capital, with no reduction for subsequent returns of capital. The rationale was that an SBIC should not be forced to reduce the intended investment size reflected in its

business plan because of an early distribution. One commenter pointed out that this imposes a penalty that is particularly unjustified in the case of an SBIC which makes a distribution resulting from a profitable realization of a portfolio company investment.

SBA understood these concerns, but the comments were not adopted because SBA believed that the suggested changes were prohibited by section 306(a) of the Act. Since that time, the Agency has reconsidered its position on the proper interpretation of the statutory provision, and has now concluded that the statute permits SBA to determine, by regulation, the point as of which Regulatory Capital is measured for the purpose of establishing an SBIC's overline limit.

Accordingly, under proposed § 107.740(a), an SBIC's overline limit would be computed based on the sum of: (1) Its Regulatory Capital at the time an investment or commitment is made, and (2) any distributions permitted under the regulations that were made within the preceding 5 years and reduced Regulatory Capital. The effect of this change would be greatest for SBICs that issue Participating Securities. Under § 107.1570(b), these Licensees are permitted to make distributions that reduce Regulatory Capital, as long as they also redeem outstanding Participating Securities on a pro rata basis. Such distributions can be substantial; since 1995, when Participating Securities were first issued, 15 SBICs have elected to make distributions that reduced Regulatory Capital by a total of about $39 million. SBA expects the frequency and amount of such distributions to grow as Licensees' portfolios mature.

For SBICs that use other forms of SBA Leverage (Debentures or Preferred Securities), the proposed rule would be less significant, although it could have some effect. Under current § 107.585, such SBICs cannot reduce their Regulatory Capital by more than 2 percent in any fiscal year without SBA's prior written approval. Any distribution that falls within the 2 percent limitation could be added back to Regulatory Capital for overline purposes. SBA would determine whether a distribution exceeding 2 percent of Regulatory Capital could be added back to the Licensee's overline limit. SBA believes that it must have this discretion because of the wide variety of circumstances under which various SBICs may seek to reduce their Regulatory Capital.

SBA is also proposing a clarification of the introductory text in § 107.740(a). The proposed rule states that the provisions of § 107.740 would apply to Licensees that ''have outstanding Leverage or intend to issue Leverage in the future.'' This phrase would replace current language referring to Licensees that ''have outstanding Leverage or want to be eligible for Leverage.'' The purpose of the proposed change is to clarify that the overline limit does apply to ''temporarily'' non-leveraged SBICs whose business plans indicate that they expect to become leveraged.

Leverage Application Procedures and Eligibility

SBA is proposing a technical correction in § 107.1100(b) to reflect recent changes in Leverage funding procedures, under which a Licensee can issue Leverage only by first obtaining a Leverage commitment from SBA, and then drawing down funds against the commitment.

Proposed § 107.1120(d) would implement a requirement in section 215(b)(1) of Pub. L. 105–135 that applies to Licensees seeking Leverage in excess of $90 million. To be eligible for the Leverage, such Licensees must certify that they will use 100 percent of all proceeds over $90 million to provide financing to Smaller Enterprises. See also the section of this preamble entitled ''Financing of Smaller Enterprises.''

Maximum Amount of Leverage

Section 215(b) of Pub. L. 105–135 increased the maximum amount of SBA Leverage for which an SBIC could be eligible. The previous limit, for either a single SBIC or a group of SBICs under common control, was $90 million. The statute indexed this amount to the Consumer Price Index (CPI) retroactive to March 1993, with annual adjustments to take place following the initial adjustment.

Proposed § 107.1150(a) and (b)(1) would implement the statutory change. The Leverage eligibility table in § 107.1150(a)(1) reflects increases in the CPI from March 1993, through September 1998, the final month of the Federal Government's 1998 fiscal year. SBA proposes to make subsequent adjustments each year based on the September-to-September increase in the CPI. The proposed rule would result in a new Leverage ceiling of $102.5 million.

Below the overall Leverage ceiling, there are also several Leverageable Capital brackets within which a Licensee is eligible for certain maximum Leverage amounts. These individual brackets would also be indexed to the CPI. For example, the first bracket currently consists of Leverageable Capital of not more than $15 million on which a Licensee may be eligible for maximum Leverage in the ratio of 3:1. Based on increases in the CPI from March 1993 to September 1998, the $15 million cutoff would increase to $17.1 million.

Under proposed § 107.1150(a)(2), SBA would publish an annual notice in the **Federal Register** to update the maximum Leverage amounts. The Bureau of Labor Statistics normally publishes the CPI for September in mid-October, and SBA would expect to publish its **Federal Register** notice shortly thereafter.

Draws Against SBA Leverage Commitments

In May 1998, SBA instituted a new interim Leverage funding mechanism, sometimes described as ''just-in-time'' funding. Under the new procedures, an SBIC that has obtained a Leverage commitment from SBA may draw funds against the commitment on any business day. All SBICs with Leverage commitments must file quarterly financial statements on SBA Form 468 within 30 days after the end of each fiscal quarter. Under current §§ 107.1220 and 107.1230(d)(1), if an SBIC wishes to draw funds after the end of a quarter, but before the normal quarterly reporting deadline, it must submit quarterly financial statements with its draw request. With the advent of just-in-time funding, these provisions can result in an SBIC having as little as 1 week after the end of a quarter to prepare and submit financial statements to SBA.

SBA believes that most SBICs cannot reasonably comply with such a tight time frame, and that attempts to do so may result in the filing of incomplete or erroneous statements. Furthermore, the Agency believes that it can properly evaluate a draw request based on financial statements from a Licensee's previous fiscal quarter, together with the Licensee's certification that there has been no material adverse change in its financial condition since that time. Therefore, proposed §§ 107.1220 and 107.1230(d)(1) would eliminate the requirement that draw requests submitted within 30 days of the end of a Licensee's fiscal quarter be accompanied by updated quarterly financial statements. In addition, proposed § 107.1230(d)(1) would clarify that every draw request must be accompanied by a statement certifying that there has been no material adverse change in the Licensee's financial condition since its last filing of SBA Form 468.

Finally, proposed § 107.1230(d)(2) would require a Licensee to provide preliminary unaudited year end

financial statements when it submits a draw request more than 30 days following the end of its fiscal year if the Licensee has not yet filed its audited annual financial statements. SBA expects these preliminary financial statements to be as close to final as possible, but understands that they may not be exactly the same as the audited statements submitted later.

Under current § 107.1230(d)(3), which is proposed to be redesignated as § 107.730(d)(4), an SBIC applying for a draw must submit a statement of need showing the names of the Small Businesses that will be financed with the proceeds. SBA recognizes that an SBIC may sometimes wish to draw funds to provide necessary liquidity for its day-to-day operations, and is willing to consider draw requests for this purpose. Accordingly, under proposed § 107.1230(d)(4), the Licensee could apply for a draw based on operating liquidity needs, on specific financings it expects to close, or on a combination of the two.

Tax Distributions

Section 215(c) of Pub. L. 105–135 amended provisions of the Act governing the timing of ''tax distributions'' that SBICs with outstanding Participating Securities may make to their private investors and SBA. Previously, such distributions could be made once a year, based on the income allocated by a Licensee to its investors for Federal income tax purposes for the fiscal year immediately preceding the distribution. The statutory change now gives a Licensee the option of making a tax distribution at the end of any calendar quarter based on a quarterly estimate of tax liability. However, if the aggregate quarterly distributions made during any fiscal year exceed the amount that the Licensee would have been permitted to make based on a single computation performed for the entire year, future tax distributions must be reduced by the amount of the excess.

Proposed §§ 107.1550 and 107.1575 would implement these changes. The timing of tax distributions is addressed in proposed § 107.1550(d) and § 107.1575(a). SBA believes that the statutory language permitting tax distributions ''at the end of any calendar quarter'' does not require that such distributions be made only on the last day of a quarter, and wishes to give Licensees the flexibility to make the distributions later if they so choose. The proposed rule would permit interim tax distributions to be made on the last day of a calendar quarter or on any succeeding day through the first Payment Date following the end of the quarter (Payment Dates are February 1, May 1, August 1, and November 1 of each year). As before, Licensees would be able to make annual tax distributions as late as the second Payment Date following the end of their fiscal year. If the distribution is not made on a Payment Date, SBA's prior approval would be required (see the current introductory text of § 107.1575(a), which SBA does not propose to change).

Proposed § 107.1550(e) implements the statutory provision concerning excess tax distributions. The determination of the excess amount and the corresponding reduction of future distributions should be straightforward in most cases. One complexity that may arise is best illustrated by an example. Assume that an SBIC made quarterly tax distributions of $2.5 million in year 1. At the end of the year, it was determined that the permitted tax distribution for the full year would have been only $2 million so the excess tax distribution for the year was $500,000. In year 2, the SBIC computes a first quarter tax distribution of $900,000. It must reduce this distribution by the $500,000 excess from year 1, so its actual distribution is only $400,000. It then makes additional quarterly tax distributions of $1.5 million and $1.1 million during the year, so that its actual aggregate quarterly distributions are $3 million. At the end of year 2, the SBIC determines that its maximum permitted tax distribution for the full year would have been $3 million. Although it appears at first glance that there is no excess tax distribution for year 2, this is not the case. Under proposed § 107.1550(e)(2), the SBIC must recompute its aggregate quarterly distributions, ignoring the $500,000 reduction that was required in the first quarter. Taking this adjustment into account, the aggregate quarterly distributions would be $900,000 + $1,500,000 + $1,100,000 = $3,500,000. Thus, there would be an excess tax distribution of $500,000. SBA believes this formulation yields a result that is consistent with the intent of the Act. The point can best be seen by looking at years 1 and 2 together: Actual tax distributions were $5.5 million while the total that would have been permitted based on full-year computations was only $5 million. Thus, it is appropriate for the SBIC to have a $500,000 excess tax distribution computed as of the end of year 2.

Distributions on Other Than Payment Dates

SBA is proposing a technical correction in § 107.1575 to resolve a potential conflict between two provisions governing the timing of distributions. Current § 107.1575(a)(1) permits Licensees to make annual distributions, as required or permitted under various sections of the regulations, on dates other than one of the four quarterly Payment Dates. Clearly, in order to retain their character as ''annual'' distributions, such amounts must be computed as of the end of a Licensee's fiscal year, regardless of the date on which payment is actually made. However, under current § 107.1575(b)(2), any distribution made on a date other than a Payment Date must be computed as of the distribution date. To resolve this inconsistency, the proposed rule would modify § 107.1575(b)(2) so that annual distributions would be computed as of a Licensee's fiscal year end but could be paid at a later date other than a Payment Date.

In-Kind Distributions

SBA is proposing two substantive changes in § 107.1580, which governs in-kind distributions by SBICs that have issued Participating Securities. First, under proposed § 107.1580(a)(1), all in-kind distributions would require SBA's prior approval. This change represents a slight expansion of the requirement in current § 107.1570(a) that SBA approve distributions made on dates other than Payment Dates. Because in-kind distributions may subject SBA to significant market risk, the Agency strongly believes that it must have the ability to review and approve all such distributions, regardless of when they are made.

Second, under proposed § 107.1580(a)(2), only ''Distributable Securities'' could be distributed in kind. This new term, which is defined in proposed § 107.50, would replace the term ''Publicly Traded and Marketable'' that currently appears in § 107.1580 (''Publicly Traded and Marketable'' securities would continue to be used in the Capital Impairment computation under § 107.1840). Although the two terms are technically different, SBA does not expect the change to have a major effect on Licensees' ability to distribute securities.

The first difference between the current and proposed rules involves ''Rule 144'' stock, i.e., stock that is subject to resale volume restrictions pursuant to Rule 144 under the Securities Act of 1933, as amended. The definition of ''Publicly Traded and Marketable'' includes securities that are ''salable within 12 months pursuant to Rule 144''. The proposed definition of ''Distributable Securities'' would also include Rule 144 stock, but only if SBA

determined that it could immediately sell all of its shares without exceeding the volume restrictions. For purposes of determining whether a security meets this requirement, SBA would assume a ''worst-case'' scenario in which all the securities of the issuer being distributed by a Licensee were being sold simultaneously by the distributees.

The second difference between the current and proposed rules involves securities that are not traded on a regulated stock exchange or listed in the National Association of Securities Dealers Automated Quotation System (NASDAQ), such as stocks traded on the ''pink sheets.'' The definition of ''Publicly Traded and Marketable'' includes such securities if they have at least two market makers, while the proposed definition of ''Distributable Securities'' would exclude them. SBA is proposing this change because it believes that the current regulation may encompass stocks with extremely low trading volume, the disposition of which may be a prolonged and high-risk process. As a practical matter, no Licensee has sought to distribute such securities and SBA believes the change would have no effect on the vast majority of in-kind distributions proposed by Licensees.

SBA is also proposing a non-substantive change in § 107.1580(a)(4), which deals with the disposition of securities distributed to SBA. The current provision requires an SBIC distributing securities to deposit SBA's share with the Central Registration Agent (an agent employed by SBA to handle certain functions related to the pooling of Debentures and Participating Securities) who then selects a disposition agent. Having gained some experience with in-kind distributions, SBA has found it unnecessary to involve the CRA in the process. Accordingly, proposed § 107.1580(a)(4) would direct an SBIC to deposit SBA's share of securities directly with a disposition agent designated by SBA.

Compliance With Executive Orders, 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not be a significant regulatory action for purposes of Executive Order 12866 because it would not have an annual effect on the economy of more than $100 million, and that it would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The purpose of the proposed rule is to implement provisions of Pub. L. 105–135 which relate to small business investment companies, and to make certain other changes, primarily technical corrections and clarifications, to the regulations governing SBICs. There are 330 SBICs, not all of which are small businesses. In addition, the changes would have little or no effect on small businesses seeking funding from SBICs; rather they would only affect definitions for and activities of the SBICs.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated above, the SBA proposes to amend 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. In § 107.50 revise paragraph (8)(i) of the definition of Associate and the definition of Leverageable Capital, and add in alphabetical order a definition of Distributable Securities to read as follows:

§ 107.50 Definitions of terms.

* * * * *

Associate of a Licensee means any of the following:

* * * * *

(8) * * *

(i) Any person described in paragraphs (1) through (6) of this definition is an officer, general partner, or managing member; or

* * * * *

Distributable securities means equity securities that meet each of the following requirements:

(1) The securities (which may include securities that are salable pursuant to the provisions of Rule 144 (17 CFR 230.144) under the Securities Act of 1933, as amended) are determined by SBA, in its sole discretion, to be salable immediately without restriction under Federal and state securities laws;

(2) The securities are of a class:

(i) Which is listed and registered on a national securities exchange, or

(ii) For which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation System and as to which transaction reports and last sale data are disseminated pursuant to Rule 11Aa3–1 (17 CFR 240.11Aa3–1) under the Securities Exchange Act of 1934, as amended; and

(3) The quantity of such securities to be distributed to SBA can be sold over a reasonable period of time without having an adverse impact upon the price of the security.

* * * * *

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

* * * * *

3. In § 107.230, revise paragraph (b)(3) to read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

* * * * *

(b) *Exclusions from Private Capital.* * * *

(3) Funds obtained directly or indirectly from any Federal, State, or local government agency or instrumentality, except for:

(i) Funds invested by a public pension fund;

(ii) Funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or Government-sponsored corporation established before October 1, 1987, to the extent that such revenues are reflected in the retained earnings of the corporation; and

(iii) ''Qualified Non-private Funds'' as defined in paragraph (d) of this section.

* * * * *

4. Revise § 107.504 to read as follows:

§ 107.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA-provided software) and transmit them to SBA. In addition, by June 30, 1999, you must have access to the Internet and the capability to send and receive electronic mail via the Internet.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

5. Revise § 107.505 to read as follows:

§ 107.505 Prohibition against political contributions.

You may not make a contribution to any national, State, or local political party, campaign or candidate, or to any political action committee that makes contributions to one or more political parties, campaigns, or candidates.

6. Remove § 107.508.

§ 107.508 [Removed]

7. In § 107.710 revise paragraphs (c)(1)(i) and (ii), redesignate paragraphs (d) and (e) as paragraphs (e) and (f), revise the last sentence of new paragraph (f), and add a new paragraph (d) to read as follows:

§ 107.710 Requirement to Finance Smaller Enterprises.

* * * * *

(c) Special requirement for certain leveraged Licensees.

(1) * * *

(i) Less than $10,000,000 if such Leverage included Participating Securities; or

(ii) Less than $5,000,000 if such Leverage was Debentures only.

* * * * *

(d) *Special requirement for Leverage over $90,000,000.* In addition to the applicable requirements in paragraphs (b) and (c) of this section, at the close of each of your fiscal years, 100 percent of any outstanding Leverage over $90,000,000 (including aggregate Leverage over $90,000,000 issued by two or more Licensees under Common Control) must have been invested in Smaller Enterprises.

* * * * *

(f) *Non-compliance with this section.* * * * However, you will not be eligible for additional Leverage until you reach the required percentage (see § 107.1120(c) through (e)).

8. In § 107.720 revise paragraph (c)(2) to read as follows:

§ 107.720 Small Businesses that may be ineligible for Financing.

* * * * *

(c) *Real Estate Businesses.* * * *

(2) You are not permitted to finance a business, regardless of SIC classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business purpose; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business purpose.

* * * * *

9. In § 107.730 revise paragraph (d)(3)(iv) to read as follows:

§ 107.730 Financing which constitute conflicts of interest.

* * * * *

(d) *Financings with Associates.* * * *

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* * * *

(iv) You have no outstanding Leverage and do not intend to issue Leverage in the future, and your Associate either is not a Licensee or has no outstanding Leverage and does not intend to issue Leverage in the future.

* * * * *

10. In § 107.740 revise paragraph (a) to read as follows:

§ 107.740 Portfolio diversification (''overline'' limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or intend to issue Leverage in the future. Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed:

(1) For a Section 301(c) Licensee, 20 percent of the sum of:

(i) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(ii) Any Distribution(s) you made under § 107.1570(b), during the 5 years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital; plus

(iii) Any Distribution(s) you made under § 107.585, during the 5 years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital by no more than 2 percent or which SBA approves for inclusion in the sum determined in this paragraph (a)(1).

(2) For a Section 301(d) Licensee, 30 percent of a sum determined in the manner set forth in paragraph (a)(1)(i) through (iii) of this section.

* * * * *

11. In § 107.1100, revise the section heading and paragraph (b) to read as follows:

§ 107.1100 Types of Leverage and application procedures.

* * * * *

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for SBA's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 107.1200 through 107.1240.

* * * * *

12. In § 107.1120 redesignate paragraphs (d) through (f) as paragraphs (e) through (g) and add a new paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(d) Certify, if applicable, that you will use 100 percent of any Leverage over $90,000,000 (including aggregate Leverage over $90,000,000 issued by two or more Licensees under Common Control) to provide Financing to Smaller Enterprises (see also § 107.710).

* * * * *

13. In § 107.1150 revise paragraph (a) and the first sentence of paragraph (b)(1) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

(a) *Maximum amount of Leverage.*

(1) *Amounts before indexing.* If you are a Section 301(c) Licensee, the following table shows the maximum amount of Leverage you may have outstanding at any time, subject to the indexing adjustment set forth in paragraph (a)(2) of this section:

If your Leverageable Capital is:	Then your maximum Leverage is:
(1) Not over $17,100,000	300 percent of Leverageable Capital
(2) Over $17,100,000 but not over $34,100,000	$51,300,000 + [2 × (Leverageable Capital − $17,100,000)]
(3) Over $34,100,000 but not over $51,300,000	$85,300,000 + (Leverageable Capital − $34,100,000)
(4) Over $51,300,000	$102,500,000

(2) *Indexing of maximum amount of Leverage.* SBA will adjust the amounts in paragraph (a) of this section annually to reflect increases through September in the Consumer Price Index published by the Bureau of Labor Statistics. SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

(b) *Exceptions to maximum Leverage provisions*—(1) *Licensees under Common Control.* Two or more Licensees under Common Control may have aggregate outstanding Leverage over $102,500,000 (subject to indexing as set forth in paragraph (a)(2) of this section) only if SBA gives them permission to do so. * * *

* * * * *

14. Revise § 107.1220 to read as follows:

§ 107.1220 Requirement for Licensee to file quarterly financial statements.

As long as any part of SBA's Leverage commitment is outstanding, you must give SBA a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year (other than the fourth quarter, which is covered by your annual filing of Form 468 under § 107.630(a)). You must file this form within 30 days after the close of the quarter. You will not be eligible for a draw if you are not in compliance with this § 107.1220.

15. In § 107.1230(d) revise paragraph (d)(1), redesignate paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), add a new paragraph (d)(2), and revise the first sentence of redesignated paragraph (d)(4) to read as follows:

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

* * * * *

(d) *Procedures for funding draws.* * * *

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also § 107.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with § 107.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

* * * * *

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. * * *

* * * * *

16. In § 107.1550 revise the first sentence of the introductory text, paragraph (b)(1) and paragraph (d), and add a new paragraph (e) to read as follows:

§ 107.1550 Distributions by Licensee-permitted "tax Distributions" to private investors and SBA.

If you have outstanding Participating Securities or Earmarked Assets, and you are a limited partnership, "S Corporation", or equivalent pass-through entity for tax purposes, you may make "tax Distributions" to your investors in accordance with this § 107.1550, whether or not they have an actual tax liability. * * *

* * * * *

(b) *How to compute the Maximum Tax Liability.* (1) You may compute your Maximum Tax Liability for a full fiscal year or for any calendar quarter. Use the following formula:

$$M = (TOI \times HRO) + (TCG \times HRC)$$

where:

M = Maximum Tax Liability

TOI = Net ordinary income allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

HRO = The highest combined marginal Federal and State income tax rate for corporations or individuals on ordinary income, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

TCG = Net capital gains allocated to your partners or other owners for Federal income tax purposes for the fiscal year or calendar quarter for which the Distribution is being made, excluding Prioritized Payments allocated to SBA.

HRC = The highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

* * * * *

(d) *Paying a tax Distribution.* You may make an annual tax Distribution on the first or second Payment Date following the end of your fiscal year. You may make a quarterly tax Distribution on the first Payment Date following the end of the calendar quarter for which the Distribution is being made. See also § 107.1575(a).

(e) *Excess tax Distributions.* (1) As of the end of your fiscal year, you must determine whether you made any excess tax Distributions for the year in accordance with paragraph (e)(2) of this section. Any tax Distributions that you make for a subsequent period must be reduced by the excess amount distributed.

(2) Determine your excess tax Distributions by adding together all your quarterly tax Distributions for the year (ignoring any required reductions for excess tax Distributions made in prior years), and subtracting the maximum tax Distribution that you would have been permitted to make based upon a single computation performed for the entire fiscal year. The result, if greater than zero, is your excess tax Distribution for the year.

17. In § 107.1575, revise paragraphs (a)(1) and (b)(2) and add a new paragraph (a)(4) to read as follows:

§ 107.1575 Distributions on other than Payment Dates.

(a) *Permitted Distributions on other than Payment Dates.* * * *

(1) Required annual Distributions under § 107.1540(a)(1), annual Distributions under § 107.1550, and any Distributions under § 107.1560 must be made no later than the second Payment Date following the end of your fiscal year.

* * * * *

(4) Quarterly Distributions under § 107.1550 must be made no earlier than the last day of the calendar quarter for which the Distribution is being made and no later than the first Payment Date following the end of such calendar quarter.

(b) *Conditions for making a Distribution.*

* * * * *

(2) The ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distribution, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570, must be:

(i) The distribution date, or

(ii) If your Distribution includes annual Distributions under §§ 107.1540(a)(1), 107.1550 and/or 107.1560, your most recent fiscal year end;

* * * * *

18. In § 107.1580, redesignate paragraphs (a)(1) through (a)(4) as paragraphs (a)(2) through (a)(5), add a new paragraph (a)(1) and revise paragraph (b)(2) to read as follows:

§ 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind Distributions while Licensee has outstanding Participating Securities.* * * *

(1) You must obtain SBA's written approval before the distribution date.

(2) You may distribute only Distributable Securities.

* * * * *

(5) You must deposit SBA's share of securities being distributed with a disposition agent designated by SBA. As an alternative, if you agree, SBA may direct you to dispose of its shares. In this case, you must promptly remit the proceeds to SBA.

* * * * *

(b) *In-Kind Distributions after Licensee has redeemed all Participating Securities.* * * *

* * * * *

(2) You must obtain SBA's prior written approval of any In-Kind Distribution of Earmarked Assets that are not Distributable Securities, specifically including approval of the valuation of the assets.

Dated: March 31, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–9265 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–122–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–13–08, which currently requires replacing and re-routing the power return cables on the starter generator and the generator 2 on certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. AD 98–13–08 also requires inserting a temporary revision to the pilot operating handbook (POH), and installing a placard near the standby magnetic compass. The proposed AD would retain the actions currently required by AD 98–13–08 on all airplanes affected by that AD, and would require replacing the temporary revision to the POH and the placard near the standby magnetic compass with an improved procedural POH revision and placard. The proposed AD would also require the placard and the temporary revision to the POH for additional serial number Models PC–12 and PC–12/45 airplanes; and would require accomplishing improved Standby Magnetic Compass Swing procedures and incorporating a temporary revision to the maintenance manual on all of the affected airplanes. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent directional deviation on the standby magnetic compass caused by modifications made to the airplane since manufacture, which could result in flight-path deviation during critical phases of flight.

DATES: Comments must be received on or before May 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–122–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted. Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information also may be examined at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–122–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–122–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 98–13–08, Amendment 39–10596 (63 FR 32975, June 17, 1998), currently requires the following on certain Pilatus Models PC–12 and PC–12/45 airplanes (serial numbers 101 through 147):

—Replacing and re-routing the power return cables on the starter generator and generator 2;

—Inserting a temporary revision to the POH; and

—Installing a placard near the standby magnetic compass, using at least ⅛-inch letters, with the following words:

''*STANDBY COMPASS* FOR CORRECT READING CHECK: WINDSHIELD DE-ICE LH & RH HEAVY & COOLING SYSTEM OFF.''

Accomplishment of the actions of 98–13–08 is required in accordance with Pilatus PC XII Service Bulletin No. 24–002, Rev. No. 1, dated September 20, 1996.

Actions Since Issuance of Previous Rule

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Model PC–12 and PC–12/45 airplanes. The FOCA advises that the changes made to the systems during the accomplishment of AD 98–13–08, along with other system modifications incorporated during the service life of the affected aircraft, have made certain revisions to the standby magnetic compass swing procedures necessary.

These changes, if not incorporated in a timely manner, could result in a deviation of the airplane flight path during critical phases of flight.

Relevant Service Information

Pilatus has issued Service Bulletin No. 34–006, dated September 3, 1998, which specifies:

—Accomplishing the compass swing procedures of the standby magnetic compass in accordance with PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998;

—Incorporating PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Standby Compass, dated July 16, 1998; and

—Installing a revised placard near the standby magnetic compass.

The FOCA classified this service information as mandatory and issued Swiss AD HB–98–426, dated November 6, 1998, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design registered for operation in the United States, the FAA is proposing AD action to supersede AD 98–13–08. The proposed AD would retain the actions currently required by AD 98–13–08 on all airplanes affected by that AD (manufacturer serial numbers 101 through 147), and would require replacing the temporary revision to the POH and the placard near the standby magnetic compass with an improved procedural POH revision and placard. The proposed AD would also require the placard and the temporary revision to the POH for additional serial number Models PC–12 and PC–12/45 airplanes; and would require accomplishing improved Standby Magnetic Compass Swing procedures and incorporating a temporary revision to the maintenance manual on all of the affected airplanes. The placard will incorporate the following language:

STANDBY COMPASS

FOR CORRECT READING SWITCH:

AVIONICS ON

NAV & INSTRUMENT LIGHTING AS REQUIRED

WINDSHIELD DE-ICE LH & RH OFF

AUXILIARY HEATING SYSTEMS OFF

AUXILIARY COOLING SYSTEM OFF

Accomplishment of the replacement and re-routing of the power return cables would be required in accordance with Pilatus PC XII Service Bulletin No. 24–002, Rev. No. 1, dated September 20, 1996.

The Standby Magnetic Compass Swing procedures would be accomplished in accordance with PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specified in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

Cost Impact

The FAA estimates that 70 airplanes in the U.S. registry would be affected by the proposed AD.

Approximately 40 of these airplanes are affected by the proposed power return cable replacement and re-routing requirements that are being retained from AD 98–13–08. The FAA estimates that it would take approximately 12 workhours per airplane to accomplish these proposed actions, and that the average labor rate is approximately $60 an hour. Pilatus will provide parts at no cost to the owners/operators of the affected airplanes. Based on these figures, the cost impact of the proposed replacement and re-routing requirements on U.S. operators is $28,800, or $720 per airplane. The proposed AD imposes no additional replacement and re-routing cost impact upon U.S. operators of the affected airplanes over that currently required by AD 98–13–08.

Accomplishing the improved Standby Magnetic Compass Check Swing procedures would be required for approximately 70 airplanes and would take approximately 3 workhours per airplane to accomplish at an average labor rate of $60 per hour. Based on these figures, the proposed cost impact on U.S. operators to accomplish the improved Standby Magnetic Compass Check Swing procedures would be $12,600, or $180 per airplane.

The proposed POH revision and placard requirements would be required for approximately 70 airplanes. Incorporating the POH revisions and fabricating and installing a placard may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact the proposed placard and POH revision requirements impose is the time it would take each owner/operator of the affected airplanes to incorporate this information into the POH and fabricate and install the placard.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–13–08, Amendment 39–10596 (63 FR 32975, June 17, 1998), and by adding a new AD to read as follows:

Pilatus Aircraft Ltd.: Docket No. 98–CE–122–AD; Supersedes AD 98–13–08, Amendment 39–10596.

Applicability: Models PC–12 and PC–12/45 airplanes, serial numbers 101 through 230), certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent directional deviation on the standby magnetic compass caused by modifications made to the airplane since manufacture, which could result in flight-path deviation during critical phases of flight, accomplish the following:

(a) For airplanes incorporating serial numbers 101 through 147, within the next 100 hours time-in-service (TIS) after July 31, 1998 (the effective date of AD 98–13–08), accomplish the following:

(1) Replace the starter generator cable and the generator 2 power return cables with new cables of improved design and re-route these cables, in accordance with the Accomplishment Instructions section in Pilatus PC XII Service Bulletin (SB) No. 24–002, Rev. No. 1, dated September 20, 1996.

(2) Remove the temporary revision titled ''Electrical Cables,'' dated March 7, 1996, from the Pilot Operating Handbook (POH) and insert a temporary revision titled ''Electrical Cables'' Rev. 1, dated July 12, 1996. Accomplish this action in accordance with the Accomplishment Instructions section in Pilatus PC XII SB No. 24–002, Rev. No. 1, dated September 20, 1996.

(b) For airplanes incorporating serial numbers 101 through 147, within the next 50 hours TIS after the effective date of this AD, replace the placard installed near the standby magnetic compass that is required by AD 98–13–08, with a new placard that incorporates the following words (using at least 1/8-inch letters):

STANDBY COMPASS

FOR CORRECT READING SWITCH:

AVIONICS ON

NAV & INSTRUMENT LIGHTING AS REQUIRED

WINDSHIELD DE-ICE LH & RH OFF

AUXILIARY HEATING SYSTEMS OFF

AUXILIARY COOLING SYSTEM OFF

This placard is referenced in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(c) For airplanes incorporating serial numbers 148 through 230, within the next 50 hours TIS after the effective date of this AD, install a placard with the following words (using at least 1/8-inch letters) near the standby magnetic compass:

STANDBY COMPASS

FOR CORRECT READING SWITCH:

AVIONICS ON

NAV & INSTRUMENT LIGHTING AS REQUIRED

WINDSHIELD DE-ICE LH & RH OFF

AUXILIARY HEATING SYSTEMS OFF

AUXILIARY COOLING SYSTEM OFF

This placard is referenced in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(d) For all serial number airplanes, within the next 50 hours TIS after the effective date of this AD, accomplish the following:

(1) Insert Pilatus Report No. 01973–001, Temporary Revision, Standby Compass, dated July 16, 1998, into the Pilot Operating Handbook (POH).

(2) Accomplish the improved Standby Magnetic Compass Check Swing procedures in accordance with Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, as specified in Pilatus Service Bulletin No. 34–006, dated September 3, 1998.

(3) Insert Pilatus PC–12 Maintenance Manual Temporary Revision No. 34–03, dated July 16, 1998, in chapter 34–21–00 facing page 502 of the maintenance manual. Disregard existing pages 502 through 506.

(e) Accomplishment of the POH revision, maintenance manual insertions, and placard fabrication and installation, as required by paragraphs (a)(2), (b), (c), (d)(1), and (d)(3) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 98–13–08 are not considered approved as alternative methods of compliance for this AD.

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

(h) Questions or technical information related to the service information referenced in this AD should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland; telephone: +41 41 6196 233; facsimile: +41 41 6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 98–13–08, Amendment 39–10596.

Note 3: The subject of this AD is addressed in Swiss AD HB–98–426, dated November 6, 1998.

Issued in Kansas City, Missouri, on April 7, 1999.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9249 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–120–AD]

RIN 2120–AA64

Airworthiness Directives; LET Aeronautical Works Model L33 SOLO Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain LET Aeronautical Works (LET) Model L33 SOLO sailplanes. The proposed AD would require replacing the main wing attachment and wing spar root pins and modifying the corresponding area. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by the proposed AD are intended to prevent structural failure of the wing attachments caused

by the current design configuration, which could result in the wing separating from the sailplane with consequent loss of control.

DATES: Comments must be received on or before May 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–120–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from LET Aeronautical Works, 686 04 Kunovice, Czech Republic; telephone: +420 632 51 11 11; facsimile: +420 632 613 52. This information also may be examined at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–120–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–120–AD, Room 1558, 601 E. 12th Street, KansasCity, Missouri 64106.

Discussion

The Civil Aviation Authority of the Czech Republic (CAA CZ), which is the airworthiness authority for the Czech Republic, notified the FAA that an unsafe condition may exist on certain LET Model L33 SOLO sailplanes. The CAA CZ reports that fatigue damage could occur to the main wing attachment over a certain period of time. LET performed fatigue testing that revealed deterioration and potential failure of these parts around 2,000 hours time-in-service (TIS).

This condition, if not corrected in a timely manner, could result in the wing separating from the sailplane with consequent loss of control.

Relevant Service Information

LET has issued Mandatory Bulletin Number L33/008a, dated January 20, 1998, which specifies procedures for replacing the main wing attachment and wing spar root pins and modifying the corresponding area.

The CAA CZ classified this service bulletin as mandatory and issued Czechoslovakian AD CCA–T–AD–1–024/98, dated March 23, 1998, in order to assure the continued airworthiness of these sailplanes in the Czech Republic.

The FAA's Determination

This sailplane model is manufactured in the Czech Republic and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA CZ has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA CZ; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other LET Model L33 sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the main wing attachment and wing spar root pins and modifying the corresponding area. Accomplishment of the proposed AD would be required in accordance with the service information referenced previously.

Cost Impact

The FAA estimates that 20 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 35 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $900 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $60,000, or $3,000 per sailplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

LET Aeronautical Works: Docket No. 98–CE–120–AD.

Applicability: The following serial numbers of Model L33 SOLO sailplanes, certificated in any category:

930101 through 930205;
940310 through 940316;
950405 and 950406;
960407 and 960408; and
940206 through 940308;
950318 through 950401;
960402 through 960404;
960410

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural failure of the wing attachments caused by the current design configuration, which could result in the wing separating from the sailplane with consequent loss of control, accomplish the following:

(a) Upon accumulating 1,500 hours time-in-service (TIS) on each wing attachment or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, replace the main wing attachment and wing spar root pins and modify the corresponding area. Accomplish these actions in accordance with the WORK PROCEDURE section of Mandatory Bulletin Number L33/008a, dated January 20, 1998.

Note 2: When shipping the parts required to accomplish the actions of this AD, LET Aeronautical Works will also send a service technician to train or assist mechanics within the geographic locations of the Model L33 SOLO sailplane owners.

(b) As of the effective date of this AD, no person may install, on any of the affected sailplanes, main wing attachments or wing spar root pins without accomplishing the modification specified in paragraph (a) of this AD, in accordance with the WORK PROCEDURE section of Mandatory Bulletin Number L33/008a, dated January 20, 1998.

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

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

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

(e) Questions or technical information related to LET Mandatory Bulletin Number L33/008a, dated January 20, 1998 should be directed LET Aeronautical Works, 686 04 Kunovice, Czech Republic; telephone: +420 632 51 11 11; facsimile: +420 632 613 52. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Czechoslovakian AD CCA–T–AD–1–024/98, dated March 23, 1998.

Issued in Kansas City, Missouri, on April 7, 1999.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9252 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–363–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by Pratt & Whitney JT9D–7R4 Series Turbofan Engines or General Electric CF6–80A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require modification of the engine thrust control cable installation; repetitive inspections to detect certain discrepancies of the cables, pulleys, pulley brackets, and cable travel; and repair, if necessary. For certain airplanes, this proposal also would require replacement of certain pulleys with new pulleys, and re-rigging of the engine thrust control cable. This proposal is prompted by reports of engine thrust control cable failures. The actions specified by the proposed AD are intended to prevent such failures, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

DATES: Comments must be received by June 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–363–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–363–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–363–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In December 1985, the FAA received a report indicating that a Boeing Model 747–100 series airplane had experienced a thrust control 'B' cable failure following application of reverse thrust during landing. This failure caused engine number 1 to go full forward thrust with engine numbers 2, 3, and 4 in full reverse thrust. The airplane exited the runway and eventually slid to a stop with consequent hull damage.

In December 1992, a broken thrust control 'B' cable was found on a Boeing Model 767–200 series airplane following an uncommanded acceleration of the number two engine during engine start. The broken cable was located adjacent to the right-hand wing.

In April 1997, during a review of the certification plan for the Boeing Model 757–300 series airplane, Boeing informed the FAA that the thrust control cable installation on Boeing Model 757–200, –200PF, and –200CB series airplanes equipped with Rolls Royce engines, and on Model 767 series airplanes equipped with Pratt & Whitney Model JT9D–7R4 series engines and General Electric CF6–80A series turbofan engines, is similar to the thrust control cable installation on the Boeing Model 747–100 series airplane, and that a similar failure could result in subsequent runway departure.

The FAA has recently received a report of uncommanded advancement of the right thrust lever on a Boeing Model 757–200 series airplane during flight. Subsequently, the engine power began steadily increasing. In order to reduce the engine power, the flight crew set the lever to the idle stop position; however, the engine power continued to increase. The flight crew then used the cut-off lever to stop the engine as it approached the maximum speed. After the airplane landed, a close visual inspection revealed that the thrust control cable had broken due to continuous chafing against the adjacent wire bundle that supplies power to the right window heater.

In addition, failure of a pulley could result in insufficient support or improper positioning of the thrust control cable and may lead to cable chafing on adjacent structure or airplane system components and subsequent failure of the thrust control cable. Such failure of a thrust control cable could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–76–0010,

Revision 1, dated February 20, 1992, which describes procedures for replacement of the two non-metallic pulleys of the thrust control cable that are located in the leading edge of the wing adjacent to the left and right engine strut with aluminum pulleys. The service bulletin also describes procedures for re-rigging of the thrust control cable after replacement of the pulleys.

Accomplishment of the actions specified in the service bulletin described previously, and the repetitive inspection mandated by this AD, is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the engine thrust control cable installation and repetitive inspections to detect certain discrepancies of the engine thrust control cables, pulleys, pulley brackets, and cable travel; and repair, if necessary. The actions would be required to be accomplished in accordance with the procedure included in Appendix 1 of this AD.

For certain airplanes, this proposed AD would require replacement of the non-metallic pulleys of the two thrust control cables that are located in the leading edge of the wing adjacent to the left and right engine strut with aluminum pulleys. The proposed AD also would require re-rigging of the thrust control cable after replacement of the pulleys. These actions would be required to be accomplished in accordance with the service bulletin described previously.

Justification of Compliance Time

This proposed AD includes a procedure to inspect the engine thrust control cables, pulleys, pulley brackets, and cable travel, which is similar to the inspection for control cables contained in Chapter 20–20–02 of the Boeing 767 Maintenance Manual. The Boeing Maintenance Planning Document recommends that an inspection of the engine thrust control cables be conducted in accordance with Chapter 20–20–02 at every ''2C'' check. The FAA has no evidence that indicates that the Model 747, 757, and 767 series airplanes that experienced the thrust control cable failures were not adhering to those recommendations; therefore, the FAA has determined that the repetitive inspections of the thrust control cables, pulleys, pulley brackets, and cable travel must be done at every ''C'' check, which corresponds with 18 months or 4,500 flight hours, whichever occurs first.

Explanation of Inspection Procedure

The inspection procedure identified for the thrust control cables was derived from the Boeing 747, 757, and 767 Maintenance Manuals. The thrust control cable designs are similar among these airplane models. However, the damage tolerance criteria for replacement of the thrust control cables are more stringent for Model 757 than for the Model 767. Therefore, in recognition that the cable designs are similar and the fact that there is no readily apparent reason for the differences in damage tolerance criteria, the more stringent Model 757 requirements are stated in the thrust control cable procedure described in this proposed rule.

Cost Impact

There are approximately 211 airplanes of the affected design in the worldwide fleet. The FAA estimates that 100 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes (100 U.S.-registered airplanes), it would take approximately 3 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $18,000, or $180 per airplane, per inspection cycle.

For airplanes identified in Boeing Service Bulletin 767–76–0010, Revision 1 (52 U.S.-registered airplanes), it would take approximately 9 work hours per airplane to accomplish the proposed

replacement and re-rigging, at an average labor rate of $60 per work hour. Required parts would cost $484 per airplane. Based on these figures, the cost impact of the replacement and re-rigging proposed by this AD on U.S. operators is estimated to be $53,248, or $1,024 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–363–AD.

Applicability: Model 767 series airplanes powered by Pratt & Whitney JT9D–7R4 series turbofan engines or General Electric CF6–80A series turbofan engines, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent engine thrust control cable failure, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, accomplish the following:

(a) For all airplanes: Within 18 months or 4,500 flight hours after the effective date of this AD, whichever occurs first, accomplish the ''Thrust Control Cable Inspection Procedure'' specified in Appendix 1 (including figures 1 and 2) of this AD to verify the integrity of the thrust control cables. Prior to further flight, repair any discrepancy found in accordance with the procedures described in the Boeing 767 Maintenance Manual. Repeat the inspection thereafter at intervals not to exceed 18 months or 4,500 flight hours, whichever occurs first.

Appendix 1.—Thrust Control Cable Inspection Procedure

1. General

A. Use these procedures to verify the integrity of the thrust control cables. The procedures must be performed along the entire cable run for each engine.

B. The first task is an inspection of the control cable. The second task is an inspection of the control cable pulley. The third task is an inspection of the control cable pulley bracket. The fourth task is an inspection of control cable travel.

2. Inspection of the Control Cables

A. Clean the cables (if necessary) for the inspection, in accordance with 767 Maintenance Manual 12–21–31.

B. Examine the cables:

(1) To do a check for broken wires, rub a cloth along the length of the cable. The cloth catches broken wires.

(2) To aid in the visual inspection, remove the tension and bend the cable.

Broken wire ends frequently move apart from the cable surface. Use large bend radius to prevent kinks.

Note: Wires break most frequently where cables go through fairleads, seals, or around drums, quadrants, or pulleys. Examine these areas carefully, paying close attention to cable runs outside the pressurized areas. Use a flashlight and mirror to aid inspection in places that are difficult to access.

C. Replace the control cable when you find one of these conditions:

(1) Two or more broken wires.

(2) If one cable strand has worn wires where one wire cross section is decreased by 40 percent or more (see Figure 1).

(3) For cables not in the pressurized area, replace a worn cable where you cannot identify the wire strands on the worn side.

(4) A broken wire in the area that goes over a pulley, through a pressure seal, or through a fairlead.

Note: A cable assembly can have one broken wire if the broken wire is in a straight part of the cable assembly. The broken wire must not go over a pulley or through a pressure seal or fairlead. The cable must comply with the other specifications of this section.

(5) A nick or cut.

(6) Rust or corrosion.

D. Lubricate the cable (if you removed the lubricant), in accordance with 767 Maintenance Manual 12–21–31.

Note: Do not apply grease or corrosion preventative agents on corrosion resistant cables (CRES) because accumulation of grit increases the wear rate on CRES cables. CRES cables should not be lubricated.

3. Inspection of the Control Cable Pulley

A. Visually examine the pulleys for roughness, sharp edges, and unwanted material in the grooves.

B. Visually examine the pulley wear pattern (see Figure 2).

C. Do these steps at the same time to examine the pulley for wobble:

(1) Push on the side of the pulley at the outer edge with a 2-pound force, perpendicular to control cable travel.

(2) Make sure the movement of the outer edge is no more than:

(a) 0.10 inch for 8-inch diameter pulleys

(b) 0.09 inch for 6-inch diameter pulleys

(c) 0.08 inch for 5-inch diameter pulleys

(d) 0.07 inch for 4-inch diameter pulleys

(e) 0.06 inch for 3-inch diameter pulleys

D. Make sure the pulley bearings have lubrication and turn smoothly.

E. Examine the pulley bolts for wear.

F. Replace the pulley when you find one of these conditions:

(1) An unusual pulley wear pattern.

(2) Too much pulley wobble.

(3) The pulley does not turn freely and smoothly.

4. Inspection of the Control Cable Pulley Bracket

A. Examine the brackets and the support structure for cracks or other damage.

B. Replace or repair all brackets or structure that have damage.

5. Inspection of the Cable Travel

A. Make sure the cable guides and fairleads have no worn or broken parts and that the parts are aligned, clean, and attached correctly.

B. Make sure the deflection angle at each fairlead is not more than 3 degrees.

C. Visually examine the cable runs for incorrect routing or twists in the cable.

D. The minimum clearance between the cable and the adjacent structure shall be 0.20 inches. At pulley bracket locations, the minimum clearance is 0.10 inches for a 10 inch distance, beginning at the cable breakpoint and extending along the cable run in both directions.

E. Make sure the cable moves freely through its full travel, and does not contact structure, wire bundles, or tubing.

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Figure 1

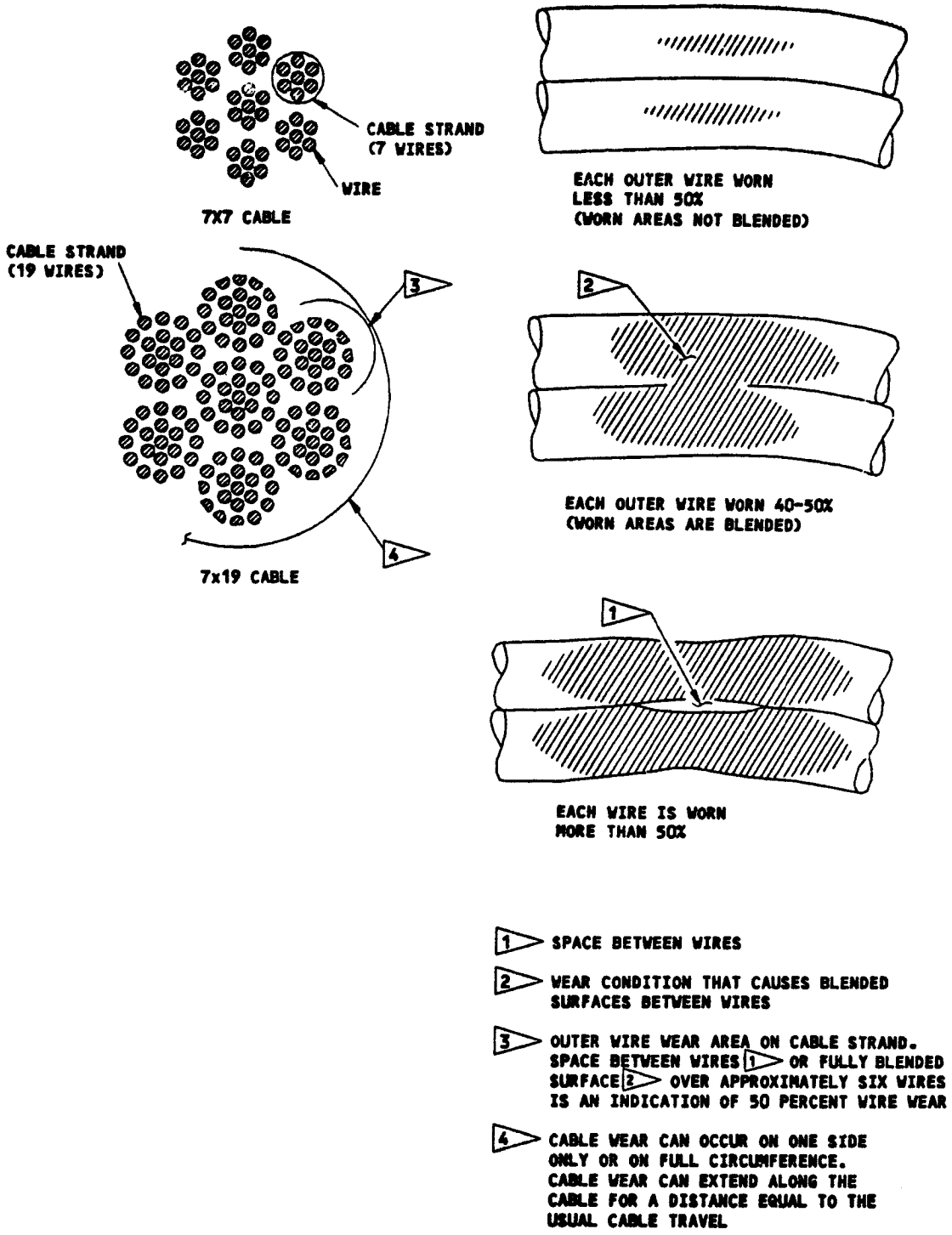
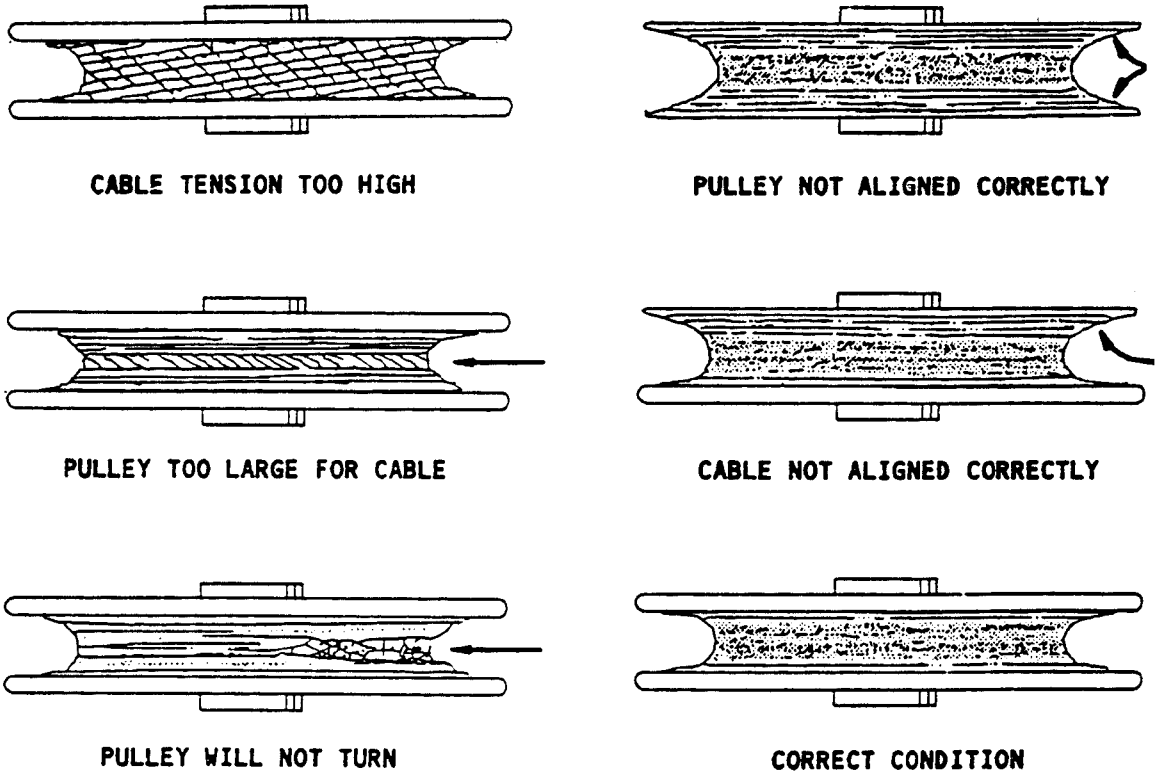


Figure 1

Figure 2



Pulley Wear Patterns

Figure 2

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(b) For airplanes identified in Boeing Service Bulletin 767–76–0010, Revision 1, dated February 20, 1992: Within 18 months or 4,500 flight hours after the effective date of this AD, whichever occurs first, replace the two non-metallic pulleys of the thrust control cable that are located in the leading edge of the wing adjacent to the left and right engine strut with aluminum pulleys; and re-rig the thrust control cables; in accordance with the service bulletin.

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

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

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

Issued in Renton, Washington, on April 7, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9254 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–26]

RIN 2120–AA66

Proposed Modification and Revocation of Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify five jet routes, three Very High Frequency Omnidirectional Range (VOR) Federal airways, and one colored Federal airway, and to revoke one jet route, located in the State of Alaska (AK). The FAA is proposing this action for the following reasons: to realign the North Pacific (NOPAC) Air Traffic Service (ATS) route structure; to reflect the ADAK Nondirectional Radio Beacon (NDB), AK, decommissioning from the National Airspace System (NAS); and to resolve an aeronautical charting discrepancy. Further, this action would improve the management of air traffic operations in the State of Alaska and enhance safety.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 98–AAL–26, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 915, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AAL–26.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677 for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo.gov/nara/ index.html for access to recently published rulemaking documents.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 (part 71) to modify five jet routes, three VOR Federal airways, and one colored Federal airway, and to revoke one jet route.

Specifically, jet routes J–111, J–115, J–127, J–501, J–511, VOR Federal airways V–319, V–453, V–456, and Colored Federal airway Green-8 would be modified, and J–814R would be revoked. The FAA is proposing this action for the following reasons:

Segments of J–111 from Anchorage to Middleton Island to the noncompulsory reporting point SNOUT overlap existing J–804R segments and are not used.

J–115 and Colored Federal airway Green-8 use ADAK NDB which will be decommissioned. The new NDB on ADAK Island will be named Mount Moffett NDB.

J–127, J–501, J–511, and J–814R terminate at AUGIN, MIXER, ENCOR, and PANTT fixes which were once part of the NOPAC ATS route structure and these fixes are no longer required for ATC purposes. As a result, the FAA is proposing to revise J–127, J–501, and J–511 to reflect this change in route structure, and to revoke J–814R as this route is no longer needed for ATC purposes.

V–319, and V–453 are being amended by adding non-part 95 segments which provide continuity and make it easier for the pilot to plan the flight and file the flight plan. The conversion of these non-part 95 segments would change uncharted nonregulatory route segments to VOR Federal Airway segments, thus adding to the instrument flight rules (IFR) airway and route infrastructure in Alaska. Also, pilots would be provided with minimum en route altitudes and minimum obstruction clearance altitudes information along the new route segments, thereby enhancing safety.

V–456 would be amended to correct a discrepancy with the victor airway and how it is depicted on the IFR Enroute L–3/L–4 Low Altitude—Alaska Chart and the Kodiak Aeronautical Sectional Chart. The outbound radial from King Salmon is 032° on the sectional chart and 033° on the enroute chart. The current legal description for V–456 includes an intersection (King Salmon 053° and Kenai 239°) which needs to be removed. This action would make the route segment a straight line and would not affect the fixes STREW, BITOP, or COPPS on V–456.

Jet routes, green Federal airways, and Alaskan VOR Federal airways are published in paragraph 2004, paragraph 6009(a), and paragraph 6010(b), respectively, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The jet routes, green Federal airway, and Alaskan VOR Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–111 [Revised]

From Nome, AK, via Unalakleet, AK; McGrath, AK; Anchorage, AK.

* * * * *

J–115 [Revised]

From Shemya, AK, NDB; Mount Moffett, AK, NDB; Dutch Harbor, AK, NDB; Cold Bay, AK; King Salmon, AK; INT King Salmon 053° and Kenai, AK, 239° radials; Kenai; Anchorage, AK; Fairbanks, AK; Chandalar, AK, NDB; to Deadhorse, AK.

* * * * *

J–127 [Revised]

From King Salmon, AK; to INT King Salmon 042° and Anchorage, AK, 246° radials.

* * * * *

J–501 [Revised]

From San Marcus, CA, via Big Sur, CA; Point Reyes, CA, via Rogue Valley, OR; Hoquiam, WA; INT Hoquiam 354° and Tatoosh, WA, 162° radials; Tatoosh; Cape Scott, BC, Canada, NDB; Sandspit, BC, Canada; Biorka Island, AK; Yakutat, AK; Johnstone Point, AK; Anchorage, AK; Sparrevohn, AK; Bethel, AK; excluding the airspace within Canada.

* * * * *

J–511 [Revised]

From Dillingham, AK; Anchorage, AK; Big Lake, AK; Gulkana, AK; to Burwash Landing, YT, Canada, NDB, excluding the portion which lies over Canadian territory.

* * * * *

J–814R [Revoked]

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Paragraph 6009(a)—Green Federal Airways

* * * * *

Green-8 [Revised]

From Shemya, AK, NDB; 20 AGL, Mount Moffet, NDB, AK; 20 AGL, Dutch Harbor, AK, NDB; 20 AGL, INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL, Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings; to Kachemak NDB. From Campbell Lake, AK, NDB; Glenallen, AK, NDB; INT Glenallen NDB 052° and Nabesna, AK NDB 252° bearings; Nabesna NDB.

* * * * *

Paragraph 6010(b)—Alaskan VOR Federal Airways

* * * * *

V–319 [Revised]

From Yakutat, AK, via Johnstone Point, AK; INT Johnstone Point 286° and Anchorage, AK, 117° radials; Anchorage; Sparrevohn, AK; Bethel, AK; Hooper Bay, AK; Nanwak, AK, NDB; to Kipnuk, AK.

* * * * *

V–453 [Revised]

From King Salmon, AK; Dillingham, AK; INT Dillingham, AK 308° and Bethel, AK 143° radials; Bethel, AK; to Unalakleet, AK.

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V–456 [Revised]

From Cold Bay, AK; King Salmon, AK; Kenai, AK; Anchorage, AK; Big Lake, AK; Gulkana, AK; to Northway, AK.

* * * * *

Issued in Washington, DC, April 6, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–9298 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41261; File No. S7–5–99]

RIN 3235–AH40

Publication or Submission of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for a release reproposing amendments to Rule 15c2–11 under the Securities Exchange Act of 1934 (Release No. 34-41110) which was published in the **Federal Register** on

March 8, 1999 (64 FR 11124). Rule 15c2–11 governs the publication of quotations for securities in a quotation medium other than a national securities exchange or Nasdaq. The comment period for Release No. 34–41110 is being extended to May 8, 1999.

DATES: Comments must be received on or before May 8, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–5–99. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001, at (202) 942–0772: James A. Brigagliano, Florence E. Harmon, Jerome J. Roche, or Thomas D. Eidt.

SUPPLEMENTARY INFORMATION: On February 25, 1999, the Commission issued Release No. 34–41110 soliciting comment on reproposed amendments to Rule 15c2–11. Rule 15c2–11 governs the publication of quotations for securities in a quotation medium other than a national securities exchange or Nasdaq. The Commission originally requested that comments on this reproposal be received by April 7, 1999. The Commission has recently received several requests to extend the comment period and believes that extending the comment period is appropriate in order to give the public additional time to comment on the matters addressed by the release. Therefore, the Commission is extending the comment period to May 8, 1999, for Release No. 34–41110 (Publication or Submission of Quotations Without Specified Information).

Dated: April 8, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9242 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 040599D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of experimental fishery proposals; request for comments.

SUMMARY: NMFS announces that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of the Gulf of Maine Separator Trawl Whiting Fishery (Separator Trawl Fishery) and proposed supplemental gear testing experiment to enable vessels to conduct operations otherwise restricted by regulations governing the Northeastern Multispecies Fishery. The experimental fisheries would allow commercial vessels to fish for, retain, and land silver hake (whiting) with mesh smaller than currently allowed in a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area. These experiments would continue investigations designed to demonstrate the effectiveness of a bycatch reduction device (separator grate) assembled on small-mesh silver hake (whiting) trawls. It is anticipated that participation level would be dictated by two interrelated factors: Market value of whiting at the dock and the availability of the whiting at sea. Approximately 60 vessels were authorized to participate in last year's experiment from July 1 - November 30, 1998, although enrollment periods fluctuated due to the factors identified here. Regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on the proposed experimental fisheries.

DATES: Comments on this notice must be received by April 29, 1999.

ADDRESSES: Comments should be sent to Jon Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Proposed Experimental Fisheries.''

FOR FURTHER INFORMATION CONTACT: Bonnie VanPelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Maine Department of Marine Resources (MEDMR) submitted an application to continue the experimental whiting separator trawl fishery (Separator Trawl Fishery) in the Small Mesh Northern Shrimp Area, a portion of the Gulf of Maine/Georges Bank Regulated Mesh Area. This will provide an additional opportunity to collect information on the effectiveness of the separator grate in an effort to show that the separator trawl fishery could be a low bycatch fishery. Although this would be the fifth consecutive year of the experiment, data from previous years are sparse and inclusive, due in part to the fact that the whiting failed to school in the experimental fishery areas and market value of whiting declined. As a result, there was limited activity in the experimental fishery in 1998. Therefore, in order to gather sufficient data on the separator grate's ability to reduce bycatch of regulated species consistent with the requirement of an exempted fishery, as well as to determine whether the fishery as a whole can reach its economic potential, a continuation of the experiment is necessary.

Participants in the Separator Trawl Fishery will be required to elect either a food fishery or bait fishery component designation: Food fishery enrollment includes an allowance for landing whiting at the dock only, while bait fishery enrollment allows for at-sea utilization of whiting and transfer of whiting catch at sea under a special authorization. Program participants may designate only one fishery component at a time for a minimum enrollment of 7 days.

A participants list will be compiled by the MEDMR based on a trends analysis of historical enrollment in recent years. Further limitations on participation may be necessary depending on consistency in reporting or logbook compliance issues identified through the NMFS review process.

As part of the same request, the MEDMR also requested a supplemental gear testing experiment to support the objectives of the Separator Trawl Fishery. Proposed modifications of the current gear include two increased bar spacings on the separator grate and two increased codend mesh sizes along with the addition of a raised footrope configuration on the otter trawl. The gear testing experiment may reveal modifications in trawl gear and grate configuration that would be more effective in reducing bycatch and more

selective in catching the appropriate sized whiting in accordance with whiting resource management strategies.

EFPs would be issued to the participating vessels in both experiments in accordance with the conditions stated therein, and will exempt vessels from the mesh size, days-at-sea, and other gear restrictions of the Northeast Multispecies Fishery Management Plan.

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

Dated: April 8, 1999.

Gary C. Matlock,

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

[FR Doc. 99–9313 Filed 4–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 033199C]

RIN 0648–AM15

Fisheries of the Gulf of Mexico; Amendment 16B to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 16B)

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

ACTION: Notice of availability of Amendment 16B to the FMP for the reef fish resources of the Gulf of Mexico; request for comments.

SUMMARY: Amendment 16B would authorize size limits for banded rudderfish, lesser amberjack, cubera snapper, dog snapper, mahogany snapper, mutton snapper, schoolmaster, scamp, gray triggerfish, and hogfish; exclude banded rudderfish, lesser amberjack, dwarf sand perch, sand perch, and hogfish from the 20–fish aggregate (combined) reef fish bag limit; authorize new bag limits for hogfish, speckled hind, warsaw grouper, and for banded rudderfish and lesser amberjack combined; remove queen triggerfish from the Reef Fish FMP and authorize removal from the applicable regulations; and eliminate the distinction between species in the management unit and species in the fishery, but not included in the management unit. The intended effect of Amendment 16B is to conserve and manage the reef fish resources of the Gulf of Mexico.

DATES: Written comments must be received on or before June 14, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Requests for copies of the FMP, which includes an Environmental Assessment and a Regulatory Impact Review, should be sent to the Gulf of Mexico Fishery Management Council (Council), The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, 727-570-5305, fax 727–570–5583.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any FMP or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a FMP or amendment, immediately publish a document in the **Federal Register** stating that the FMP or amendment is available for public review and comment.

Amendment 16B would authorize more conservative bag and size limits for several reef fish species and improve consistency with Florida state regulations, thereby improving enforcement. Fish trap phase-out measures that were the subject of public hearings as part of draft Amendment 16, and approved by the Council, were included in Amendment 16A, which was partially approved by NMFS on March 18, 1999.

Minor Amberjack Measures

A 1996 NMFS stock assessment suggests that the number of young greater amberjack has decreased steadily since 1991. In addition, anecdotal information from anglers along Florida's Gulf coast suggests that greater amberjack have decreased in size and abundance in recent years. In response to this information, the Council developed Amendment 12 to the Reef Fish FMP, which established a 1–fish bag limit for greater amberjack, and Amendment 15 to the FMP, which established a seasonal closure of the commercial fishery. Greater amberjack are also subject to minimum size limits of 28 inches (71.1 cm) fork length for the recreational fishery and 36 inches (91.4 cm) for the commercial fishery.

Juvenile greater amberjack, lesser amberjack, and banded rudderfish are difficult to distinguish and are often confused by the public; consequently, misidentified juvenile greater amberjack may be landed as lesser amberjack or banded rudderfish, species that are currently unregulated. Therefore, the Council believes that additional protection for juvenile greater amberjack is warranted. The intent of Amendment 16B is to reduce the harvest of misidentified juvenile greater amberjack by limiting the harvest of these minor amberjack species. The word ''minor'' used by the Council in Amendment 16B is not intended to reflect on the significance of these measures; instead it refers to the species banded rudderfish and lesser amberjack.

In Reef Fish Amendment 12 the Council proposed to apply an aggregate bag limit and a minimum size limit of 28 inches (71.1 cm) to greater amberjack, lesser amberjack, and banded rudderfish. These proposed actions would have effectively eliminated the recreational harvest of banded rudderfish and lesser amberjack because these species rarely, if ever, reach 28 inches (71.1 cm). The Council did not present this aspect of the measure as a deliberate, direct allocation; however, the effect of the measure would have been to shift the allocation of these species from principally recreational to entirely commercial. Therefore, this aspect of the measure would have operated as the functional equivalent of a direct allocation, and NMFS considered this allocation unfair and inequitable. Accordingly, NMFS disapproved this portion of Amendment 12 based on national standard 4 of the Magnuson-Stevens Act, which requires that allocations of fishing privilege be fair and equitable to all fishermen.

Amendment 16B would authorize new bag and size limits that should reduce the harvest of banded rudderfish, lesser amberjack, and misidentified greater amberjack while continuing to allow a limited recreational harvest. Amendment 16B would authorize: (1) Establishment of a ''slot limit'' of 14 inches (35.6 cm) (minimum) to 22 inches (55.9 cm) (maximum) fork length for the commercial and recreational harvest of banded rudderfish and lesser amberjack; and (2) establishment of a 5–fish aggregate bag limit for banded rudderfish and lesser amberjack and exclude both species from the 20–fish aggregate reef fish bag limit.

Species Not Listed in the Management Unit

Since its inception, the FMP has included two lists of reef fishes: One of species in the management unit and another of species in the fishery, but not included in the management unit. The designation of species in the fishery, but not included in the management unit was originally intended for data collection purposes only; however, the existence of two lists has created confusion regarding which species are subject to regulations. Amendment 16B would eliminate the distinction in the FMP between these two lists and create a single list of ''species in the reef fish FMP,'' which identifies the reef fish management unit. There are only four reef fish species that are ''species in the fishery but not in the management unit''–sand perch, dwarf sand perch, queen triggerfish, and hogfish. Amendment 16B would include hogfish, dwarf sand perch, and sand perch in the management unit and remove queen triggerfish from the FMP. Amendment 16B would authorize removal of queen triggerfish from the regulations implementing the FMP, and thus allow Florida to regulate vessels registered in the State of Florida and fishing for that species in the exclusive economic zone (EEZ) under that state's more conservative management measures. Although queen triggerfish occur rarely or occasionally throughout the Gulf of Mexico, they are abundant only off Florida and are seldom landed outside Florida.

Florida Compatible Size and Bag Limits

Florida has established bag limits and size limits for several reef fish species for which there are either no corresponding limits in the EEZ, or for which the Federal limits differ from the state limits. In response to a request from the Florida Marine Fisheries Commission (FMFC) that the Council consider implementing size and bag limits consistent with those in Florida state waters, the Council proposes new compatible bag and size limits. In a November 3, 1994, letter the FMFC provided to the Council biological information that formed the basis for Florida's regulations. Although limited, the best scientific information available to the Council, and the precautionary approach to fisheries management, indicate a need for greater protection for these species. The Council concluded that bag and size limits compatible with Florida's would be the most effective means of achieving greater protection, because compatible regulations would facilitate compliance and enforcement. Furthermore, the Council states that with the possible exception of gray triggerfish, Florida accounts for most of the recreational and commercial landings of these species. The proposed minimum size limit for gray triggerfish is based on a 1995 NMFS stock assessment, and, thus, it is an appropriate measure to extend throughout the Gulf EEZ.

Amendment 16B would authorize the establishment of the following minimum size limits: cubera snapper (12 inches (30.5 cm), total length (TL)), dog snapper (12 inches (30.5 cm), TL), mahogany snapper (12 inches (30.5 cm), TL), schoolmaster (12 inches (30.5 cm), TL), mutton snapper (16 inches (40.6 cm), TL), scamp (16 inches (40.6 cm), TL), gray triggerfish (12 inches 30.5 cm), TL), and hogfish (12 inches (30.5 cm), fork length). In addition, Amendment 16B would authorize the establishment of a 5–fish bag limit for hogfish, exclude hogfish from the 20–fish aggregate reef fish bag limit, and clarify that sand perch and dwarf sand perch are excluded from the 20–fish aggregate bag limit. Sand perch and dwarf sand perch are often used as bait, and there is no evidence to suggest their stocks are in need of management.

Speckled Hind and Warsaw Grouper

The NMFS Office of Protected Resources has added speckled hind and warsaw grouper to the list of candidates for possible listing as threatened or endangered under the Endangered Species Act. Candidate status does not afford any specific level of additional protection for a species, but it does reflect a significant level of concern regarding a species' status. Amendment 16B would authorize the establishment of a recreational bag limit of one speckled hind and one warsaw grouper per vessel. These new restrictions would also prohibit the sale of these species by the recreational sector because the FMP and existing regulations prohibit the sale of reef fish subject to bag limits. The commercial harvest of warsaw grouper and speckled hind would continue and be limited by the deep-water grouper quota. The Council believes that because warsaw grouper and speckled hind are usually caught in relatively deep water, the mortality rate of released fish is high; consequently, closure of the fishery would provide little additional protection. Furthermore, the Council states that commercial vessels do not target these species, and since the intent is to eliminate targeting of these species, additional restrictions on the commercial fishery are not needed.

A proposed rule to implement Amendment 16B has been completed. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish that finding in the **Federal Register** for public review and comment.

Comments received by June 14, 1999, whether specifically directed to Amendment 16B or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 16B or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: April 8, 1999.

Gary C. Matlock,

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

[FR Doc. 99–9314 Filed 4–13–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 71
Wednesday, April 14, 1999

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

Agricultural Marketing Service

[Docket No. FV99–360]

Information About Recognizing Limited Liability Companies Under the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice to the public that it is USDA policy to recognize a limited liability company (LLC) as a legal entity under the Perishable Agricultural Commodities Act (PACA), and that any member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC, may be considered to be ''responsibly connected'' with the LLC.

DATES: April 14, 1999.

ADDITIONAL INFORMATION: Contact Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, AMS, USDA, Room 2095–So. Bldg., P.O. Box 96456, Washington, DC 20090–6456. Email—charles.parrott@usda.gov. This notice will also be posted on the Internet at www.ams.usda.gov/fv/paca.htm.

SUPPLEMENTARY INFORMATION: The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefitting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

Any person who buys or sells commercial quantities of fruits and vegetables in interstate or foreign commerce must be licensed under the PACA. Under the Act, the term ''person'' means any individual, partnership, corporation, association, or separate legal entity. 7 U.S.C. 499a(b)(1); 7 CFR 46.2(i). Separate licenses are required for each person. A person is designated as ''responsibly connected'' with a firm under the PACA if that person is affiliated as an owner, as a partner in a partnership, or as an officer, director or holder of more than 10 percent of the outstanding stock of a corporation or association. 7 U.S.C. 499a(b)(9); 7 CFR 46.2(ff). In the event that a licensee is found to have violated the Act and USDA suspends or revokes the firm's license, then the licensee and its ''responsibly connected'' principals face PACA licensing and employment restrictions which may include the denial of a license, a prohibition on employment with another PACA licensee, or the requirement that a bond be posted as a prerequisite to licensing or employment in the fruit and vegetable industry. 7 U.S.C. 499h.

Although the PACA and PACA regulations do not specifically list the LLC as a ''person,'' it is USDA policy to recognize an LLC as a separate legal entity, just as LLCs are recognized in most states, subject to licensing under the PACA regulations. This notice provides information about how AMS handles LLCs under the PACA, especially with regard to the licensing of LLCs and the responsibly connected status of LLC members.

An LLC may be described as a cross between a partnership and a corporation. This hybrid business structure is now available to businesses in most states. The personal liability protection afforded by the LLC is similar to that of a corporation. For example, the members are insulated from liability arising solely from being a member but are not insulated from liability for the acts of the LLC which violate any laws or regulations. Liability issues may vary somewhat according to state law and the LLC's organizational agreement.

Although an LLC affords personal liability protection to its owners that is similar to that of a corporation, the ownership characteristics of an LLC more closely resemble those of a partnership. The LLC owners are often referred to as members, and member-managers may be designated. Membership requirements in an LLC can be determined by the members; for example, members may join through financial contributions or through the performance of services.

In general, state LLC statutes require the filing of documentation similar to articles of incorporation, sometimes called articles of organization. In addition, an operating agreement is entered into which usually designates who has the authority to run the LLC company. This operating agreement usually details the process to be followed in choosing the manager(s) and sets forth the manager(s)' authority and the authority retained by the members. The manager(s) is often, but not always, a member of the LLC. Specific requirements vary by state.

Because of the unique composite nature of the LLC, an LLC's members are analogous to partners in a partnership, while managers, who are not always members, may be analogous to corporate officers, depending on the manager's responsibilities as set out by the LLC's operating agreement. Therefore, it is USDA's policy that all LLC members, regardless of the member's financial contribution, are ''responsibly connected'' persons under the PACA, just as all partners are ''responsibly connected'' with a partnership. In addition, any person(s), whether or not a member, who is authorized by the LLC to be in charge of the daily business operations, management, and control of the LLC, may be considered responsibly connected to the LLC by USDA, just as officers in a corporation are under the PACA. The determination of whether a person other than a member is ''responsibly connected'' will depend upon the terms of the LLC's operating agreement. These agreements are similar to a partnership agreement or corporate bylaws which outline who is in charge of the business' daily operations. Those persons whom the LLC authorizes to be in charge of the day-to-day operation, management and control of the LLC's daily business activities may include, but are not limited to, those with the titles of managers, officers, and/or directors.

An LLC members' ownership in the company closely resembles a

partnership. Therefore, all LLC members, including corporations or other entities, must be identified on the firm's PACA license application. If a member is a corporation or other legal entity, more information, such as the names of officers of the corporation or other data, will be required by AMS. PACA license applications submitted by LLCs should include organizational information about the company, including, but not limited to, documentation filed with the state in which the LLC is legally established, such as its articles of organization and its operating agreement. Only one member's signature is required to make a valid PACA application. In addition, just as is required of other legal entities, if the articles of organization or the operating agreements change, the LLC should notify AMS' PACA Branch as soon as possible and the LLC should submit revised documents to the PACA Branch.

The LLC business structure has become widely accepted throughout the United States as a new legal entity. AMS is hereby providing notice to all current and future licensees that certain information is required in order to obtain a license as an LLC under the PACA. In addition, notice is given to all LLC members that they are presumed to be ''responsibly connected'' persons and to all LLC managers, who are not also members, that they are potentially ''responsibly connected'' persons. The ''responsibly connected'' status of LLC managers will be determined on a case-by-case basis, depending upon the terms of the LLC's operating agreement and the ways in which the person's status is analogous to that of an officer, director or shareholder of a corporation. Therefore, both members and managers may be subject to PACA sanctions if the Act is violated by the LLC.

Dated: April 6, 1999

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–8975 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Protein Scientific, Inc./The Protein Group, of Portland, Maine, an exclusive license to U.S. Patent No. 5,071,763 issued on December 10, 1991, and the Divisional U.S. Patent No. 5,198,351 issued on March 30, 1993, both entitled ''Lactose Hydrolysis by Mutant *Streptococcus thermophilus*.'' Notice of availability for U.S. Patent No. 5,071,763 was published in the **Federal Register** on January 23, 1992, and notice of availability for U.S. Patent No. 5,198,351 was published in the **Federal Register** on December 17, 1991.

DATES: Comments must be received by June 14, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Protein Scientific, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, by June 14, 1999, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–9263 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Public Perceptions of Land Use Change

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to establish a new information collection. The new collection will help the Forest Service meet the needs and expectations of the people who live and work along the Interstate-90 (I–90) corridor, within and in proximity to, the Mt. Baker-Snoqualmie and Wenatchee National Forests. Respondents will include wildlife, silviculture, timber, land planning, wildland conservation, business, and development professionals, biologists, and residents along the I–90 corridor.

DATES: Comments must be received in writing on or before June 14, 1999.

ADDRESSES: All comments should be addressed to Linda Kruger, Research Social Scientist, Seattle Forestry Sciences Laboratory, Forest Service, USDA, 4043 Roosevelt Way NE, Seattle, Washington 98105 or email lkruger/r6pnw__seattle@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Linda Kruger, Seattle Forestry Sciences Laboratory, at (206) 553–7817.

SUPPLEMENTARY INFORMATION:

Background

The Mt. Baker-Snoqualmie and Wenatchee National Forests are in close proximity to the large, rapidly expanding Seattle, Washington, area. Urban residents and businesses are making more demands on nearby National Forest lands. Many urban residents in this metropolitan area are moving to rural communities or forested housing developments in an attempt to enjoy the natural environment of the Pacific Northwest, while maintaining access to a vibrant urban center. Multiple interests, such as recreation, tourism, housing, access to a vibrant urban center. Multiple interests, such as recreation, tourism, housing, private-sector businesses, timber, wildlife, and conservation are competing for use, within and in proximity to, the Mt. Baker-Snoqualmie and Wenatchee National Forests along the Washington State I–90 corridor. This competition and increased demand have already resulted in new ski resorts, recreational facilities, shopping malls, increased resistance to timber harvesting, and heavier traffic and congestion.

Data from this information collection will be considered when revising land and resource management plans and will help the Forest Service meet multiple-use land management needs of the Mt. Baker-Snoqualmie and Wenatchee National Forest lands in close proximity to the Washington State I–90 corridor.

Description of Information Collection

The following describes the new information collection:

Title: Public Perceptions of Land Use Change.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: The following describes a new information collection requirement and has not received approval by the Office of Management and Budget.

Abstract: The data in this information collection will be used to identify the range of perceptions, concerns, and attitudes the public has toward changes in land use along the Washington State I–90 corridor within and in close proximity to the Mt. Baker-Snoqualmie and Wenatchee National Forests. The data also will be used to identify the characteristics about the I–90 corridor that the respondents value most; to explore the differences in opinion of various groups on how to use National Forest and adjacent land; and to ascertain the perceptions that the diverse group of respondents has regarding the Forest Service's land management practices and policies. Additionally, the data will be used for amendments and revisions of forest plans, as well as in assessing proposed National Forest projects and activities. Respondents include wildlife, silviculture, timber, land planning, wildland conservation, business and development professionals, biologists, and residents along the I–90 corridor.

The Forest Service will provide data from this information collection to other agencies and organizations, such as city and county planning commissions, the Washington Department of Natural Resources, and the Mountains to Sound Greenway Trust (a non-profit Seattle-based organization working to create a greenbelt along the I–90 corridor from Seattle to Ellensburg). The results of the study also will be available to the participants upon request and will be published in community newspapers and organization newsletters.

The Forest Service Pacific Northwest Research Station, People and Natural Resources Program has entered into a cooperative agreement with the University of Washington to facilitate the collection of information. University of Washington staff, in collaboration with Forest Service Pacific Northwest Research Station staff, will write and administer the survey and analyze the survey results.

Respondents will be selected in such a way as to help ensure representation from all interested groups.

University of Washington staff, along with Forest Service staff, will ask respondents to complete a survey assessing their concerns about changes in how to use National Forest and adjacent land along the Washington State I–90 corridor, their familiarity with the issues related to changes in use of these lands, their attitudes toward changes in the use of these lands, their ethnic and economic background, their education level, their name, and their address.

Data gathered in this information collection is not available from other sources.

Estimate of Burden: 30 minutes.

Type of Respondents: Respondents will include wildlife, silviculture, timber, land planning, wildland conservation, business and development professionals, biologists, and residents along the I–90 corridor.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment Is Invited

The agency invites comments on: (a) 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; (b) the accuracy of this agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity or the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 5, 1999.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 99–9335 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lemolo Watershed Projects, Diamond Lake Ranger District, Umpqua National Forest, Douglas County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) for a variety of connected resource projects within the Lemolo watershed planning area of the Diamond Lake Ranger District. These projects were developed according to direction in the Umpqua National Forest Plan, as amended, and in response to recommendations in the Diamond Lake/Lemolo Lake Watershed Analysis. They are intended to restore, to the extent possible, the desired vegetation patterns in the planning area by approximating natural disturbance processes while providing economic benefits to the local economy. The projects being proposed include several timber sales, the construction of temporary and system roads, site preparation, planting, the burning of natural fuels, road decommissioning, and soil restoration. These projects are proposed for implementation in the year 2000 and 2001. The planning area is located approximately 80 miles east of Roseburg, Oregon. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by May 21, 1999.

ADDRESSES: Send written comments and suggestions concerning this proposal to J. Dan Schindler, District Ranger, Diamond Lake Ranger District, 2020 Toketee Ranger Station RD, Roseburg, Oregon 97447–9704.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action, or EIS to Pat Williams, ID Team Leader/Timber Sale Planner, Diamond Lake Ranger District, 2020 Toketee Ranger Station RD, Idleyld Park, Oregon 97447–9704, or (541) 498–2531.

SUPPLEMENTARY INFORMATION: The area being analyzed in the Lemolo Watershed Projects EIS encompasses approximately 71,800 acres of National Forest land on the Diamond Lake Ranger District. The planning area include all or portions of sections 24 through 28 and 33 through 36, T25S, R5½E; sections 30, 31 and 32, T25S, R6E; sections 32 through 36, T25½S, R6E; sections 31, 32 and 33, T25½S, R6½E; sections 10 through 15, 22 through 25 and 36, T26S, R5E; sections 1 through 36, T26S, R6E; sections 4 through 9, 15 through 21 and 27 through 35, T26S, R6½E;

sections 1, 12 and 13, T27S, R5E; sections 1 through 28 and 33 through 36, T27S, R6E; sections 3 through 10, 17, 18, 19 and 30, T27S, R6½E; and sections 1, 2, 3, 10, 11 and 12, T28S, R6E, Willamette Meridian, Douglas County, Oregon.

This proposal is based on the need to achieve several objectives for matrix lands within Management Areas 5 and 10 of the planning area. These objectives are described in the 1990 Umpqua National Forest Land and Resource Management Plan (LRMP) and page B–1 of the Record of Decision (ROD) for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. The focus for Management Area 5 is managing the Oregon Cascades Recreation Area (OCRA) consistent with the intent of the Oregon Wilderness Act. Toward this end, the proposed action includes the decommissioning of approximately two miles of roads in the OCRA. The focus of Management Area 10 is the supply of timber to local and regional economies on a cost efficient, sustainable basis. The ROD states that the production of timber and other commodities is an important objective for the Matrix. The ROD states further that one of the objectives of matrix is to provide ecological diversity at the landscape scale in the form of early-successional habitat through commercial timber harvest.

The Diamond Lake/Lemolo Lake Watershed Analysis recommends that harvest prescriptions in the analysis area should create a high level of vegetative diversity in both structure and pattern by replicating natural disturbance processes. Towards this end, the priority in the Lodgepole Pine Type is to conduct regeneration harvests in overstocked lodgepole pine stands older than 70 years to reduce the potential for mountain pine beetle epidemics. There is also an opportunity to reduce stand densities to a more desired condition around Lemolo Lake by commercially thining some of those stands.

From a total planning area of 71,800 acres, the proposed action identifies a need to harvest approximately 1,670 acres under several different silvicultural treatments that include approximately 940 acres of commercial thinning, approximately 490 acres of regeneration harvests, and approximately 240 acres of partial cutting. As proposed, this harvest may be accomplished via three to six timber sales. In conjunction with the sales, implementation of the proposed action will necessitate the construction of 5.4 miles of system roads, the reconstruction of 33.2 miles of existing roads, the construction of 3.5 miles of temporary roads with subsequent obliteration, the decommissioning of 10 miles of road, the construction of two permanent helicopter landings, the expansion of an existing rock pit by two acres, and the burning of natural fuels on approximately 530 acres. Some of the areas prescribed for harvest will require a helicopter yarding system, others will require a skyline yarding system, and others can be harvested with ground-based equipment. The 1,670 acres proposed for harvest are estimated to yield 31.0 million board feet of timber. To put this estimated yield in a perspective that is easier to visualize, the lumber derived from this proposal could build approximately 3,100 low-income family dwellings and provide other wood products, such as chips and fiber, for the regional economy.

As part of the analysis process under the National Environmental Policy Act, the Umpqua National Forest has begun the scoping process for this project. Preliminary issues identified to date include the following:

- Potential effects on the Northern Spotted Owl and it's habitat.
- Potential effects on Wolverine habitat.
- The harvest of timber in a visually sensitive area.
- Potential effects on Lynx habitat.

One of the purposes of this notice of intent is to solicit input from the public. At this very early stage of the analysis process, there are no alternatives to the proposed action other than the No Action Alternative. The scoping is intended to identify issues which may lead to the development of alternatives to the proposed action.

In addition to this notice, the public has been notified of the environmental impact statement through the Umpqua National Forest's April, 1999, Schedule of Proposed Actions (SOPA). Scoping for this project will also include an open house in Roseburg, Oregon, on April 21, 1999. Based on the preliminary issues, the Responsible Official has determined that it is appropriate to proceed with an environmental impact statement.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by October, 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available in December, 1999.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corps.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequence discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Don Ostby, Forest Supervisor for the Umpqua National Forest. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The decision will be subject to appeal under 36 CFR part 215.

Dated: April 5, 1999.

Marty Santiago,

Acting Deputy Forest Supervisor.

[FR Doc. 99–9275 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Blue Stewardship Project; White River National Forest, Summit County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement on Monday, April 5, 1999 (64 FR 16419), in conjunction with planning the Upper Blue Stewardship Project. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Kathleen Phelps or Gwenan Stephens at (970) 468–5400.

Correction

In the **Federal Register** of April 5, 1999, in FR Doc. 99–7977, on page 16420, column three, correct paragraph 1 to read as follows:

''Comments concerning the scope of the analysis should be received in writing by May 5, 1999. In June and July a field trip(s) can be scheduled to look at particular concerns or alternatives in the field (such as non-system trail closures). Please respond if you are interested in attending field trip(s).''

Dated: April 8, 1999.

Gloria Manning,

Acting Deputy Chief, National Forest System.

[FR Doc. 99–9333 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Thursday, April 22, 1999, at the Wenatchee National Forest headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. The majority of the meeting will be devoted to presentations on listing of fish species under the Endangered Species Act and a short period of time will be dedicated to the Methow Valley dry forest management proposal. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington, 98801, 509–662–4335.

Dated: April 2, 1999.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 99–9321 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forestry Research Advisory Council Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the requirements of Federal Advisory Committee Act, the Department of Agriculture announces the next meeting of the Forestry Research Advisory Council. The meeting is open to the public. Persons may participate in the meeting if time and space permit. The council agenda includes: a discussion of current issues relating to forestry research; a discussion of science planning related to forestry, natural resources, and laws and regulations that affect research funding and direction; a review of Forest Service Research and Development and the Cooperative Forestry Research (McIntire-Stennis) programs; and other current research issues

The public may file written comments before or after the meeting by sending written comments to Hao C. Tran, Staff Assistant, Deputy Chief for Research and Development, Forest Service, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1293.

DATES: The meeting will be held May 25–26, 1999, from 8:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held in the Cabinet Room at the Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Hao C. Tran, Office of the Deputy Chief for Research and Development, telephone (202) 205–1293.

Dated: April 8, 1999.

Robert Lewis, Jr.,

Deputy Chief for Research and Development.

[FR Doc. 99–9334 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Requests for the Appointment of a Technical Advisory Committee

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 14, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Officer, Department of Commerce, Room 6881, 14th and Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Technical Advisory Committees were established to advise and assist the U.S. Government on export control matters. In managing the operations of the TACs, the Department of Commerce is responsible for implementing the policies and procedures prescribed in the Federal Advisory Committee Act. The Bureau of Export Administration provides technical and administrative support for the Committees.

The TACs advise the government on proposed revisions to export control lists, licensing procedures, assessments of the foreign availability of controlled products, and export control regulations. Any producer of items subject to export controls can make application to the Secretary of Commerce requesting that a committee be established. The information provided is used to determine if the creation of a committee is appropriate.

II. Method of Collection

Written request to BXA.

III. Data

OMB Number: 0694–0100.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 5 hours per response.

Estimated Total Annual Burden Hours: 5.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 7, 1999.

Linda Engelmeier,

Departmental Clearance Officer, Office of the Chief Information Officer

[FR Doc. 99–9336 Filed 4–13–99; 8:45 a.m.]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Information Systems Technical Advisory Committee (ISTAC) will be held May 13, 1999, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: April 8, 1999.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 99–9312 Filed 4–13–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031799C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings; amendment.

SUMMARY: The New England Fishery Management Council (Council) has modified a meeting of its Groundfish Advisory Panel for April 21, 1999. The meeting will now be a joint meeting with the Groundfish Oversight Committee, and the agenda is unchanged from the initial announcement of the meeting. As announced previously, the Groundfish Committee will also meet on April 22, 1999.

DATES: The meetings will be held on April 21 and 22, 1999.

ADDRESSES: Meetings will be held in Danvers, MA. See the **SUPPLEMENTARY INFORMATION** as previously published in the original notice (64 FR 14215, March 24, 1999) for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906-1097; telephone: (781) 231-0422.

SUPPLEMENTARY INFORMATION: The original notice (64 FR 14215, March 24, 1999) stated that only the Groundfish Advisory Panel would meet on Wednesday, April 21, 1999. The meeting has been rescheduled as a joint meeting between the Groundfish Advisory Panel and Groundfish Committee. All other information, as previously published in the original notice, remains unchanged.

Dated: April 8, 1999.

Valerie L. Chambers,

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

[FR Doc. 99–9214 Filed 4–8–99; 4:26 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Rules for Patent Maintenance Fees

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 14, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 or via the Internet (LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Patent and Trademark Office, Washington, DC 20231, by telephone at (703) 305–9285.

SUPPLEMENTARY INFORMATION:

I. Abstract

Maintenance fees are required to maintain a patent in force under Title 35 of the U.S. Code. Payments of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. The maintenance fee provisions appear in 35 U.S.C. 41(b) and (c). A patent number and serial number of the patent on which maintenance fees are paid are required in order to insure proper crediting of such payments.

There are forms associated with collecting maintenance fees. These forms are Form PTO/SB/45 (Maintenance Fee Transmittal Form), Form PTO/SB/47 (''Fee Address'' Indication Form), Form PTO/SB/65 (Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)), and Form PTO/SB/66 (Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)). The patentee uses Form PTO/SB/45 for payment of the maintenance fee(s) for listed patent(s), and PTO/SB/47 to indicate a ''fee address.'' Form PTO/SB/65 is used by the applicant to petition the PTO to accept unavoidably delayed payment of the maintenance fee for an expired patent, and Form PTO/SB/66 to petition the PTO to accept unintentionally delayed payment of a maintenance fee for an expired patent. Form PTO/SB/46 (Request for Payor Number) was eliminated in favor of Form PTO/SB/125 (already taken into account in 0651–0035) due to the fact that the ''payor number'' practice was replaced with a more comprehensive ''customer number'' practice.

II. Method of Collection

By mail, facsimile, and hand carry when the individual desires to participate in the information collection.

III. Data

OMB Number: 0651–0016.

Form Number(s): Forms PTO/SB/45, PTO/SB/47, PTO/SB/65, and PTO/SB/66.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; farms, state, local or tribal governments; and the Federal Government.

Estimated Number of Respondents: 326,101 responses per year.

Estimated Time Per Response: It is estimated to take approximately 48 minutes each to complete the maintenance fee transmittal form and the ''fee address'' indication form. It is estimated to take 1 hour each to complete the unavoidable and unintentional petitions.

Estimated Total Annual Respondent Burden Hours: 26,965 hours per year.

Estimated Total Annual Respondent Cost Burden: $0 (no capital start-up or maintenance expenditures are required). $947,135 per year is estimated for salary costs associated with respondents.

Title of form	PTO form No.	Estimated time for response	Estimated annual burden hours	Estimated annual responses
Maintenance Fee Transmittal Form	Form PTO/SB/45	48 mins	312,150	10,405
''Fee Address'' Indication Form	Form PTO/SB/47	48 mins	468,210	15,607
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)).	Form PTO/SB/65	1 hour	31,325	179
Petition to Except Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)).	Form PTO/SB/66	1 hour	135,450	774
Totals			947,135	26,965

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9337 Filed 4–13–99; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the ''Corporation'') , has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of AmeriCorps Recruitment, Susie Zimmerman, 606–5000, Extension 104. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Danny Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 to enhance the quality, utility and clarity of the information to be collected; and

• Propose 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.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application for Membership.

OMB Number: None.

Agency Number: None.

Affected Public: Any individual interested in applying to become a member of AmeriCorps*NCCC, AmeriCorps*VISTA, or a state and local AmeriCorps program located throughout the United States.

Total Respondents: Approximately 60,000. (Approximately 40,000 individuals serve each year in AmeriCorps programs; (collection totals are inexact as the bulk of these completed applications are submitted to local programs and not back to the Corporation for National Service).

Frequency: An applicant need only complete the application once. Applicants may make copies of their completed forms, and submit copies (each, however, with an original signature) to several different AmeriCorps programs for consideration.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 45,000 hours (if 60,000 individuals complete the form per year).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The Corporation for National Service proposes to utilize a new membership application form entitled ''AmeriCorps Application for Membership'' which will be used to screen and place applicants into the various AmeriCorps programs, and will replace the previously approved individual applications for the National Civilian Community Corps (NCCC) and Volunteers in Service to America (VISTA). Applicants will be able to use this single, new application to apply to any of the AmeriCorps programs, thereby eliminating the need for multiple applications should the individual wish to be considered for multiple programs, either concurrently or consecutively.

Dated: April 9, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9309 Filed 4–13–99; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552B), notice is hereby given of the following meeting of the Advisory Board of the Civilian Community Corps, a program operated by the Corporation for National and Community Service (Corporation).

TIME AND DATE: Friday, April 23, 1999, 9:00 a.m. to 11:30 and 2:30 to 4:00 p.m.

PLACE: The meeting will be held at Corporation Headquarters, 1201 New York Avenue, NW, Washington, DC.

STATUS: The meeting will be open.

MATTERS TO BE CONSIDERED: .

1. Introductions.
2. Advisory Board Purpose: Goals & Objectives.
3. AmeriCorps*NCCC Program Report.
4. AmeriCorps & Legislative Affairs Report.
5. Issues Concerning the Corporation for National Service.
6. Funding Issues.
7. Public Comment.
8. Future Board Meetings.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Ms. Merlene Mazyck, 1201 New York Avenue NW, 9th Floor, Washington, DC 20525. Telephone (202) 606–5000, ext. 137 (T.D.D. (202) 565–2799)).

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Individuals who have a disability and who need an accommodation to attend the meeting may notify Ms. Mazyck.

Dated: April 12, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9444 Filed 4–12–99; 3:11 pm]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Commissary Evaluation and Utility Surveys—Generic Clearance, OMB Number 0704—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 50,000.

Responses Per Respondent: 1.

Annual Responses: 50,000.

Average Burden Per Response: 6 minutes.

Annual Burden Hours: 5,000.

Neds and Uses: The Defense Commissary Agency (DeCA) will conduct a variety of surveys to include, but not necessarily limited to customer satisfaction, transaction based comment cards, transaction based telephone interviews, commissary sizing, and patron migration. The information collected will provide customer perceptions, demographics, and will identify agency operations that need quality improvement, provide early detection of process or system problems, and focus attention on areas where customer service and functional training, new construction/ renovations, and changes in existing operations that will improve service delivery..

Affected Public: Individuals or households; Business or other for-profit.

Frequency: On occasion.

Respondent's obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 7, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 99–9213 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provision of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of the Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 22 April 1999 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd, Arlington, VA 22201–5300.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: April 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–9210 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: 19 April 1999 (12:00 p.m. To 4:00 p.m.).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: April 8, 1999.

L.M. Bynum,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–9211 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Performance Review Board Membership

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra L. Burrell, Defense Finance and Accounting Service, DFAS–HQ–H, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service Performance Review Boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Joanne Arnette, Deputy Director for Information and Technology, Defense Finance and Accounting Service

Gregory Bitz, Director for Finance, Defense Finance and Accounting Service

Bruce Carnes, Director of Resource Management, Defense Finance and Accounting Service

Stephen Freeman, Director for Human Resources, Defense Finance and Accounting Service

Zack Gaddy, Deputy Director for Policy and Systems, Defense Finance and Accounting Services

Edward Grysavage, Deputy Director for Military and Civilian Pay, Defense Fiance and Accounting Service

Jerry Hinton, Deputy Director for Electronic Commerce and Program Management, Defense Finance and Accounting Service

Kathleen Noe, Deputy Director for Systems Development, Defense Finance and Accounting Service

Kenneth Sweitzer, Deputy Director Cleveland Center, Defense Finance and Accounting Service

Michael Dugan, Director, Indianapolis Center, Defense Finance and Accounting Service

Loen Krushinski, Director—Cleveland Center, Defense Finance and Accounting Service

Steve Turner, Director—Denver Center, Defense Finance and Accounting Service

JoAnn Boutelle, Deputy Director—Columbus Center, Defense Finance and Accounting Service

David Harris, Deputy Director—Denver Center, Defense Finance and Accounting Service

David Burman, Deputy Director—Indianapolis Center, Defense Finance and Accounting Service

Lydia Moschkin, Director for Systems Integration, Defense Finance and Accounting Service

C. Vance Kauzlarich, Director for Information and Technology, Defense Finance and Accounting Service

Edward Harris, Deputy Director for Accounting, Defense Finance and Accounting Service

John Barber, Deputy Director for Customer Support and Internal Control, Defense Finance and Accounting Service

Ida Faye Groves, Deputy Director for Customer Support and Internal Control, Defense Finance and Accounting Service

Robert McNamara, Deputy Director for Operations, Defense Finance and Accounting Service

Teresa Walker, Director, Kansas City Center, Defense Finance and Accounting Service

Dated: April 7, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–9212 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on May 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 614–7819.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: April 8, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 SAFAA A

SYSTEM NAME:

Civilian Personnel Files *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Civilian Personnel, Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

* * * * *

F036 SAFAA A

SYSTEM NAME:

Civilian Personnel Files.

SYSTEM LOCATION:

Chief, Civilian Personnel, Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilians, consultants, and Summer Hires employed in the Office of the Secretary of the Air Force only.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment applications and records; award recommendations; position descriptions, training; Process sheets.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

To provide information and services to employees and offices within the Office of the Secretary of the Air Force

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, note books/binders and card files.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Access controlled by Assistant Manager and to Restricted authorized personnel.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from Air Force Civilian Personnel Offices and from financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9216 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amendment systems of records.

SUMMARY: The Department of the Air Force proposes to amend three systems of records notices in its inventory of

record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on May 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 614–7819.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: April 8, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 SAFLL A

SYSTEM NAME:

Congressional/Executive Inquiries *(October 16, 1997, 62 FR 53824).*

CHANGES:

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'Personnel Records' from the entry.

* * * * *

F033 SAFLL A

SYSTEM NAME:

Congressional/Executive Inquiries.

SYSTEM LOCATION:

Office of the Secretary of the Air Force, Washington, DC 20330–1160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty and retired military personnel, present and former civilian employees, Air Force Reserve and Air National Guard personnel, Air Force Academy nominees/applicants and cadets, Senior and Junior Air Force Reserve Officers, dependents of military personnel, and anyone who has written to the President or a Member of Congress regarding an Air Force issue.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of applicable Congressional/Executive correspondence and Air Force replies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

Information is used as a reference base in the case of similar inquiries from other Members of Congress, in behalf of the same Air Force issue and/or follow-up by the same Member. Information may also be used by appropriate Air Force offices as a basis for corrective action and for statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer/imaging system.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Current year plus 2 years of records will be retained in the records system, then deleted from the computer database.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director of Legislative Liaison, Office of the Secretary of the Air Force, Headquarters, U.S. Air Force, Washington, DC 20330–1160.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Congressional and Executive inquiries and information from Air Force offices and organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AF PC U

SYSTEM NAME:

Education Services Program Records (Individual) *(June 11, 1997, 62 FR 31793).*

Changes:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to end of entry 'and the Tuition Assistance Program.'

* * * * *

PURPOSE(S):

Add to end of entry 'to manage the tuition assistance program and to track enrollments and funding.'

* * * * *

STORAGE:

Add to end of entry 'computers, and on backup tapes.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name, Social Security Number, or tuition assistance document number.'

SAFEGUARDS:

Add to end of entry 'and in computer storage devices and protected by computer system software. Records/information may be transferred outside the local area network (LAN). Records/

information transferred outside the LAN will be encrypted using Entrust Technologies' Cryptographic Kernel V 2.4. This product meets the Federal Information Processing Standard (FIPS) 140-1 requirement.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained and disposed of in the following ways:

(1) Given to individual when released from EAD, discharged, or retired. Servicing MPF will destroy in case of death by tearing into pieces, shredding, pulping, macerating, or burning.

(2) For records pertaining to the individual's education level and progress: Give to individual when released from EAD, discharged, or destroy when no longer on active duty. For records pertaining to requests for tuition assistance, records supporting consolidation grade sheets, and cases of non-compliance or failure: Destroy after invoices have been paid and final grades have been recorded in Individual Record Education Services form.

(3) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its 'expired year' status and applicable fiscal year appropriation has been cancelled.'

* * * * *

F036 AF PC U

SYSTEM NAME:

Education Services Program Records (Individual).

SYSTEM LOCATION:

Air Force Base Education Services Flights. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and airmen who participate in the Education Services Program and the Tuition Assistance Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pertinent education data maintained in an educational file folder may be Air Force (AF) Form 63, Active Duty Service Commitment; AF Form 118, Notice of Student Withdrawal/ Noncompletion; AF Form 186, Individual Record-Education Services Program; AF Form 204, Permissive Temporary Duty (TDY) Request - Operation Bootstrap; AF Form 1033, Academic Education Data; AF Form 1227, Authority for Tuition Assistance - Education Services Program; DD Form 114, Military Pay Order or Department of Defense (DD) Form 1131, Cash Collection for Voucher; DD Form 295, Application for the Evaluation of Educational Experiences During Military Service; DD Form 139, Pay Adjustment Authorization; Department of Veterans Affairs (VA) Form 22–8821, Application for Educational Assistance; VA Form 22–1990p, Service person's Application for Educational Benefits; Academic evaluations and/or transcripts from schools; Automated Air Force Tuition Assistance Program (AAFTAP); and Educational test results from testing agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force powers and duties; delegation by; as implemented by Air Force Instruction 36-2306, Operation and Administration of the Air Force Education Services Program and E.O. 9397 (SSN).

PURPOSE(S):

Counseling/Advisement Guide and Educational Registration Record used by Education Services Center staff personnel, Promotion and/or classification boards, and other authorized personnel such as military service schools, civilian schools, and supervisors of military personnel. The principle purpose is to provide a record of education endeavors and progress of Air Force personnel participating in Education Services Programs, to manage the tuition assistance program and to track enrollments and funding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to civilian schools for the purposes of ensuring correct enrollment and billing information.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file folders/ cabinet, computers, and on backup tapes.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or tuition assistance document number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, and in computer storage devices and protected by computer system software. Records/information may be transferred outside the local area network (LAN). Records/information transferred outside the LAN will be encrypted using Entrust Technologies' Cryptographic Kernel V 2.4. This product meets the Federal Information Processing Standard (FIPS) 140-1 requirement.

RETENTION AND DISPOSAL:

Records are retained and disposed of in the following ways:

(1) Given to individual when released from EAD, discharged, or retired. Servicing MPF will destroy in case of death by tearing into pieces, shredding, pulping, macerating, or burning.

(2) For records pertaining to the individual's education level and progress: Give to individual when released from EAD, discharged, or destroy when no longer on active duty. For records pertaining to requests for tuition assistance, records supporting consolidation grade sheets, and cases of non-compliance or failure: Destroy after invoices have been paid and final grades have been recorded in Individual Record Education Services form.

(3) For records pertaining to funding documents, appropriation controls, supporting documents for monitoring obligations: Destroy two years after document's fiscal year appropriation has ended its 'expired year' status and applicable fiscal year appropriation has been cancelled.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150-4750.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data gathered from the individual, data gathered from other personnel records, transcripts and/or evaluations from schools and test results from testing agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA C

SYSTEM NAME:

Prospective Instructor Files *(October 15, 1997, 62 FR 53598).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of Application for Instructor Duty; college transcripts; past Officer Effectiveness Reports; Officer Uniform Assignment Brief which may contain prior assignment information, aeronautical rating information, general personnel data including security clearance, date of birth, marital status, and promotion dates; correspondence between individual and department; evaluations on individual's suitability, and record of personal interview. Enlisted special duty folders contain enlisted performance reports, special duty applications, AF Form 422, Physical Profile Serial Report, and records review Report on Individual Personnel (RIP).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Military personnel applying for instructor duty (Officer) and Special Duty (Enlisted) at the Air Force Academy.'

* * * * *

PURPOSE(S):

Add to end of entry 'and enlisted personnel at the Academy'

* * * * *

SAFEGUARDS:

Add to end of entry 'and are password protected.'

* * * * *

F036 USAFA C

SYSTEM NAME:

Prospective Instructor Files.

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel applying for instructor duty (Officer) and Special Duty (Enlisted) at the Air Force Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of Application for Instructor Duty; college transcripts; past Officer Effectiveness Reports; Officer Uniform Assignment Brief which may contain prior assignment information, aeronautical rating information, general personnel data including security clearance, date of birth, marital status, and promotion dates; correspondence between individual and department; evaluations on individual's suitability, and record of personal interview. Enlisted special duty folders contain enlisted performance reports, special duty applications, AF Form 422, Physical Profile Serial Report, and records review Report on Individual Personnel (RIP).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C., Chapter 903, U.S. Air Force Academy.

PURPOSE(S):

Used to determine qualification, availability and location of potential instructors and enlisted personnel at the Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers data bases, and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software and are password protected.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, or no longer needed for reference. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020;

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200;

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020; or the

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200; or the

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Deputy Chief of Staff for Personnel, 2304 Cadet Drive, Suite 317, U.S. Air Force Academy, CO 80840–5020; or the

Dean of Faculty, 2354 Fairchild Drive, Suite 6F26, U.S. Air Force Academy, CO 80840–6200; or the

Commander, 34th Training Wing, 2354 Fairchild Drive, Suite 5A10, U.S. Air Force Academy, CO 80840–6260.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, previous employers, educational institutions and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9218 Filed 4–13–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Delete records systems.

SUMMARY: The Department of the Navy proposes to delete six systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on May 14, 1999 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report.

Dated: April 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01001–3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File *March 3, 1998, 63 FR 10366).*

Reason: System no longer being used. All files were destroyed several years ago.

N01070–13

SYSTEM NAME:

Nuclear Program Interview and Screening *(September 20, 1993, 58 FR 48852).*

Reason: Information maintained within this system of records duplicates information currently maintained in the following Department of the Navy systems of records: N01070–3, N01080–2, N01131–1, and N12950–5. Therefore, the Navy is deleting this duplicative system of records.

N01070–14

SYSTEM NAME:

Next of Kin Information for Sea Trial Riders *(February 22, 1993, 58 FR 10704).*

Reason: System of records is no longer needed. Records have been destroyed.

N01070–15

SYSTEM NAME:

Nuclear-Trained Naval Officers *(February 22, 1993, 58 FR 10704).*

Reason: Information maintained within this system of records duplicates information currently maintained in the following Department of the Navy systems of records: N01070–3, N01080–2, N01131–1, and N12950–5. Therefore, the Navy is deleting this duplicative system of records.

N01572–1

SYSTEM NAME:

NJAG Reserve Officer Questionnaires *(February 22, 1993, 58 FR 10719).*

Reason: Program was discontinued several years ago. All files have been destroyed.

N04600–1

SYSTEM NAME:

Portable Asset Control Environment (PACE) *(February 22, 1993, 58 FR 10744).*

Reason: System is obsolete and all records have been destroyed.

[FR Doc. 99–9217 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend five systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on May 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system reports.

Dated: April 8, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01000–2

SYSTEM NAME:

Naval Discharge Review Board Proceedings *(March 18, 1997, 62 FR 12806).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Naval Discharge Review Board, Washington

Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Computerized data base is password protected and access is limited. The office is locked at the close of business. The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

N01000–2

SYSTEM NAME:

Naval Discharge Review Board Proceedings.

SYSTEM LOCATION:

Naval Discharge Review Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Navy and Marine Corps personnel who have submitted applications for review of discharge or dismissal pursuant to 10 U.S.C. 1553, or whose discharge or dismissal has been or is being reviewed by the Naval Discharge Review Board, on its own motion, or pursuant to an application by a deceased former member's next of kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the former member's application for review of discharge or dismissal, any supporting documents submitted therewith, copies of correspondence between the former member or his counsel and the Naval Discharge Review Board and other correspondence concerning the case, and a summarized record of proceedings before the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553 and E.O. 9397 (SSN).

PURPOSE(S):

Selected information is used to defend the Department of the Navy in civil suits filed against it in the State and/or Federal courts system. This information will permit officials and employees of the Board to consider former member's applications for review of discharge or dismissal and any subsequent application by the member; to answer inquiries on behalf of or from the former member or counsel regarding the action taken in the former member's case. The file is used by members of the Board for Correction of Naval Records when reviewing any subsequent application by the former member for a correction of records relative to the former member's discharge or dismissal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The file is used by counsel for the former member, and by accredited representatives of veterans' organizations recognized by the Secretary, Department of Veterans Affairs under 38 U.S.C. 3402 and duly designated by the former member as his or her representative before the Naval Discharge Review Board.

Officials of the Department of Justice and the United States Attorneys offices assigned to the particular case.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche; plastic recording disks; recording cassettes; and computerized data base.

RETRIEVABILITY:

Name, docket number, and/or Social Security Number.

SAFEGUARDS:

Computerized data base is password protected and access is limited. The office is locked at the close of business. The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.

RETENTION AND DISPOSAL:

Files are transferred to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 when case is closed and then destroyed after 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the former member or those acting on the former member's behalf, from military personnel and medical records, and from records of law enforcement investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01000–5

SYSTEM NAME:

Naval Clemency and Parole Board Files *(July 22, 1997, 62 FR 39225).*

CHANGES:

* * * * *

SSYSTEM LOCATION:

Delete entry and replace with 'Naval Clemency and Parole Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

N01000–5

SYSTEM NAME:

Naval Clemency and Parole Board Files.

SYSTEM LOCATION:

Naval Clemency and Parole Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members or former members of the Navy, Marine Corps, or Coast Guard whose cases have been or are being considered by the Naval Clemency and Parole Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains individual applications for clemency and/or parole, reports and recommendations thereon indicating progress in confinement or while awaiting completion of appellate review if not confined, or on parole; correspondence between the individual or his counsel and the Naval Clemency and Parole Board or other Navy offices; other correspondence concerning the case; the court-martial order and staff Judge Advocate's review; records of trial; and a summarized record of the proceedings of the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 874(a), 952–954; SECNAVINST 5815.3H, Department of the Navy Clemency and Parole Systems; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in conjunction with periodic review of the member's or former member's case to determine whether or not clemency or parole is warranted. The file is referred to in answering inquiries from the member or former member or their counsel. The file is referred to by the Naval Discharge Review Board and the Board for Correction of Naval Records in conjunction with their subsequent review of applications from members or former members. The file is also used by counsel in connection with representation of members or former members before the Naval Clemency and Parole Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Files are kept within the Naval Clemency and Parole Board administration office. Access during business hours is controlled by Board personnel. The office is locked at the close of business. Computerized data base is password protected.

RETENTION AND DISPOSAL:

Files are transferred to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 one year after discharge of individual from the naval service. Files are destroyed after 25 years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

Requests should contain full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

Requests should contain full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the file is obtained from the member or former member or from those acting in their behalf, from confinement facilities, from military commands and offices, from personnel service records and medical records, and from civilian law enforcement agencies or individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N01770–3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records *(September 9, 1996, 61 FR 47483).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chaplains Center, Mitscher Hall, U.S. Naval Academy, 101 Cooper Road, Annapolis, MD 21402-5027.'

* * * * *

STORAGE:

Add to entry 'and computer generated reports.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Memorial Affairs Coordinator, U.S. Naval Academy, Mitscher Hall, 101 Cooper Road, Annapolis, MD 21402-5027.'

* * * * *

N01770–3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records.

SYSTEM LOCATION:

Chaplains Center, Mitscher Hall, U.S. Naval Academy, 101 Cooper Road, Annapolis, MD 21402-5027.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those eligible to reserve a lot for future burial in the Naval Academy Cemetery. Deceased individuals

interred/inured in the Naval Academy Cemetery/Columbarium.

CATEGORIES OF RECORDS IN THE SYSTEM:

State Burial Transit Permit, Application for Reimbursement of Headstone or Marker Expenses (VA Form 21–8834), Application of Standard Government Headstone or Marker for Installation in a Private or Local Cemetery (VA Form 40–1330), Lot Marker (NDW–USNA–DMC–1170/08), Columbarium Niche Cover Inscription (NDW–USNA–DMC–5370/42), U.S. Naval Academy Internment/Inurement Record (NDW–USNA–DMC–5360/43), U.S. Naval Academy Cemetery Record (NDW–USNA–DMC–1170/46), Naval Academy Foundation Order (NDW–USNA–DMC–5360/09), and correspondence to and from individuals. Specifically, information contained on the forms or correspondence may be: Full name, home address, rank, service, Social Security Number, date and place of birth, date and place of death, marital status, name of father and mother, name of next of kin and their address, telephone number, date of birth and date of death (if applicable), date and place of burial, lot number and other information relating to burial arrangements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1481–1488; 44 U.S.C. 3101; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain official records of individuals holding grave site reservations and/or individuals interred/inured in the Naval Academy Cemetery or Columbarium. Records are used to respond to general inquiries from individuals holding grave site reservations, to verify eligibility of spouses of an officer or enlisted person of the Navy or Marine Corps who is interred/inured in the Naval Academy Cemetery or Columbarium.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfiche, and computer generated reports.

RETRIEVABILITY:

Alphabetically by last name and numerically by lot number.

SAFEGUARDS:

Records are kept in a building not open to general visiting and are maintained in an area accessible only to authorized personnel. Building is under surveillance of security personnel during non-working hours. Microfiche records are kept in the Naval Academy Archives which is not open to general visiting and is locked during non-working hours.

RETENTION AND DISPOSAL:

Records are permanent. They are retained after the individual is deceased.

SYSTEM MANAGER(S) AND ADDRESS:

Memorial Affairs Coordinator, U.S. Naval Academy, Mitscher Hall, 101 Cooper Road, Annapolis, MD 21402-5027.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Memorial Affairs Coordinator, U.S. Naval Academy, Mitscher Hall, 101 Cooper Road, Annapolis, MD 21402-5027.

Requests should contain name, rank, and year of graduation from the U.S. Naval Academy.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Memorial Affairs Coordinator, U.S. Naval Academy, Mitscher Hall, 101 Cooper Road, Annapolis, MD 21402-5027.

Requests should contain name, rank, and year of graduation from the U.S. Naval Academy.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies, the next of kin, and from the Register of the Alumni.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01850–1

SYSTEM NAME:

Origins of Disabilities for Retired Military Members *(February 22, 1993, 58 FR 10727).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Disabilities of Separated/Retired Military Members'.

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Retired or former members of the Navy or Marine Corps who have been separated for a disability or placed on the Temporary Disability Retired List or Permanent Disability Retired List who have applied for income tax exclusion and/or applied for Federal civilian employment or retirement.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Correspondence from individual originating request; Office of Personnel Management or any federal agencies employing such individuals; Chief, Bureau of Medicine and Surgery historical narratives and opinions concerning the origins of disabilities of individuals on whom determinations have been requested; copies of Judge Advocate General determinations; and related correspondence.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 3501(a), 5532(d), 6303(a), 8332(c), 8411(b); 26 U.S.C. 104(b); 44 U.S.C. 3101; and 50 U.S.C. 403, 2082.'

PURPOSE(S):

Delete entry and replace with 'Information is used for determinations concerning the eligibility of individuals to certain benefits connected with Federal taxation of compensation for

injuries or sickness and/or Federal civilian employment benefits available to those disabled in combat with enemies of the U.S. or having disabilities caused or aggravated by instrumentalities of war or in the case of federal taxation only, an injury or sickness incurred while engaged in extra-hazardous service or under conditions simulating war.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Amend second paragraph to read 'Determinations are provided, upon request, to any Federal agency employing members who are retired or separated from the Naval service for disability.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.'

* * * * *

N01850–1

SYSTEM NAME:

Disabilities of Separated/Retired Military Members.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired or former members of the Navy or Marine Corps who have been separated for a disability or placed on the Temporary Disability Retired List or Permanent Disability Retired List who have applied for income tax exclusion and/or applied for Federal civilian employment or retirement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from individual originating request; Office of Personnel Management or any federal agencies employing such individuals; Chief, Bureau of Medicine and Surgery historical narratives and opinions concerning the origins of disabilities of individuals on whom determinations have been requested; copies of Judge Advocate General determinations; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 3501(a), 5532(d), 6303(a), 8332(c), 8411(b); 26 U.S.C. 104(b); 44 U.S.C. 3101; and 50 U.S.C. 403, 2082.

PURPOSE(S):

Information is used for determinations concerning the eligibility of individuals to certain benefits connected with Federal taxation of compensation for injuries or sickness and/or Federal civilian employment benefits available to those disabled in combat with enemies of the U.S. or having disabilities caused or aggravated by instrumentalities of war or in the case of federal taxation only, an injury or sickness incurred while engaged in extra-hazardous service or under conditions simulating war.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Determinations are provided, upon request, to any Federal agency employing members who are retired or separated from the Naval service for disability.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Retire to Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 for storage when one year old. Destroy when 75 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

The request should contain the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to the Administrative Law Division (Code 13), Office of the Judge Advocate General, Suite 7000, Presidential Towers, 2611 South Jefferson Davis Highway, Arlington, VA 22209. Armed Forces' identification card or state driver's license is required for identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

The request should contain the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to the Administrative Law Division (Code 13), Office of the Judge Advocate General, Suite 7000, Presidential Towers, 2611 South Jefferson Davis Highway, Arlington, VA 22209. Armed Forces' identification card or state driver's license is required for identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employment information in the system is submitted by the individuals concerned or the federal agencies employing them. Medical information in the system is obtained from the individuals' medical records, physical evaluation board records, and service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings *(March 18, 1997, 62 FR 12806).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Physical Evaluation Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374–5023.'

* * * * *

SAFEGUARDS:

Replace last sentence of entry with 'The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.'

* * * * *

N01850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings.

SYSTEM LOCATION:

Physical Evaluation Board, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374–5023.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps personnel who have been considered by a Physical Evaluation Board for separation or retirement by reason of physical disability (including those found fit for duty by such boards).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains medical board reports; statements of findings of physical evaluation boards; medical reports from Department of Veterans Affairs and civilian medical facilities; copies of military health records; copies of JAG Manual investigations; copies of prior actions/appellate actions/review taken in the case; recordings of physical evaluation board hearings; rebuttals submitted by the member; intra and interagency correspondence concerning the case; correspondence from and to the member, members of Congress, attorneys, and other interested members; and documents concerning the appointment of trustees for mentally incompetent service members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1216 and E.O. 9397 (SSN).

PURPOSE(S):

To determine fitness for duty or eligibility for separation or retirement due to physical disability of Navy and Marine Corps personnel, by establishing the existence of disability, the degree of disability, and the circumstances under which the disability was incurred, and to respond to official inquiries concerning the disability evaluation proceedings of particular service personnel.

Used by the Office of the Judge Advocate General relating to legal review of disability evaluation proceedings; response to official inquiries concerning the disability evaluation proceedings of particular service personnel; to obtain information in order to initiate claims against third parties for recovery of medical expenses under the Medical Care Recovery Act (42 U.S.C. 2651–2653); and to obtain information on personnel determined to be mentally incompetent to handle their own financial affairs, in order to appoint trustees to receive their retired pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs to verify information of service connected disabilities in order to evaluate applications for veteran's benefits.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records, microfiche, and cassette recordings.

RETRIEVABILITY:

Year of disability proceeding, name, record number, and Social Security Number within that year.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Computerized system is password protected. Access during working hours is controlled by Board personnel and the office space in which the file cabinets and storage devices are located is locked after official working hours. The office is located in a building on a military installation which has 24-hour gate sentries and 24-hour roving patrols.

RETENTION AND DISPOSAL:

Records are retained on-site at the Naval Council of Personnel Boards for one year. After that, they are retired to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 for retention. After a total of 75 years, records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

Written requests for information should contain the full name of the individual, military grade or rate, and date of Disability Evaluation System action. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Department of the Navy, Washington Navy Yard, 720 Kennon Street SE, Room 309, Washington, DC 20374-5023.

Written requests for information should contain the full name of the individual, military grade or rate, and date of Disability Evaluation System action. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or

may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military medical boards and medical facilities; Department of Veterans Affairs and civilian medical facilities; physical evaluation boards and other activities of the disability evaluation system, Naval Council of Personnel Boards, the Bureau of Medicine and Surgery; the Judge Advocate General; Navy and Marine Corps local command activities; other activities of the Department of Defense; and correspondence from private counsel and other interested persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9219 Filed 4–13–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2843–007; etc.]

AES Redondo Beach, LLC et al.; Notice of Filing

April 8, 1999.

In the matter of: AES Redondo Beach, LLC, Docket No. ER98–2843–007, AES Huntington Beach, LLC, Docket No. ER98–2844–007, AES Alamitos, LLC, Docket No. ER98–2883–007 (Not Consolidated), Long Beach Generation, LLC, Docket No. ER98–2972–008, EL Segundo Power, LLC, Docket No. ER98–2971–007 (Not Consolidated), Ocean Vista Power Generation, LLC, Mountain Vista Power Generation, LLC, Alta Power Generation, LLC, Docket No. ER98–2977–006, Oeste Power Generation, LLC, Ormond Beach Power Generation, LLC, Williams Energy Services Company, Docket No. ER98–3106–004, Duke Energy Oakland, LLC, Docket No. ER98–3416–006, Duke Energy Morro Bay, Docket No. ER98–3417–006, Duke Energy Moss Landing, Docket No. ER98–3418–006 (Not Consolidated), and Southern California Edison Company, Docket No. EL98–62–005.

Take notice that on April 6, 1999, the Market Surveillance Committee (MSC) of the California Independent System Operator Corporation (ISO) filed with the Federal Energy Regulatory Commission its ''Report on Redesign of Markets for Ancillary Services and Real-Time Energy'' prepared in compliance with the Commission's October 28, 1998 Order and March 22, 1999 letter order in the above-captioned proceedings. The MSC had previously submitted this report to the Commission on March 25, 1999 with a request that certain information contained in the report be given confidential treatment, on a temporary basis, in accordance with Section 388.112 of the Commission's regulations (18 CFR 388.112). Interventions and protests on the report, as previously released on March 25, 1999, should be filed on or before April 12, 1999. The report filed on April 6, 1999 releases this information from a claim of confidentiality. The report filed on April 6, 1999 also contains several attachments which were not included in the March 25, 1999 filing of the report.

The ISO has served copies of the report, including these attachments and the previously confidential information, upon the official service list in the above-captioned proceedings.

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 Practices and Procedures (18 CFR 385.211 and 385.214). All such motions and protests regarding the newly released material should be filed on or before April 19, 1999. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9295 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–049 and ER96–1663–051]

California Power Exchange Corporation; Notice of Filing

April 8, 1999.

Take notice that on March 30, 1999, California Power Exchange Corporation (PX) filed two reports. The first report concerns the relative benefits of a Simultaneous versus Sequential Market for Energy and Ancillary Services. The second report relates to the format of the PX's Auction Process. These reports are being submitted in compliance with the Commission's October 30, 1997 Order in these proceedings.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 19, 1999. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9294 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–028]

Columbia Gas Transmission Corporation; Notice of Filing

April 8, 1999.

Take notice that on April 6, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing its report on the sharing with its customers of a portion of the profits from the sale of certain base gas as provided in Columbia's Docket No. RP95–408 rate case settlement.

Columbia states that its approved settlement in Docket No. RP95–408 provides for the sharing with customers a portion of the profits from certain base gas sales. See Stipulation II, Article IV, Sections A through E, in Docket No. RP95–408 approved at Columbia Gas Transmission Corp., 79 FERC 61,044 (1997). Sales of base gas have generated additional profits of $7,645,758 (above a $21.4 million threshold) requiring a sharing of 10 percent of the excess profits with customers in accordance with Stipulation II, Article IV, Section C. Consequently, 10 percent of such profits, totaling $771,906, inclusive of interest, have been allocated to affected customers and credited to their April invoices, which credits remain subject to Commission acceptance of this filing.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 Commission's and Regulations. All such protests must be filed on or before April 25, 1999. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9240 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–647–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

April 8, 1999.

Take notice that on April 2, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP96–647–001 an application pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued on October 21, 1997, in Docket No. CP96–647–000, *Great Lakes Gas Transmission Limited Partnership,* 81 FERC ¶ 61,075, (1997). Specifically, Great Lakes seeks authorization to operate two recently installed compressor units at the manufacturer's updated nameplate horsepower rating, rather than the currently certificated horsepower associated with those units, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Great Lakes requests a certificate of public convenience and necessity authorizing it to amend the certificate issued in Docket No. CP96–647–000 so as to operate the two Solar Taurus 70 compressor units, each rated at 7,400 hp (NEMA), added as part of the 1998 Expansion Project, at the manufacturer's current nameplate rating of 8,330 hp (NEMA). Great Lakes states that one unit was installed at its St. Vincent Compressor Station (Compressor Station No. 1) located in Kittson County, Minnesota, and the other at its Farwell Compressor Station (Compressor Station No. 12), located in Clare County, Michigan.

Great Lakes declares that no mechanical alterations of the units will be required in order to obtain the increased horsepower, which will be accomplished by changes in control modifications. Consequently, Great Lakes asserts that there will be no construction costs associated with increasing the rates horsepower of the two units.

Great Lakes states that the increased horsepower will only have a minor impact on system capacity. Great Lakes declares that the increase in horsepower will nevertheless be useful for their operational requirements, contributing to system flexibility and efficiency, and will also reduce overall system fuel usage as compared to transporting an equivalent average day volume of natural gas.

Any person desiring to be heard or to make any protest with reference to said Application should on or before April 29, 1999, filed with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 because the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant on the abandonment is required by the public convenience and necessity. If a petition 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 Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr,

Acting Secretary.

[FR Doc. 99–9232 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–280–000]

National Fuel Gas Supply Corporation; Notice of Application

April 8, 1999.

Take notice that on March 31, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP99–280–000 pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for authority to abandon a storage line, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, National Fuel proposes to abandon a well line, designated Line SW–386, in its East Branch Storage Field located in Mckean County, Pennsylvania. National Fuel proposes to abandon Line SW–386 because the line serves no purpose since the well it is connected to, Well 386–P, was plugged and abandoned pursuant to the Commission's regulations at 18 CFR Part 284, Subpart I. National Fuel states that the abandonment of Line SW–386 will have no significant environmental impact because Line SW–386 is above-ground and no excavation will be required.

Any person desiring to be heard or to make a protest with reference to said application should on or before April 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commissions Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests

filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party 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 Commission by Sections 7 and 15 of the Natural Gas Act and the Commissions 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 procedures herein provide for unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 99–9234 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–286–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

April 8, 1999.

Take notice that on April 5, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–286–000 a request pursuant to sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade an existing Town Border Station (TBS) located in O'Brien County, Iowa, to provide incremental natural gas deliveries to MidAmerican Energy Company (MidAmerican) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Northern states that it requests authority to upgrade the existing TBS at an estimated cost of $85,000 to provide incremental natural gas deliveries to MidAmerican under currently effective throughput service agreements. Estimated incremental volumes to MidAmerican at this TBs will be 275 MMBtu on a peak day and 8,250 MMBtu on an annual basis.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9235 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–16–000]

Northwest Pipeline Corporation; Notice of proposed changes in FERC gas tariff and filing of non-conforming service agreements

April 8, 1999.

Take notice that on April 5, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance (1) seven non-conforming service agreements, and (2) Third Revised Sheet No. 364 and First Revised Sheet No. 365 of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective May 6, 1999.

Northwest states that six of the non-conforming service agreements contain either contract-specific operational flow order provisions or provisions imposing subordinate primary corridor rights. The seventh service agreement contains a provision that obligates the shipper to reallocate a portion of its receipt point capacity or pay additional facility charges if Northwest initiates an expansion project to reduce required south flow displacement. The tariff sheets are submitted to add such agreements to the list of non-conforming service agreements contained in Northwest's tariff.

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. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9237 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–37–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

April 8, 1999.

Take notice that on April 5, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective May 1, 1999:

Third Revised Volume No. 1

Eleventh Revised Sheet No. 14;

Original Volume No. 2

Twenty-Sixth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to comply with the Commission's letter order dated March 31, 1999 in Docket No. TM99–1–37–000 which directed Northwest to revise its fuel reimbursement factor (Factor) for Northwest's transportation service Rate Schedules TF–1, TF–2, TI–1 and for all transportation service rate schedules

contained in Original Volume No. 2 of Northwest's FERC Gas Tariff.

Northwest states that the revised Factor of 0.84% is calculated using a two-year average of actual lost and unaccounted-for gas as directed by the Commission. Northwest seeks waiver of any necessary regulations so that the proposed tariff sheets may be effective May 1, 1999.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9241 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–9–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

April 8, 1999.

Take notice that on April 1, 1999, PG&E Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Second Revised Sheet No. 85. PG&E GT–NW requests that the above-referenced tariff sheets become effective May 1, 1999.

PG&E GT–NW asserts that the purpose of this filing is to update its Tariff to reflect the PG&E GT–NW will share certain facilities in Houston Texas, with a marketing affiliate.

PG&E GT–NW also submitted a revised set of Marketing Affiliate Standards to reflect the shared facilities as well as to add new Standard L.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9238 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–288–000]

Texas Gas Transmission Corporation; Notice of Application

April 8, 1999.

Take notice that on April 6, 1999, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application with the Commission in Docket No. CP99–288–000 pursuant to Section 7 of the Natural Gas Act (NGA) for permission and approval to abandon an interruptible transportation service performed for Tennessee Gas Pipeline Company (Tennessee) under Texas Gas' FERC Gas Tariff Rate Schedule X–82, all as more fully set forth in the request which is open to the public for inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Texas Gas received authority on December 7, 1979, to transport up to 80,000 Mcf of natural gas and associated liquids per day for Tennessee via its capacity in the High Island Offshore System and the Michigan Wisconsin Pipe Line Company from West Cameron Block 167, offshore Louisiana, to an exchange point between Texas Gas and Tennessee at Egan, Acadia Parish, Louisiana.[1] Texas Gas states that Tennessee no longer needs this interruptible transportation service. By mutual agreement, the parties via a letter dated March 8, 1999, terminated the transportation service. No facilities would be abandoned in this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA 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 Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9236 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

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[1] 9 FERC ¶ 61,307 (1979).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–113–000]

Algonquin LNG, Inc. Notice of Availability of the Environmental assessment for the Proposed ALNG Plant Modifications Project

April 8, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) on the modification of existing facilities proposed by Algonquin LNG, Inc. (ALNG Plant Modifications Project) in the above-referenced docket. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the tests of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed modification, construction, and operation at an existing liquefied natural gas (LNG) storage facility. The proposed modifications would include:

- Abandoning the three existing direct-fired LNG vaporizers, and installing three new horizontal indirect-fired 150 million standard cubic feet per day (MMscfd) LNG vaporizers;
- Increasing the capacity of the existing LNG pumps from 100 MMscfd to 150 MMscfd;
- Installing two new 600 horsepower boiloff gas compressors consisting of flooded screw type compressors driven by fixed speed electric motors.

Installing additional emergency power generation equipment, control systems, and safety systems; and

- Modifying metering facilities for the delivery of vaporized LNG and boiloff gas.

The proposed facilities would allow ALNG to continue to provide LNG storage, LNG truck loading and unloading, and LNG vaporization services on a firm and interruptible non-discriminatory open access basis.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory commission, Public Reference and files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow the instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR11.1;
- Reference Docket No. CP99–113–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 7, 1999.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties not seeking to file late interventions must show good cause, as required by section 395.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9233 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–160 Oklahoma]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

April 8, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application for approval of additional marina facilities. Grand River Dam Authority proposes to permit Gene Gregg, d/b/a Tera Miranda Marina, (permittee) to improve and enlarge an existing commercial marina facility located on the east side of Grand Lake's Monkey Island. The existing marina facility includes 20 boat docks with a total of 129 slips. The permittee requests permission to remove from the site an existing jetty and two manmade breakwaters and to install and operate certain additional facilities. The new proposed facilities include five new boat docks with a total of 116 slips, two floating breakwaters, a building containing showers and a restroom facility, and a waste disposal system. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The DEA was written by staff in the Office of Hydropower licensing, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371 or may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). In the DEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

lease submit any comments within 30 days from the date of this notice. Comments should be addressed to: Mr. David P. Boergers, Acting Secretary,

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1494–160 to all comments. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9239 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting on Nevada Independent System Administrator

April 9, 1999.

Take notice that, on April 15, 1999, Mr. C.M. Naeve of Skadden, Arps, Slate, Meagher & Flom, other representatives of Nevada utilities, and other stakeholders will meet with members of the Commission's staff and interested members of the public concerning the formation of an independent system administrator for the transmission facilities of Nevada utilities.

The meeting will be held on April 15, 1999, at 4:00 PM, in a Hearing or Conference Room to be determined later, at the Commission's Headquarters, 888 First Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9296 Filed 4–13–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66266; FRL 6071–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 12, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 48 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000192–00206	Dexol Preemergent Weed and Grass Preventer 2	Dimethyl tetrachloroterephthalate
000239–02532	Ortho Grass & Weed Preventer	Dimethyl tetrachloroterephthalate
000352 OR–92–0003	Du Pont Sinbar Herbicide	3-tert-Butyl-5-chloro-6-methyluracil
000352 OR–92–0015	Dupont Karmex DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352 OR–93–0020	Dupont Karmex DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352 OR–94–0009	Dupont Karmex DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000655–00328	Prentox Carbamate Concentrate Contains 10% Propoxur	*o*-Isopropoxyphenyl methylcarbamate
000769–00836	Miller Dacthal 5G	Dimethyl tetrachloroterephthalate
000769–00837	Miller Turf Food 12–6–6 Plus 3	Dimethyl tetrachloroterephthalate
000769–00911	Science Garden Weeder	Dimethyl tetrachloroterephthalate
001203–00005	Delta Foremost 4820 Del-Kill Insecticide	*o*-Isopropoxyphenyl methylcarbamate
001270–00172	Zep 10–X Insecticide	*o*-Isopropoxyphenyl methylcarbamate
001270–00197	Zep Tox II Pressurized Spray	*o*-Isopropoxyphenyl methylcarbamate
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
001270–00199	Zep Stop	*o*-Isopropoxyphenyl methylcarbamate
001685–00069	Formula 296 State Roach & Ant Killer	*o*-Isopropoxyphenyl methylcarbamate
001685–00071	State Formula 298 RAS Residual Roach & Ant Spray	*o*-Isopropoxyphenyl methylcarbamate
002155–00059	R.I.S. 15 Residual Insecticide	*o*-Isopropoxyphenyl methylcarbamate

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
002596–00114	Hartz Blockade for Cats	*N,N*-Diethyl-meta-toluamide and other isomers
		4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
002596–00115	Hartz Blockade for Dogs	*N,N*-Diethyl-meta-toluamide and other isomers
		4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
002781–00050	Spot Guard	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
002935 OR–85–0042	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–85–0043	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–85–0045	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–85–0046	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 OR–94–0024	Mancozeb Potato Seed Protectant Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
003125–00205	Morestan Technical for Use Only In the Manufacture of E	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
003125–00381	Morestan 4 Ornamental Miticide	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
003125–00437	Morestan 4 Nursery Miticide	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
004691–00137	Kennel and Yard Spray Concentrate	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
		2,2-Dichlorovinyl dimethyl phosphate
005042 OR–85–0003	Orco Patrol	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
005042 WA–92–0022	Orco Patrol Ground Squirrel Bait	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
010107–00106	Two Plus Two Bromacil and Diuron	5-Bromo-3-sec-butyl-6-methyluracil
		3-(3,4-Dichlorophenyl)-1,1-dimethylurea
010107–00107	Four Plus Four Bromacil and Diuron	5-Bromo-3-sec-butyl-6-methyluracil
		3-(3,4-Dichlorophenyl)-1,1-dimethylurea
010163–00218	Bran-L-Bait 1.5%	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
010163 ID–97–0010		6,7,8,9,10-Hexachloro-1,5,5α,6,9,9α-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
010163 OR–95–0008	Gowan Cryolite Bait	Cryolite
010163 OR–96–0031	Gowan Cryolite Bait	Cryolite
010806–00001	Contact Roach and Ant Killer	*o*-Isopropoxyphenyl methylcarbamate
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
011225 CA–88–0029	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
013283–00010	Rainbow Wasp Killer	o-Isopropoxyphenyl methylcarbamate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
032273–00008	#90 Deck & Fencepost Preservative	Copper naphthenate
050534–00011	2 Plus 2 (MCPP + 2,4-D Amine)	Dimethylamine 2,4-dichlorophenoxyacetate
		Dimethylamine 2-(2-methyl-4-chlorophenoxy)propionate
050534–00131	2, 4-D Acid Technical Flake	2,4-Dichlorophenoxyacetic acid
050534–00151	Triban-D	Dimethylamine 3,6-dichloro-o-anisate
		Dimethylamine 2,4-dichlorophenoxyacetate
		Dimethylamine 2-(2-methyl-4-chlorophenoxy)propionate
050534–00153	2,4-D + Dicamba Turf Care Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
		Dimethylamine 2,4-dichlorophenoxyacetate
050534–00194	DS-33	Dimethylamine 2,4-dichlorophenoxyacetate
		Dimethylamine 2-(2-methyl-4-chlorophenoxy)propionate
050534–00203	Reach	Tetrachloroisophthalonitrile

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone
071714–00001	Roundup Ultra	Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine)

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000192	Dexol, A Division of Verdant Brands, Inc., Attn: Elizabeth L. Neslund, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
000239	The Solaris Group of Monsanto Co., Box 5006, San Ramon, CA 94583.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
000769	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
001203	Delta Foremost Chemical Corp., 3915 Air Park St., Memphis, TN 38118.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
001685	The State Chemical Mfg., Co., 3100 Hamilton Ave, Cleveland, OH 44114.
002155	I. Schneid, 1429 Fairmont Ave., N.W., Atlanta, GA 30318.
002596	Hartz Mountain Corp., 400 Plaza Dr., Secaucus, NJ 07094.
002781	Happy Jack Inc., Box 475, Snow Hill, NC 28580.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004691	Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506.
005042	RCO Co., Inc., Box 446, Junction City, OR 97448.
010107	Van Diest Supply Co., 1434 220th Street, Box 610, Webster City, IA 50595.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010806	Contact Industries, Div of Safeguard Chemical Corp., 411 Wales Ave, Bronx, NY 10454.
011225	Tuolumne County Agricultural Commissioner, 2 South Green Street, Sonora, CA 95370.
013283	Regwest Co., Agent For: Rainbow Technology Corp., Box 2220, Greeley, CO 80632.
032273	Behr Process Corp., 1603 W Alton St., Santa Ana, CA 92704.
050534	GB Biosciences Corp., c/o Zeneca Ag Products, 1800 Concord Pike, Box 15458, Wilmington, DE 19850.
071714	Dilbeck Fertilizer, Box 258, Ralston, OK 74650.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before October 12, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific

cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 25, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–8832 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34181; FRL 6071–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on October 12, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery telephone number, and e-mail address: Rm., 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 35 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before October 12, 1999 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (*Note: Registration number(s) preceded by ** indicate a 30–day comment period.*)

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
**000264–00312	SEVIN Brand 10% Bait Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00314	SEVIN Brand 50W Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00315	SEVIN Brand 85 Sprayable Carbaryl Insec ticide	Carbaryl	Use on cotton
**000264–00316	SEVIN Brand 80S Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00320	SEVIN Brand 5% Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00321	SEVIN Brand Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00324	SEVIN Brand 99% Technical Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00325	SEVIN Brand 97.5% Manufacturing Concentrate Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00328	SEVIN Brand 80% Dust Base Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00333	SEVIN Brand XLR PLUS Carbaryl Insecticide		Use on cotton
**000264–00335	SEVIN Brand RP4 Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00349	SEVIN Brand 4F Carbaryl Insecticide	Carbaryl	Use on cotton
**000264–00526	SEVIN Brand 80WSP Carbaryl Insecticide	Carbaryl	Use on cotton
000432–00582	BIORAM 0.15% + 0.25% Insecticide Aqueous Pressurized Spray	*d-trans*-Allethrin; Permethrin	Use on dogs & cats
000432–00585	BIORAM 0.2% + 0.2% Insecticide Aqueous Pressurized Spray	*d-trans*-Allethrin; Permethrin, mixed *cis, trans*	Use on dogs & cats

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000432–00592	Pramex Insecticide Aqueous Pressurized Spray 0.25% for House & Garden	Permethrin, mixed *cis, trans*	Use on dogs & cats
**003125–00102	Guthion 2L	Azinphos-methyl	Apricot, pasture grasses, tobacco, artichoke, grass mixture, peas, wheat, barley, kiwi, rye, beans (dry), oats, soybeans
**003125–00108	Guthion Technical	Azinphos-methyl	Apricot, pasture grasses, tobacco, artichoke, grass mixture, peas, wheat, barley, kiwi, rye, beans (dry), oats, soybeans
**003125–00310	Guthion Solupak 50%	Azinphos-methyl	Apricot, pasture grasses, tobacco, artichoke, grass mixture, peas, wheat, barley, kiwi, rye, beans (dry), oats, soybeans
**005905–00525	Diazinon 4EC	Diazinon	Use on all agricultural crops
**010163–00078	Gowan Azinphos-M-50-W	Azinphos-methyl	Barley, oats, rye, wheat, soybeans, tobacco, apricots, artichokes, dry beans, blackeyed peas (southern peas, crowder peas) shade trees
**010163–00080	Gowan Azinphos-M 2EC	Azinphos-methyl	Barley, oats, rye, wheat, pasture grasses, soybeans, tobacco, artichokes, dry beans, black eyed peas (southern and crowder peas), shade trees
**010163–00095	Azinphos Methyl Technical	Azinphos-methyl	Alfalfa-grass mixture, artichokes, rye, safflower (seed crop), vetch (seed crop), tobacco
**010163–00138	Gowan Azinphos-M 35WP	Azinphos-methyl	Barley, oats, rye, wheat, soybeans, apricots, dry beans, blackeyed peas (southern & crowder peas), cotton, southern pine seed orchards, pista chios, ornamentals, nursery plants, Christmas trees
**010163–00139	Gowan Azinphos-M 35WSB	Azinphos-methyl	Barley, oats, rye, wheat, soybeans, apricots, artichokes, dry beans, blackeyed peas (southern and crowder peas), cotton, southern pine seed orchards, pista chios, ornamentals, nursery plants, Christmas trees
**010163–00180	Gowan Azinphos 50 PVA	Azinphos-methyl	Barley, oats, rye, wheat, soybeans, tobacco, apricots, dry beans, blackeyed peas (southern peas, crowder peas), shade trees
**034704–00691	Clean Crop Sniper 2-E Azinphos Methyl Insecticide		Apricot, artichoke, barley beans (dry), oats, pasture grasses, peas, rye, soybeans, tobacco, wheat
**051036–00076	Azinphos-Methyl 2EC	Azinphos-methyl	Apricot, artichoke, barley, beans (dry), oats, southern peas, rye, soybeans, tobacco, wheat
**051036–00130	Azinphos-Methyl 35W	Azinphos-methyl	Apricot, artichoke, barley, beans (dry), oats, pasture grasses, rye, southern peas, soy beans, tobacco, wheat
**051036–00164	Azinphos-Methyl 50W	Azinphos-methyl	Apricot, artichoke, barley, beans (dry), oats, rye, southern peas, slash pine, soy beans, tobacco, wheat
**051036–00205	Azinphos-Methyl 50W Soluble	Azinphos-methyl	Artichoke, rye, slash pine
**051036–00207	Azinphos-Methyl 2EC	Azinphos-methyl	Artichoke, apricot, barley, beans (dry), oats, rye, southern peas, soybeans, tobacco, wheat
**066222–00011	Cotnion-Methyl 50W	Azinphos-methyl	Apricot, barley, kiwi, pasture grasses, rye, tobacco, artichoke, beans (dry), grass mixture, oats, peas, soybeans, wheat
**066222–00012	Cotnion-Methyl 2EC	Azinphos methyl	Apricot, barley, kiwi, pasture grasses, rye, tobacco, artichoke, beans (dry), grass mixture, oats, peas, soybeans, wheat

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
**066222–00016	Cotnion-Methyl 2EC	Azinphos methyl	Apricot, barley, kiwi, pasture grasses, rye, tobacco, artichoke, beans (dry), grass mixture, oats, peas, soybeans, wheat

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
003125	Bayer Corporation, Agriculture Division, P.O. Box 4913, 8400 Hawthorn Road, Kansas City, MO 64120.
005905	Helena Chemical Company, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
010163	Gowan, P.O. Box 5569, Yuma, AZ 85366.
034704	Platte Chemical Co., 419 18th Street, P.O. Box 667, Greeley, CO 80632.
051036	Micro Flo Company, P.O. Box 5948, Lakeland, FL 33807.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 25, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–8833 Filed 4–13–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 6, 1999.

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 information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 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 estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. 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 Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0532.

Title: Scanning Receiver Compliance Exhibit (Sections 2.1033(b)(11)).

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit entities; and State, Local, or Tribal Government.

Number of Respondents: 40.

Estimated time per response: 1 hour.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 40 hours.

Total Annual Cost: None.

Needs and Uses: The Commission has proposed to require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning and control circuitry are inaccessible, and any attempt modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission has also proposed to require that the manufacturer submit information with any application for certification that: describes the testing method used to determine compliance with the 38 dB image rejection ratio, contains a statement assessing the vulnerability of the scanning receiver to modification, describes the design features that

prevent modification of the scanning receiver to receive Cellular Service transmissions, and describes the design steps taken to make tuning and control circuitry inaccessible.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–9285 Filed 4–13–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 9, 1999.

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 information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 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 estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. 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 Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0352.

Title: Part 2—Scanning Receiver Compliance Exhibit (Sections 2.975(a)(8), 2.1033(b)(12)).

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit; and State, Local, or Tribal Government.

Number of Respondents: 40.

Estimated time per response: 1 hour.

Total Annual Burden: 40 hours.

Total Annual Cost: None.

Needs and Uses: The collection of information contained in Part 2 are made necessary by revision of section 2.1033(b)(12) of the Commission Rules governing regulations for scanning receivers. The Commission will require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning, control and filtering circuitry are inaccessible, and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. In addition, the Commission will require that the manufacturer submit information with any application for certification that: describes the testing method used to determine compliance with the 38 dB image rejection ratio, contains a statement assessing the vulnerability of the scanning receiver to modification, describes the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and describes the design steps taken to make tuning, control and filtering circuitry inaccessible. Moreover, the Commission will require that a label be affixed to the scanning receiver, similar to the following: modification of this device to receive Cellular Service signals is prohibited under FCC Rules and Federal Law. Further, the Commission is modifying the definition of a scanning receiver. Finally, the Commission is modifying its rules to provide that certain portions of the scanning receiver application for certification will remain confidential after the effective date of the grant of the application. This information includes schematic diagrams, technical narratives describing equipment operation, and design details taken to prevent modification of scanning receivers to receive Cellular Service transmissions.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–9286 Filed 4–13–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

DATE AND TIME: Tuesday, April 20, 1999 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, April 21, 1999 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–6: National Rural Letter Carriers' Association, by Ken Parmelee, Vice President.

Advisory Option 1999–7: Mary Kiffmeyer, Secretary of State, Minnesota.

Status of Regulations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Office, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–9468 Filed 4–12–99; 3:08 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission,

Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–008090–045.

Title: Mediterranean North Pacific Coast Freight Conference.

Parties:

Med-Pacific Express. (a joint service between d'Amico Societa di Navigazione per Azioni and Italia di Navigazione S.P.A.)

Zim Israel Navigation Co., Ltd.

Synopsis: The proposed Amendment restates the Agreement, as well as, revising it to bring it into compliance with the requirements of the Ocean Shipping Reform Act and the requirements of the European Union.

Agreement No.: 202–011353–024.

Title: The Credit Agreement.

Parties:

A.P. Moller-Maersk Line

Consorsio Naviero Occidente, C.A.

Crowley American Transport, Inc.

King Ocean Central America, S.A.

Dole Ocean Liner Express

ALP Co. Pte. Ltd.

NPR, Inc. (''NPR'')

Seaboard Marine Ltd.

Sea-Land Service, Inc.

Venezuelan Container Service

Tecmarine Lines, Inc.

Mediterranean Shipping Company, SA

Tropical Shipping and Construction Co., Ltd.

Ivaran Lines, Ltd. (''Ivaran Lines'')

Evergreen Marine Corporation (Taiwan) Ltd.

Caribbean General Maritime Ltd.

Transroll Navieras Express (''Transroll'')

Synopsis: The proposed amendment would modify the Agreement's Independent Action provisions to conform to the Ocean Shipping Reform Act of 1998. It deletes NPR and Transroll as parties to the Agreement, changes the name of Ivaran Lines to Lykes Line Ltd., and makes a non-substantive administrative change to the Agreement.

Agreement No.: 202–011579–007.

Title: Inland Shipping Service Association.

Parties:

Crowley American Transport, Inc.

King Ocean

Sea-Land Service, Inc.

Seaboard Marine and Seaboard Marine of Florida, Inc.

Synopsis: The proposed modification would expand the geographic scope of the agreement to include any country in the world.

Dated: April 8, 1999.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–9209 Filed 4–13–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 29, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Thomas Joel Kress, Sparta, Wisconsin; to acquire additional voting shares of F&M Bancorp of Tomah, Inc., Tomah, Wisconsin, and thereby indirectly acquire voting shares of Farmers & Merchants Bank, Tomah, Wisconsin.

Board of Governors of the Federal Reserve System, April 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9322 Filed 4–13–99; 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 May 10, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Sharon Bancshares, Inc., Martin, Tennessee; to merge with First Northwest Bancshares, Inc., Kenton, Tennessee, and thereby indirectly acquire First State Bank, Kenton, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BOK Financial Corporation, and Park Cities Bancshares, Inc., both of Tulsa, Oklahoma; to acquire 100 percent of the voting shares of Swiss Avenue State Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, April 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9323 Filed 4–13–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Disposal of the Volunteer Army Ammunition Plant (VAAP), Chattanooga, TN

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by General Services

Administration (GSA), this Notice of Availability (NOA) for DEIS is announced. The proposed action is the disposal of all of real property associated with this government owned facility. The property consists of about 6,500 acres of land including buildings, industrial facilities and equipment, roadways, utilities, specialized facilities, easements, rights of way, and natural undeveloped land.

The DEIS addresses impacts of two alternatives considered; Disposal and No-Action (Continued Federal Ownership). The DEIS examined the short and long-term impacts to both natural environment and impacts to the surrounding community. The Disposal Alternative is further refined into a series of alternative land use scenarios. These were developed with the input from the local community through the scoping process.

GSA will solicit community input at a Public Meeting to be held on Thursday April 29th. This will incorporate community comments into the decision process before GSA issues a Final EIS (FEIS). The 45-day comment period will end June 2, 1999.

After the comment period GSA will issue a Final EIS for 30 days of additional comment. A decision on the Disposal will not be made until 30 days after the release of the FEIS. GSA anticipates this decision will be rendered by August 1999.

GSA solicits comments in writing at the following address: Mr. Phil Youngberg, Regional Environmental Officer (4PT), General Services Administration (GSA), 401 West Peachtree Street, NW, Suite 3010, Atlanta, GA 30365, or FAX: Mr. Phil Youngberg at 404–331–4540. Comments should be submitted in writing.

April 8, 1999.

Phil Youngberg,

Regional Environmental Office (4 PT).

[FR Doc. 99–9227 Filed 4–13–99; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), all authorities vested in the Secretary of Health and Human Services to make grants for the Medicare Rural Hospital Flexibility Program and for Rural Emergency Medical Services under section 1820(g) of the Social Security Act, as amended. This section was added by section 4201 of the Balanced Budget Act of 1997 (105–33). This delegation excludes the authority to submit reports to Congress. This delegation shall be exercised under the Department's delegation of authority and policy on regulation.

In addition, I hereby ratify any actions taken by the Administrator or other HRSA officials which involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: April 1, 1998.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–9297 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0705]

Ciba Specialty Chemicals Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 8B4618) proposing that the food additive regulations be amended to provide for the expanded safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a stabilizer in polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 27, 1998 (63 FR 45820), FDA announced that a food additive petition (FAP 8B4618) had been filed by Ciba Specialty Chemicals Corp., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. (The petitioner is no longer represented by Keller and Heckman. The address of the petitioner is 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005.) The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a stabilizer for polymers intended for use in contact with food. Ciba Specialty Chemicals Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 29, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–9223 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Indian Health Service

Health Professions Recruitment Program for Indians

AGENCY: Indian Health Service.

ACTION: Notice of competitive grant applications for the health professions recruitment program for Indians.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the Health Professions Recruitment Program for Indians established by sec. 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Pub. L. 102–573. There will be only one funding cycle during fiscal year (FY) 1999. This program is described at sec. 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 et seq. Costs will be determined in accordance with OMB Circulars A–21, A–87, and A–122 (cost principles for different types of applicant organizations); and 45 CFR part 74 or 45 CFR part 92 (as applicable). Executive Order 12372 requiring intergovernmental review is not applicable to this program. This program is not subject to the Public Health System Reporting requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000.'' ''Healthy People 2000,'' the full report, is currently out of print. You may obtain the objectives from the latest ''Healthy People 2000 Review.'' A copy may be obtained by calling the National Center for Health Statistics, telephone (301) 436–8500.

Smoke Free Workplace: PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the

PHS mission to protect and advance the physical and mental health of the American people.

DATES: A. Application Receipt Date—An original and two copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Management, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, by close of business May 28, 1999.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier on the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will *not* be considered for funding.

B. Additional Dates:

1. Application Review: June 15–17, 1999
2. Applicants Notified of Results: on or about July 1, 1999 (approved, recommended for approval but not funded, or disapproved)
3. Anticipated Start Date: August 1, 1999

FOR FURTHER INFORMATION CONTACT: For program information, contact Ms. Patricia Lee-McCoy, Chief, Scholarship Branch, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, (301) 443–6197. For grants application and business management information, contact Mrs. M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852 (301) 443–5204. (The telephone numbers are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility and preference, program objectives, required affiliation, fund availability and period of support, type of program activities considered for support, and application procedures for FY 1999.

A. General Program Purpose

The purpose of the Health Professions Recruitment program is to increase the number of American Indians and Alaska Natives entering the health professions and to ensure an adequate supply of health professionals to the IHS, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.

B. Eligibility and Preference

The following organizations are eligible with preference given in the order of priority to:

1. Indian tribes,
2. Indian tribal organizations,
3. urban Indian organizations and other Indian health organizations; and
4. public and other nonprofit private health or educational entities

C. Program Objectives

Each proposal must address the following *four* objectives to be considered for funding:

1. Identifying Indians with a potential for education or training in the health professions (excluding nursing—The Nursing profession is excluded because the IHS Nursing Recruitment Grant Program provides funding to increase the number of nurses who deliver health care services to Indians.) and encouraging and assisting them:

(A) to enroll in courses of study in such health professions; or

(B) if they are not qualified to enroll in any such courses of study, to undertake such postsecondary education or training as may be required to qualify them for enrollment;

2. Publicizing existing sources of financial aid available to Indians enrolled in any courses of study referred to in paragraph (1) of this subsection or who are undertaking training necessary to qualify them to enroll in any such school.

3. Establishing other programs which the Secretary determines will enhance and facilitate the enrollment of Indians in, and the subsequent pursuit and completion by them of courses of study referred to in paragraph (1) of this section. To delivery the necessary student support systems to help to ensure that students who are recruited successfully complete their academic training. Support services may include:

A. Providing career counseling and academic advice;

B. Assisting students to identify academic deficiencies;

C. Assisting students to locate financial aid;

D. Monitoring students to identify possible problems;

E. Assisting with the determination of, need for, and location of tutorial services; and

F. Other related activities which will help to retain students in school.

4. To work in close cooperation with the IHS, tribes, tribal organizations and urban Indian organizations, in locating and identifying non-academic period placement opportunities and practicum experiences, i.e., the IHS Extern Program authorized under section 105 of Pub. L. 94–437, as amended, assisting students with individual development plans in conjunction with identified placement opportunities; monitoring students to identify and evaluate possible problems; and monitoring and evaluating all placement and practicum experiences within the IHS to further develop and modify the program.

D. Required Affiliation

If the applicant is an Indian tribe, tribal organization, urban organization or other Indian health organization, or a public or nonprofit private health organization, the applicant must submit a letter of support from at least one school accredited for the health professions program, (excluding nursing). This letter must document linkage with that educational organization.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

E. Fund Availability and Period of Support

It is anticipated that approximately $250,000 will be available for approximately 3 new grants. The average funding level for projects in FY 1998 was $72,500. The anticipated start date for selected projects will be August 1, 1999. Pursuant to 42 Code of Federal Regulations § 36.313(c), the project period ''will usually be for one to two years.'' However, under this notice, projects will be awarded for a budget term of 12 months, with a maximum project period of up to three (3) years. A maximum project period of three (3) years is required so that key staff, such as project directors, may be recruited, without the financial and career uncertainty of a one or two year budget period and to enable the projects to carry out their recruitment activities without the added activity of applying for a grant every one or two years. Grant funding levels include both direct and indirect costs. Funding of succeeding years will be based on the FY 1999

level, continuing need for the program, satisfactory performance, and the availability of appropriations in those years.

F. Type of Program Activities Considered for Support

Funds are available to develop grant programs to locate and recruit students with potential for health professions degree programs (excluding nursing), and to provide support services to Indian students who are recruited.

G. Application Process

An *IHS Recruitment Grant Application Kit*, including the required PHS 5161–1 (Rev.. 5/96) (OMB Approval No. 0920–0428) and the U.S. Government Standard forms (SF–424, SF–424A and SF–424B), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll free number.)

H. Grant Application Requirements

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one inch border margins, on only one side of standard size 8½ × 11 paper that can be photocopied. The application narrative (not including abstract, tribal resolutions or letters of support, standard forms, table of contents or the appendix) must not exceed 20 typed pages as described above. All applications must include the following in the order presented:

—Standard Form 424, Application for Federal Assistance
—Standard Form 424A, Budget Information—Non-Construction Programs, (pages 1 and 2)
—Standard Form 424B, Assurances—Non-Construction Programs (front and back)
—Certifications, PHS 5161–1, (pages 17–19)
—Checklist, PHS 5161–1, (pages 25–26), NOTE: Each standard form and the checklist is contained in the PHS Grant Application, Form PHS 5161–1 (Revised 5/96)
—Project Abstract (one page)
—Table of Contents
—Program Narrative to include:
—Introduction and Potential Effectiveness of Project
—Project Administration
—Accessibility to Target Population
—Relationship of Objectives to Manpower Deficiencies
—Project Budget, including multi-year narratives, and Budget Justifications
—Appendix to include:
—Tribal Resolution(s) or Letters of Support
—Biographical sketches for key personnel or position descriptions if position is vacant
—Organizational chart
—Workplan
—Completed IHS Application Checklist
—Application Receipt Card, PHS 3038–1 Rev. 5–90.

I. Application Instructions

The following instructions for preparing the application narrative also constitute the standards (criteria or basis for evaluation) for reviewing and scoring the application. Weights assigned each section are noted in parenthesis.

Abstract—An abstract may not exceed one typewritten page. The abstract should clearly present the application in summary form, from a ''who-what-when-where-how-cost'' point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

Table of Conents—Provide a one page typewritten table of contents.

Narrative

1. Introduction and Potential Effectiveness (30 Pts.)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of sec. 102.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

d. Provide a project specific work plan (milestone chart) which lists each objective, the task to be conducted in order to reach the objective, and the timeframe needed to accomplish each task. Timeframes should be projected in a realistic manner to assure that the scope of work can be completed within each budget period. (A work plan format is provided.)

e. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions (excluding nursing), include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

2. Project Administration (20 Pts.)

a. Provide an organizational chart (include in appendix). Describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project.

b. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the project; and a description of the manner in which the applicant's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, i.e., although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

3. Accessibility to Target Population (20 Pts.)

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

4. Relationship of Objectives to Health Professional Deficiencies (20 Pts.)

a. Provide data and supporting documentation to address the relationship of objectives to health professional deficiencies.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

5. Soundness of Fiscal Plan (10 Pts.)

(a) Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

b. The available funding level of $250,000 is inclusive of both direct and indirect costs. Pursuant to Public Health Service Grants Policy (DHHS Publication No. (OASH) 94–50,000 (Rev.) April 1, 1994), a 'training grant' includes a grant for ''training or other educational purposes'', and the Department of Health and Human Services considers this grant activity as having an educational purpose. Because this project has an educational purpose, and therefore, is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applied to all institutions of higher education other than agencies of State and local government.

c. Projects requiring additional years must include a program narrative and categorical budget and justification for each additional year of funding requested (this is not considered part of the 20-page narrative).

Appendix—to include:

a. Tribal Resolution(s) or Letter of Support

b. Biographical sketches of key personnel or position descriptions if position is vacant

c. Organizational chart

d. Workplan

e. Completed IHS Application Checklist

f. Application Receipt Card, PHS 3038–1 Rev. 5–90.

J. Reporting

1. Progress Report—Program progress reports shall be required semiannually. These reports will include a brief description of a comparison of actual accomplishments to the goals established for the period, reasons for slippage and other pertinent information as required. A final report is due 90 days after expiration of the budget/project period.

2. Financial Status Report—Semiannually financial status reports will be submitted 30 days after the end of the half year. A final financial status report is due 90 days after expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

K. Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR part 91, HHS, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organization; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments.

2. PHS Grants Policy Statement, and

3. Appropriate Cost Principles: OMB Circular A–21, Educational Institutions, OMB Circular A–87, State and Local Governments, and OMB Circular A–122, Non-profit Organizations.

L. Objective Review Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (40% or less) and other federal or non-federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers will assign a numerical score to each application, which will be used in making the final funding decision. Approved applications scoring less than 60 points will not be considered for funding.

M. Results of the Review

The results of the objective review are forwarded to the Director, Office of Management Support (OMS), for final review and approval. The Director, OMS, will also consider the recommendations from the Acting Director, Division of Health Professions Support, and the Grants Management Branch. Applicants are notified in writing on or about July 1, 1999. A Notice of Grant Award will be issued to successful applicants. Unsuccessful applicants are notified in writing of disapproval. A brief explanation of the reasons the application was not approved is provided along with the name of an IHS official to contact if more information is desired.

Dated: April 4, 1999.

Michael H. Trujillo,

Assistant Surgeon General Director.

[FR Doc. 99–9310 Filed 4–13–99; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Research Centers in Minority Institutions Review Committee.

Date: June 7–8, 1999.

Open: June 7, 1999, 8:00 am to 9:30 am.

Agenda: To discuss program planning and program accomplishments.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Closed: June 7, 1999, 9:30 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Grace S. Ault, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical technology; 93.389, Research infrastructure, National Institutes of Health, HHS)

Dated: April 7, 1999.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9256 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, General Clinical Research Centers Review Committee.

Date: June 16–17, 1999.

Open: June 16, 1999, 8:00 am to 9:30 am.

Agenda: To discuss program planning and program accomplishments.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Closed: June 16, 1999, 9:30 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Charles G. Hollingsworth, DPH, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0818.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: April 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9255 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 25, 1999.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Washington, DC 20037.

Contact Person: Lillian M. Pubols, PhD, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd; Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, Ip28e@nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 7, 1999.

LaVerne V. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9257 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 21, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 7, 1999.

LaVerne J. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9258 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of Environmental Health Sciences Special Emphasis Panel, Midcareer Investigator Award in Patient-Oriented Research.

Date: April 28, 1999.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, biological response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9259 Filed 4–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Treatment Outcomes and Performance Pilot Studies (TOPPS)

[OMB No. 0930–0182; extension, no change]

The TOPPS program awarded contracts to 14 States to develop and pilot test performance and outcomes measures for substance abuse treatment services. The pilot studies are collecting data from substance abuse clients, including pregnant women, women with dependent children, adolescents, and managed care clients. Measures of addiction severity and other outcomes are being obtained at admission, discharge and post-discharge. These States were granted OMB clearance on data collection until September 30, 1999. SAMHSA is requesting an extension of OMB approval for two of these States, Utah and North Dakota, to allow them to complete data collection. The estimated burden for this extension is summarized below.

	Number of respondents	Responses/respondent	Average burden/response (hrs.)	Annualized total burden (hrs.)
All States, currently approved (includes North Dakota and Utah)	6,419	2.0	.51	6,551
North Dakota—extension	300	2.0	.75	450
Utah—extension	420	2.9	.20	246
Revised Total	720			696

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 7, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–9276 Filed 4–13–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–77, ''Unfair Labor Practice Charges/Complaints.'' The revisions will update the name and number of the system, the authorities, storage, retrievability, safeguards, and retention and disposition statements, and the addresses of the system locations and system managers.

EFFECTIVE DATE: These actions will be effective April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Team Leader, Employee and Labor Relations Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for OS–77, ''Unfair Labor Practice Charges/Complaints,'' to update the name and

number of the system to reflect its Department-wide scope, the authority for maintenance of the system, storage, retrievability, safeguards, and retention and disposition statements, and the addresses of the system locations and system managers to reflect changes that have occurred since the notice was last published. Accordingly, the Department of the Interior proposes to amend the ''Unfair Labor Practice Charges/Complaints,'' OS–77, in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/DOI–77

SYSTEM NAME:

Unfair Labor Practice Charges/Complaints Files—Interior, DOI–77.

SYSTEM LOCATION:

(1) Employee and Labor Relations Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue, NW, Washington, DC 20245.

(3) U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(4) U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(5) Bureau of Reclamation, P.O. Box 25001, Denver, CO 80225.

(6) Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(7) National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(8) Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(9) Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Departmental employees filing unfair labor practice charges/complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal charges and complaints; name, address, and other personal information about individuals filing charges and complaints; transcripts of hearings (if held); and relevant information about other individuals in complainants' work units.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7106.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to adjudicate charges and complaints of unfair labor practices.

Disclosures outside the Department of the Interior may be made :

(1) To the Federal Labor Relations Authority for settlement of the complaint or appeal.

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(3) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when the disclosing agency becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(4) To a congressional office in response to an inquiry an individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in both manual and electronic format.

RETRIEVABILITY:

Records are retrieved by name of individual filing charge or complaint and Docket or Case Number.

SAFEGUARDS:

Access to records is limited to authorized personnel. Manual records are stored in locked metal file cabinets or in metal file cabinets in secured premises. Electronic records are maintained with access controls meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 6, Item 29.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Team Leader, Employee and Labor Relations Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Personnel Officer, Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue, NW, Washington, DC 20245.

(3) Personnel Officer, U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(4) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(5) Labor Relations Officer, Bureau of Reclamation, P.O. Box 25001, Denver, CO 80225.

(6) Personnel Officer, Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(7) Personnel Officer, National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(8) Personnel Officer, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(9) Personnel Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245. .

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals filing charges and complaints, colleagues and supervisors of complainants, and management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9278 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–RJ–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–84, ''Delinquent Debtor File.'' The revisions will update the authorities statement and the address of the system location and system manager.

EFFECTIVE DATE: These actions will be effective April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Financial Management, U.S. Department of the Interior, 1849 C Street NW, MS–5412 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for OS–84, ''Delinquent Debtor File,'' to update the authority for maintenance of the system statement and the address of the system location and system manager to reflect changes that have occurred since the notice was last published. Accordingly, the Department of the Interior proposes to amend the ''Delinquent Debtor File,'' OS–84, in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–84

SYSTEM NAME:

Delinquent Debtor File—Interior, OS–84.

SYSTEM LOCATION:

Office of Financial Management, U.S. Department of the Interior, 1849 C Street NW, MS–5412 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and other Federal employees indebted and owing money to the Department of the Interior.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1965, Pub. L. 89–508, Debt Collection Act of 1982, Pub. L. 97–365, E.O. 9397, and Debt Collection Improvement Act of 1996, Pub. L. 104–134.

ROUTINE USES OF RECORDS MAINTAINED ON THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to collect debts owed to the Department using salary offset or administrative offset procedures.

Disclosures outside the Department of the Interior may be made:

(1) To the General Accounting Office, Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

(2) To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

(3) To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department.

(4) To any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on the Department's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

(5) To any other Federal agency including, but not limited to, the Internal Revenue Service pursuant to 31 U.S.C. 3702A, for the purpose of effecting an administrative offset against the debtor of a delinquent debt owed to the Department by the debtor.

(6) To the Internal Revenue Service by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by the Department against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 37121, 3716, and 3718. Note: The Department will disclose an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) only for the purpose of debt collection. Disclosures to a debt collection agency will be made only to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982. Disclosures to a consumer reporting agency will be made only for the limited purpose of obtaining a commercial credit report on the individual taxpayer. Address information obtained from the Interior Revenue Service will not be used or shared for any other Departmental purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individuals for its own debt collection purpose.

(7) To any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States Government from an individual.

(8) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, The Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which records were compiled.

(9) To appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order, or license, when the disclosing agency becomes aware of information indicating a violation or potential of a statute, rule, regulation, rule, order, or license.

(10) To a congressional office in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3))

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are stored in automated and manual form.

RETRIEVABILITY:

Records are retrieved by the name or Social Security number of the individual debtor.

SAFEGUARDS:

Records are maintained with access controls meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained in the Office of Financial Management only for the duration of computer matching programs. Upon conclusion of these programs, records are returned to their respective, originating bureaus/offices, where they are retained and disposed of in accordance with approved agency schedules. Backup copies are retained in the Office of Financial Management for one calendar year, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Financial Management, U.S. Department of the Interior, MS–5412–MIB, 1849 C Street NW, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Departmental and bureau financial offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9279 Filed 4–13–99; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revision to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–3, ''Financial Interest Statements and Ethics Counselor Decisions.'' The revisions will update the number of the system, the authorities for maintenance of the system, and the addresses of the system location and system managers.

EFFECTIVE DATE: These actions will be effective April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Departmental Ethics Staff, Office of the Deputy Assistant Secretary for Human Resources, Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of Interior is amending OS–03, ''Financial Interest Statements and Ethics Counselor Decisions,'' to update the number of the system to more accurately reflect the Departmentwide scope of the system, to update the authorities for maintenance of the system to reflect changes that have occurred since the system notice was last published, and to update the addresses of the system locations and system managers. Accordingly, the Department of the Interior proposes to amend the ''Financial Interest Statements and Ethics Counselor Decisions,'' OS–03 system notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary, Privacy Act Officer, National Business Center.

INTERIOR/DOI–03

SYSTEM NAME:

Financial Interest Statements and Ethics Counselor Decisions—Interior, DOI–03.

SYSTEM LOCATION:

(1) Office of the Departmental Ethics Staff, Office of the Deputy Assistant Secretary for Human Resources, Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Bureau and Office Ethics Counselors, Deputy Ethics Counselors, Associate Ethics Counselors, and Assistant Ethics Counselors. (A list of these individuals, by bureau and office, may be obtained from the Office of the Departmental Ethics Staff or from the Department's Internet site: http//www.doi.gov/ethics.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Departmental employees required to file financial interests or disclosure statements as required by 5 CFR part 2634 and 5 CFR 3501.101, and Departmental employees subjected to remedial or disciplinary action for conflicts of interest or other ethics violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Confidential statements of employment and financial interests (OGE–450, SF278 or DI–278) for Departmental employees required to file such statements. Public Financial Disclosure Reports required by the Ethics in Government Act of 1989, as amended, (form SF–278) for individuals in positions which require them to file such statements. Records of conflict of interest decisions and appeals; analysis of financial holdings; employee statements; bureau, office, and supervisor comments on covered employees, as requested by the bureau or office counselors or as needed by the Designated Agency Ethics Official.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7301; (2) 16 U.S.C. 1912; (3) 30 U.S.C. 1211; (4) 42 U.S.C. 6392; (5) 43 U.S.C. 1743; (6) 43 U.S.C. 1864; (7) E.O. 12674 as modified by E.O. 12731; and (8) 5 CFR part 2634.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the system are:

(1) To review employee financial interests and determine employee compliance with applicable conflict of interest statutes and regulations, and to effect remedial and disciplinary action where non-compliance is ascertained.

(2) To record the fact that an employee has been made aware of specifically directed legislation or regulations covering his/her organization and that he/she is in compliance with such specific legislation or regulations.

(3) To provide the public with access to, and to adequately control access to, financial disclosure reports (which must, by statute, be made available to the public).

(4) To provide an adequate system of records for Departmental auditors performing compliance audits within the Department. Disclosure outside of the Department may be made:

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component

of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the disclosure is deemed by the Department of the Interior to be relevant or necessary to the litigation, and (c) the Department of the Interior determines that disclosure is compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to an inquiry the individual has made to the congressional office.

(3) To Federal, State, tribal, territorial or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

(4) To a Federal agency which has requested information relevant or necessary to the hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit.

(5) To the Office of Government Ethics to perform oversight reviews.

(6) To the public for only those records covered by specific statutes requiring their public disclosure.

(7) To appropriate Federal, State, tribal, territorial, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing, implementing, or administering a statute, rule, regulation, program, facility, order, lease, license, contract, grant, or other agreement, when the disclosing agency becomes aware of a violation or potential violation of a statute, rule, regulation, facility, order, lease, license, contract, grant or other agreement.

(8) To a Federal, State, tribal, territorial, local or foreign agency, or an organization, or an individual, when reasonably necessary to obtain information or assistance relating to an audit, investigation, trial, hearing, preparation for trial or hearing, or any other authorized activity of the Department.

(9) To an appropriate Federal, State, tribal, territorial, local or foreign court or grand jury in accordance with established constitutional, substantive, or procedural law or practice.

(10) To an actual or potential party or his/her attorney for the purpose of negotiation or discussion on such matters as settlement of a case or matter, plea bargaining, or informal discovery proceedings.

(11) To a foreign government pursuant to an international treaty, convention, or executive agreement entered into by the United States.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Confidential statements of employment and financial interests forms OGE–450, SF278 and DI–278 are maintained in manual format, in file folders, and in automated format, on computer disks and other appropriate electronic storage media.

(2) Public Disclosure Statements of Known Financial Interest Forms SF–278 and Confidential Supplemental Forms DI–278 are maintained in manual format in file folders.

RETRIEVABILITY:

(1) Confidential statements of employment and financial interests forms OGE–450, SF278 and DI–278 are retrieved by employee name or position for each bureau and office.

(2) Public Disclosure Statements of Known Financial Interest Forms SF–278 and Confidential Supplemental Forms DI–278 are retrieved by employee name and bureau.

SAFEGUARDS:

Records are accessible by authorized personnel only. File folders containing manual records are stored in locked file cabinets in locked rooms. Computer files containing electronic records are protected by passwords and file encryption.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 1, Item No. 25.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Designated Agency Ethics Official, Deputy Assistant Secretary for Human Resources, U.S. Department of the Interior, 1849 C Street NW, MS–5124 MIB, Washington, DC 20240.

(2) Bureau and Office Ethics Counselors, Deputy Ethics Counselors, Associate Ethics Counselors, and Assistant Ethics Counselors. (A list of these individuals, by bureau and office, may be obtained from the Office of the Departmental Ethics Staff or from the Department's Internet site: http// www.doi.gov/ethics.)

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Employees of the Department who are required to file financial interest statements and bureaus and offices of the Department.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9280 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–18, ''Discrimination Complaints.'' The revisions will update the number of the system, the addresses of the system locations and system managers, the categories of individuals covered by the system statement, and the storage, retrievability, and safeguards statements.

EFFECTIVE DATE: These actions will be effective April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Equal Opportunity, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

In this notice, the Department of the Interior is amending the system notice for OS–18, ''Discrimination Complaints,'' to more accurately

describe the Department-wide scope of the system of records, to add sexual orientation to the list of discrimination factors in the categories of individuals covered by the system statement; to update the storage, retrievability and safeguards statements to reflect changes that have occurred since the system notice was last published; and to update the addresses of the system locations and system managers. Accordingly, the Department of the Interior proposes to amend the ''Discrimination Complaints'' notice, OS–18 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/DOI–18

SYSTEM NAME:

Discrimination Complaints—Interior, DOI–18.

SYSTEM LOCATION:

(1) Office of Equal Opportunity, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, D.C. 20240. Bureau/office equal opportunity offices:

(2) Bureau of Land Management, 1849 C Street NW, MS–302 LS, Washington, D.C. 20240.

(3) Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007.

(4) U.S. Geological Survey, MS 602, Reston, Virginia 22092.

(5) National Park Service, 1849 C Street NW, MS–2747 MIB, Washington, D.C. 20240.

(6) U.S. Fish and Wildlife Service, North Fairfax Drive, Room 300 Webb Building, Arlington, Virginia 22203.

(7) Minerals Management Service, 381 Elden Street, MS 2900, Herndon, Virginia 20170.

(8) Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Room 138–SIB, Washington, D.C. 20240.

(9) Bureau of Indian Affairs, 1849 C Street NW, MS–4554 MIB, Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who claim to have been discriminated against on the basis of race, color, sex, religion, national origin, handicap, age and/or sexual orientation in violation of various statutes and regulations including Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 42 U.S.C. 2000e, et seq); Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, et seq) and its implementing regulations; the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 794, et seq) and its implementing regulations; the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621, et seq); Title IX of the Education Amendments of 1972 (Pub. L. 92–318); Section 403 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 93–153.87 Stat. 576); and Departmental Manual 373 DM 7, dated December 1, 1998, subject: Equal Opportunity Procedures for Processing Complaints of Discrimination Based on Sexual Orientation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints of discrimination; reports of complaints investigation and supplementary documentary evidence; correspondence, including requests for information from other Federal agencies, and from minority, civil rights, women's and community organizations; documents obtained from recipients of permits, rights-of-way, public land orders, or other Federal authorizations, and their agents, contractors, and subcontractors, under the Trans-Alaska Pipeline Authorization Act (Pub L. 93–153, 87 Stat. 576); and relevant statistical data obtained from various sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d) and its implementing regulations (43 CFR part 17, subpart A); Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, et seq) and its implementing regulations (29 CFR part 1614); section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, et seq); section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, et seq) and its implementing regulations (43 CFR Part 17, subpart B); the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621, et seq); Title IX of the Education Amendments of 1972 (Pub.L. 92–318); and section 403 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 93–153.87 Stat. 576).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To investigate and resolve complaints of discrimination.

(2) To compile statistical information on complaints of discrimination. Disclosures outside the Department of the Interior may be made:

(1) To other Federal agencies charged with the enforcement of equal employment opportunity laws, orders and regulations, on a need-to-know basis to assist these agencies in their enforcement activities.

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the disclosure is deemed by the Department of the Interior to be relevant or necessary to the litigation, and (c) the Department of the Interior determines that disclosure is compatible with the purpose for which the records were compiled.

(3) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license when the disclosing agency becomes aware of information indicating a violation or potential violation of a statute, rule, regulation, order or license.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Within the Departmental office, manual records are stored in file folders in a Aisle Saver System manual storage system. An automated complaints management information system is used to manage and track the processing of complaints.

RETRIEVABILITY:

Records are retrieved by name and employing bureau of individuals filing complaints, docket control number of complaints, and other appropriate data fields.

SAFEGUARDS:

Records are maintained in accordance with safeguards meeting the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Departmental regulations (43 CFR part 2, subpart D). Standards for the maintenance of records subject to the Privacy Act are described in Departmental regulations (43 CFR 2.48) and involve the content of the records, data collection practices, and the use, safeguarding, and disposal of personal information in the records. In offices where records are handled, posted warning signs remind employees of

access limitations, standards of conduct for employees handling Privacy Act records, and possible criminal penalties for violation of security regulations. Access to records is limited to authorized personnel on a need-to-know basis.

Within the Departmental office, manual records are stored in a locked Aisle Saver System (file unit) in a room locked with an off-master key. Automated records are maintained in conformance with safeguards based on recommendations of the National Bureau of Standards contained in ''Computer Security Guidelines for Implementing the Privacy Act of 1974'' (FIPS Pub.41, May 30, 1975). Within bureau offices, records are maintained with appropriate administrative, technical, and physical safeguards to insure their security and confidentiality.

RETENTION AND DISPOSAL:

Records are retained and disposed of in compliance with the National Archives and Records Administration's General Records Schedule No.1, Item No.26.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Office for Equal Opportunity, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240:

For complaints of discrimination arising under Title VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 42 U.S.C. 2000e, respectively), Departmental Manual 373 DM 7, dated December 1, 1998, section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, et seq); section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, *et seq.*) and its implementing regulations; the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621, et seq); and Title IX of the Education Amendments of 1972 (Pub. L. 92–318).

(2) Director, Alaska State Office, Bureau of Land Management, 222 West 7th Avenue #13, Anchorage, Alaska 99513:

For complaints arising under section 493 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 93–153, 87 Stat. 576).

(3) Associate Solicitor, Division of General Law, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street NW, MS–6530 MIB, Washington, DC 20240:

For complaints of discrimination arising under Title VII of the Civil Rights of 1964, as amended (42 U.S.C. 2000e) which are filed against the Departmental Office for Equal Opportunity.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of records shall be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Complainants; recipients of permits, rights-of-way, public land orders, or other Federal authorizations, and their agents, contractors, subcontractors, and employees under section 403 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 576); administrators and recipients of Government funds from programs administered by the Department of the Interior; Federal, State, and local government agencies; community, minority, civil rights, and women's organizations; unions; Members of Congress and their staffs; bureaus and offices of the Department of the Interior; and confidential informants, to the extent they possess relevant data otherwise unavailable.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–9281 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–RE–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application and availability of Habitat Conservation Plan and Environmental Impact Statement.

SUMMARY: This notice advises the public that the Department of Natural Resources, State of Wisconsin (WDNR) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). 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.*).

Permit Number TE 010064

Applicant: Wisconsin Department of Natural Resources, State of Wisconsin, and Twenty-five Partners.

The applicant requests a permit to authorize the incidental take associated with habitat modification (i.e., harm), of the Karner Blue Butterfly (*Lycaeides melissa samuelis*) which is federally listed as endangered. The permit is requested for the State of Wisconsin, in its entirety, for a period of 10 years.

The Service requests comments from the public on the incidental take permit application and the accompanying Wisconsin Statewide Habitat Conservation Plan (Plan). The Plan fully describes the proposed activities and the measures the WDNR and 25 HCP Partners will undertake to conserve the species while conducting otherwise lawful land use activities. These measures and associated impacts are also described in the background and summary information that follow.

We also request comments from the public on our Draft Environmental Impact Statement Number DES 99–9, prepared in accordance with the National Environmental Policy Act, and the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1).

DATES: Written comments on the permit application and Plan should be received on or before June 14, 1999.

ADDRESSES: Individuals wishing copies of the permit application, Habitat Conservation Plan, or Draft Environmental Impact Statement, may contact the office and personnel listed below. The Habitat Conservation Plan and Draft Environmental Impact Statement may be accessed through the internet at the U.S. Fish and Wildlife Service's Web Page (*http://www.fws.gov/r3pao*) or the Wisconsin Department of Natural Resources Web Page (http://*www.dnr.state.wi.us/org/land/er/publications/karner/karner.htm*). Documents also will be available for public inspection, by appointment, during normal business hours at the address below.

Document Availability: U.S. Fish and Wildlife Service, 1015 Challenger Court, Green Bay, Wisconsin 54311, (920) 465–7440; FAX (920) 465–7410.

Three public information meetings are scheduled to provide the public an additional forum to learn about the HCP/EIS and proposed activities. Representatives from the U.S. Fish and

Wildlife Service, the WDNR, and others will be available at these meetings. Meetings will begin at 5:00 with question and answer period, followed by presentations and gathering of comments at 6:00pm. Meeting locations are as follows:

Tuesday, May 11, 1999—Siren, Wisconsin, at the Burnett County Government Center, 7410 County Road K, Siren, WI 54872, (Room number to be posted)

Wednesday, May 12, 1999—Black River Falls, at the County Courthouse, 307 Main Street, Black River Falls, WI 54615, (County Board Room)

Thursday, May 13, 1999—Wisconsin Rapids, at the Midstate Technical College, 500 32nd Street, N, Wisconsin Rapids, WI 54494, (L Building Auditorium)

Written comments regarding the permit application, the HCP or Draft EIS should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments must be submitted to this address to be considered by the Service in its final decision. Please refer to permit number TE 010064 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Mandell, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota, telephone 612–713–5343.

SUPPLEMENTARY INFORMATION: Under Section 9 of the Act and applicable federal regulations, the ''taking'' of a species listed as endangered or threatened is prohibited. However, the Service, under limited circumstances, may issue permits to ''take'' listed species, provided such take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

Background

The Karner blue butterfly (*Lycaeides melissa samuelis*) was federally-listed as endangered on December 14, 1992. Historically, the Karner blue butterfly occurred in a narrow band extending from eastern Minnesota, across portions of Wisconsin, Illinois, Indiana, Iowa, Michigan, Ohio, Canada (Ontario), Pennsylvania, New York, Maine, Massachusetts, and New Hampshire. At the time of listing, the butterfly was considered to be extirpated from Illinois, Iowa, Maine, Massachusetts, Ohio, Pennsylvania, and Ontario. To date, recovery efforts have included conservation of existing populations and reintroduction of the Karner blue butterfly into Ohio. At the time of listing, the primary threats to the Karner blue butterfly were habitat loss due to modification and destruction, habitat loss due to the absence of natural disturbances, silviculture and fragmentation of remaining habitat.

The habitat of the Karner blue butterfly is characterized by the presence of wild lupine (*Lupinus perennis*), a member of the pea family. Wild lupine is the only known larval food plant for the species and is, therefore, closely tied to the butterfly's ecology and distribution. In the Midwest, the habitat is dry and sandy, including oak savanna and jack pine areas, and dune/sandplain communities. It is believed that the Karner blue butterfly originally occurred as shifting clusters of populations, or metapopulations, across a vast fire-swept landscape covering thousands of acres. While the fires resulted in localized extirpation, post-fire vegetational succession promoted colonization and rapid population buildups (Schweitzer 1989).

In Wisconsin, Karner blue butterfly populations are concentrated across the central counties and in the northwest. The populations occur primarily on sandy soil areas that support wild lupine, although presence of this habitat alone does not indicate presence of Karner blue butterflies. It appears that other climatic and biological factors also influence suitability of habitat. Currently, abandoned agricultural fields, transportation corridors, rights-of way, managed forests, managed barrens, savannas, and prairies are areas where one might find Karner blue butterflies in Wisconsin.

Following the listing of the butterfly, the Wisconsin Department of Natural Resources recognized the need to address take of the butterfly while conducting otherwise lawful land use activities, including forest management, savanna management, etc. A coalition was formed, and the result of the effort is the Habitat Conservation Plan summarized below, which is currently under consideration for an incidental take permit.

Summary of the Habitat Conservation Plan

The WDNR is interested in administering the Incidental Take Permit for lands throughout the state. Twenty-six partners are included in the application. The WDNR has developed a Species and Habitat Conservation Agreement (SHCA) for state lands and twenty-five partners to the HCP have entered into an SHCA with the WDNR. New partners to the HCP that enter into the process after the proposed permit is issued will be provided with Certificates of Inclusion by the Service once they have signed an SHCA that meets Service and State criteria.

The WDNR and partners have identified a variety of conservation activities that will be undertaken to minimize harm to the butterfly and mitigate unavoidable permanent take during otherwise lawful land use activities. Strategies are included for conservation in forestry management, right-of-way management, barrens management, transportation corridor management, and management of areas to benefit recovery of the species. WDNR proposes to be responsible to ensure compliance and supervise monitoring of take activities.

The WDNR, in the HCP and application, is proposing a statewide Participation Plan that identifies the roles and responsibilities of the current partners and describes: (a) The process for incorporating new partners into the Permit, (b) articulates when and what activities require a separate, individual permit or authorization, and (c) encourages private landowner participation in conservation of the Karner blue butterfly throughout Wisconsin on a voluntary basis. The latter strategy involves encouraging conservation of the Karner blue butterfly through a geographically focused education and outreach program implemented by partners with no regulatory mandate attached to this group of landowners (conservation by this group is optional). This is an extremely innovative approach, but has been proposed based on an extensive, biologically justified analysis of the risk involved in terms of potential to take the butterfly, a rigorous outreach program, and conservation commitments by the WDNR and 25 partners. The WDNR developed the risk assessment associated with implementation of the Participation Plan, which graphically demonstrates (by county) the biological risk and mitigation potential associated with implementation of the Participation Plan. The expectation is that the combination of mitigation by the DNR and Partners, realized through their conservation and recovery commitments and efforts to maximize outreach in the areas most critical to survival and conservation of the species, will provide a net benefit to the species. The Service proposes to condition approval of this Participation Plan on a three year trial period for implementation of this strategy, along with a detailed and extensive reporting requirement

designed to monitor the success of its implementation.

The monitoring program includes three components: (1) An effectiveness monitoring protocol implemented yearly to detect statewide trends of the Karner blue butterfly habitat, presence and relative abundance, (2) self-monitoring to integrate partner survey and management information, and (3) an adaptive management approach. As part of an adaptive management approach, the partners have agreed that modified conservation measures and alternative management regimes will be implemented if monitoring indicates that conservation efforts do not produce the anticipated, desirable result for the butterfly.

The stated biological goal of this HCP is no-net-loss of habitat for the Karner blue butterfly over the life of the plan. A primary objective is to maintain a shifting mosaic of habitat across the Wisconsin landscape over time, which will provide for the ecological needs of the species.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, HCP, Implementation Agreement, Partners' Species and Habitat Conservation Agreements, and comments submitted relative to the proposed action to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of Karner blue butterfly.

Reference Cited

Schweitzer, D.F. 1989. Fact sheet for the Karner blue butterfly with special reference to New York. The Nature Conservancy, internal document, 7 pp.

Dated: April 6, 1999.

Marvin E. Moriarty,

Acting Regional Director, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–9247 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has 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–697830

Applicant: Assistant Regional Director, Ecological Services, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

The applicant requests an amendment to his permit for scientific take activities of listed species in Region 3 to add the Topeka shiner (*Notropis topeka*), a recently listed species, for scientific purposes and the enhancement of propagation or survival of the species in the wild, in accordance with listing, recovery outlines, recovery plans and/or other Service work for the species.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: April 7, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–9248 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Application for an Incidental Take Permit for the Hord Residential Development Project, in Los Osos, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Joe and Cindy Hord have applied for an incidental take permit from the Fish and Wildlife Service pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Hords are requesting a 10-year permit to allow the incidental take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) associated with a proposed 4.2-acre residential development project in the community of Los Osos, San Luis Obispo County, California. The permit application includes a Habitat Conservation Plan and an Implementation Agreement, both of which are available for public review and comment. The Service also announces the availability of an Environmental Assessment for the proposed issuance of the incidental take permit. All comments on the Assessment and permit application will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before May 14, 1999.

ADDRESSES: Comments should be addressed to Diane Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003; facsimile (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Kate Symonds, Fish and Wildlife Biologist, at the above address or telephone (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

If you would like copies of the documents for review, please contact the office listed above immediately. Documents also are available for inspection, by appointment, during normal business hours at the above address.

Background

Under Section 9 of the Endangered Species Act and its implementing regulations, taking of threatened and endangered wildlife species is prohibited. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found at 50 CFR 17.22 and 17.32.

The Hords need an incidental take permit because the proposed construction of their residential development project would result in the permanent loss of 1.5 acres of habitat that supports the Morro shoulderband snail within the 4.2-acre project site. The Hord's permit application includes a Habitat Conservation Plan (Plan) that

addresses impacts to the Morro shoulderband snail associated with the proposed project and that provides for implementation of measures to minimize and mitigate adverse impacts to the snail. The Hords propose to dedicate the remaining 2.7 acres of high quality Morro shoulderband snail habitat within the project site that is not proposed for residential development. Snail habitat would be conserved through a perpetual open space conservation easement in favor of the County of San Luis Obispo or another entity approved by the Service. The Hords would ensure that the site is managed in perpetuity in a manner that would be consistent with the Plan's conservation goals for the snail. This action would compensate for the loss of habitat resulting from the project and would benefit the long-term conservation of the snail. The Hord's permit application includes an Implementation Agreement that defines the responsibilities of all of the parties under the Plan.

The Habitat Conservation Plan, Implementation Agreement, and Environmental Assessment are available for public review and comment. The Plan and the Environmental Assessment consider four alternatives to the proposed residential development project: the No Residential Development Alternative, the Alternate Site Alternative, the Alternate Building Location Alternative, and the Reduced Intensity Alternative. The first two alternatives are no action (i.e., no permit) alternatives.

Under the No Residential Development Alternative, housing would not be developed on site. The Service would not issue a section 10(a)(1)(B) permit because there would be no take of the Morro shoulderband snail. This alternative would not adversely affect biological resources occurring on this site; therefore, impacts would be less than those of the proposed project. This alternative assumes the continuation of the site as an undeveloped area. Habitat for the snail would degrade over time without active management. This alternative would not substantially benefit the Morro shoulderband snail because no permanent onsite habitat conservation area would be established, managed, and monitored under this alternative.

The Alternate Site Alternative involves the use of another site for the Hord's residential development project that does not support any listed species. An incidental take permit would not be needed. This alternative would not meet the project purpose and need and was considered economically unfeasible by the Hords. Although this alternative would result in no impact at the proposed construction site, it would not result in establishment of a permanent open space easement that is expected to have long-term benefits for the snail.

Under the Alternate Building Location Alternative, the proposed 4.2-acre parcel would be surveyed for snail presence and the proposed residential buildings and accessory structures would be arranged or sited within the 4.2-acre parcel to avoid and minimize disturbance to areas of the site occupied by the snails. The project might require issuance of an incidental take permit if some acreage of Morro shoulderband snail habitat would be affected. The Hords did not select the Alternate Building Location Alternative because it would not meet the project purpose and need as well as the Proposed Project Alternative and, upon analysis, would not provide greater habitat benefit to the snail.

Under the Reduced Intensity Alternative, the Hords would construct a residential development within the same 4.2-acre parcel but within a reduced construction area, so as to cause less physical disturbance to onsite Morro shoulderband snail habitat. The project could require issuance of an incidental take permit if some acreage of Morro shoulderband snail habitat would be affected. Compared to the Proposed Project Alternative, the Reduced Intensity Alternative would result, at best, in only a minor addition of undeveloped acreage. This contribution to the overall habitat requirements of the Morro shoulderband snail would not be significant.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). In determining whether the application meets the requirements of law, the Service will evaluate the application, its associated documents, and comments submitted by the public. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the Morro shoulderband snail. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: April 7, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Region 1, Sacramento, California.

[FR Doc. 99–9274 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Trail of Tears National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held May 18, 1999, at 8:00 a.m., in Sweetwater, Tennessee, at the Best Western Sweetwater Inn.

The Trail of Tears National Historic Trail Advisory Council was established administratively under authority of section 3 of Public Law 91–383 (16 U.S.C. 1s–2(c)), to consult with the Secretary of the Interior on the implementation of a comprehensive plan and other matters relating to the Trail, including certification of sites and segments, standards for erection and maintenance of markers, preservation of trail resources, American Indian relations, visitor education, historical research, visitor use, cooperative management, and trail administration.

The matters to be discussed include:

—Plan Implementation Status

—Trail Association Status

—Cooperative Agreements Negotiation

—Trail Route

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office-Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection at the Office of the Superintendent, located in Room 205, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: April 7, 1999.

David M. Gaines,

Superintendent.

[FR Doc. 99–9231 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Lewis and Clark National Historic Trail

AGENCY: National Park Service, DOI.

ACTION: Official insignia, designation.

SUMMARY: This notice issues the official trail marker insignia of the Lewis and Clark National Historic Trail. The original graphic image was developed by the Lewis and Clark Trail Commission and became property of the Department of the Interior in 1969. The National Park Service has officially used this insignia—and earlier variations—since completion of planning documents for the Trail in 1982. It has been slightly redesigned since then so that lettering and framing match other National Trail System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, Room 3606, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Lewis and Clark National Historic Trail, administered by the National Park Service, Midwest Region. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or posses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

Dated: April 30, 1999.

Chris Andress,

Acting Director.

[FR Doc. 99–9230 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Fresno County, CA in the Possession of California State University-Fresno, Fresno, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Fresno County, CA in the possession of the University of California-Fresno, Fresno, CA.

A detailed assessment of the human remains was made by University of California-Fresno professional staff in consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1966 and 1972, human remains representing eight individuals were recovered from the Burrel Barn site (CA-FRE-386), Fresno County, CA during excavations conducted by the Fresno State College Archaeological Field Class under the supervision of Dr. William Beatty. No known individuals were identified. No associated funerary objects were present.

Based on archeological investigations, the Burrel Barn site has been identified as a large village site along the Fresno Slough, about 20 miles southwest of Fresno, CA. Based on cultural material and burial locations withing the village, these human remains have been identified as Native American. Based on the degree of preservation and the cultural material at the Burrel Barn site, the human remains have been determined to date from the late precontact period (post-1500 A.D.). Archeological evidence in this area indicates continuity of material culture and occupation from precontact times into the historic period. Early Yokuts

people are presumed to have occupied the San Joaquin Valley between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and used of this area Since the late precontact period by Tachi Yokuts peoples, now known as and represented by the Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1972, human remains representing one individual were recovered from site CA-FRE–495, Fresno County, CA during excavations conducted by Fresno State College Archaeological Field Class under the supervision of Dr. William Beatty. No known individual was identified. No associated funerary objects were present.

Based on archeological investigations, site CA-FRE-495 has been identified as a recently leveled habitation mound along the Fresno Slough, about 19 miles southwest of Fresno, CA. Based on cultural material and burial locations withing the village, these human remains have been identified as Native American. Based on the degree of preservation and the cultural material at site CA-FRE-495, the human remains have been determined to date from the late precontact period (post-1500 A.D.). Archeological evidence in this area indicates continuity of material culture and occupation from precontact times into the historic period. Early Yokuts people are presumed to have occupied the San Joaquin Valley between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and used of this area Since the late precontact period by Tachi Yokuts peoples, now known as and represented by the Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1972, human remains representing one individual were recovered from site CA-FRE-528, Fresno County, CA during a field survey by Fresno State College staff. No known individual was identified. No associated funerary objects were present.

Based on archeological investigations, site CA-FRE-528 has been identified as a low mound within a recently plowed agricultural field along Fresno Slough about 16 miles southwest of Fresno, CA. Based on degree of preservation and cultural material recovered at site CA-FRE–528, these human remains have been identified as Native American and have been determined to date from the late precontact period (post-1500 A.D.). Archeological evidence in this area indicates continuity of material culture and occupation from precontact times into the historic period. Early Yokuts people are presumed to have occupied the San Joaquin Valley between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and used of this area Since the late precontact period by Tachi Yokuts peoples, now known as and represented by the Santa Rosa Indian Community of the Santa Rosa Rancheria.

Based on the above mentioned information, officials of the University of California-Fresno have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of approximately ten individuals of Native American ancestry. Officials of the University of California-Fresno have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Santa Rosa Indian Community of the Santa Rosa Rancheria.

This notice has been sent to officials of the Santa Rosa Indian Community of the Santa Rosa Rancheria. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Professor Roger LaJeunesse, Department of Anthropology, California State University-Fresno, 5245 North Backer Avenue, Fresno, CA 93740-0016; telephone: (209) 278-4900, before May 14, 1999. Repatriation of the human remains to the Santa Rosa Indian Community of the Santa Rosa Rancheria may begin after that date if no additional claimants come forward.

Dated: April 8, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9328 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Heard Museum, Phoenix, AZ which meets the definition of ''sacred object'' under Section 2 of the Act.

The cultural item consists of a natural stone formation known as *Pokonghoya* (Deity of Protection).

During the early 1900s, this cultural item was collected from an unknown location by Henry Voth. In 1978, this cultural item was donated to the Heard Museum by the Fred Harvey Corporation.

During consultation, representatives of the Hopi Tribe identified this cultural item as central to the continuance of the Soyalang (Winter Solstice) ceremony.

Based on the above-mentioned information, officials of the Heard Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Heard Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Martin Sullivan, Director, Heard Museum, 22 E. Monte Vista Rd., Phoenix, AZ 85004-1480; telephone: (602) 252-8840 before May 14, 1999. Repatriation of this object to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: April 5, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9326 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains, Associated Funerary Object, and Unassociated Funerary Object in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American

Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council, Bemidji, MN.

A detailed assessment of the human remains was made by professional staff in consultation with representatives of the Leech Lake Band of the Minnesota Chippewa Tribe.

In 1938, human remains representing one individual were removed from Osufen Mound (21-IC-02), MN, a site within the exterior boundaries of the Leech Lake Reservation, by L.A. Wilford of the University of Minnesota. No known individual was identified. The associated funerary object is a metal axe.

Based on the associated funerary object, this burial has been identified as Native American from the historic period. The Osufen Mound site is located within the exterior boundaries of the Leech Lake Indian Reservation.

The cultural item is a ceramic vessel.

In 1944, this ceramic vessel was donated to the University of Minnesota by George Kremer. University of Minnesota indicates this vessel was removed from an eroding burial on Lake Winnibigoshish, MN. Lake Winnibigoshish is located within the exterior boundaries of the Leech Lake Indian Reservation.

Based on the above mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), the one cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains, associated funerary object, and the unassociated funerary object and the Leech Lake Band of the Minnesota Chippewa Tribe.

This notice has been sent to officials of the Leech Lake Band of the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Ave. Bemidji, MN 56601; telephone: (218) 755-3825, before May 14, 1999. Repatriation of the human remains, associated funerary object, and unassociated funerary object to the Leech Lake Band of the Minnesota Chippewa Tribe may begin after that date if no additional claimants come forward.

Dated: April 8, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9327 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Peabody Museum of Arhcaeology and Ethnology, Harvard University, Cambridge, MA.

A detailed assessment of the human remains was made by Peabody Museum professional staff in consultation with representatives of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes.

In 1929, human remains representing four individuals were recovered from Pecos Pueblo by William Claflin, Jr. while visiting excavations conducted by Vincent Kidder under the auspices of Phillips Academy, Andover, MA. In 1985, William Claflin, Jr. donated these human remains to the Peabody Museum of Archaeology and Ethnology. No known individuals were identified. No associated funerary objects are present.

Based on the ceramic types recovered from this site, Pecos Pueblo was occupied into the historic period 1300-1838. Historic records document occupation at the site unitl 1838 when the last inhabitants left the Pueblo and went to the Pueblo of Jemez. In 1936, an Act of Congress recognized the Pueblo of Jemez as a ''consolidation'' and ''merger'' of the Pueblo of Pecos and the Pueblo of Jemez; this Act further recognizes that all property, rights, titles, interests, and claims of both Pueblos were consolidated under the Pueblo of Jemez.

Further evidence supporting a shared group identity between the Pecos and Jemez pueblos emerges in numerous aspects of present-day Jemez life. The 1992-1993 Pecos Ethnographic Project (unrelated to NAGPRA) states: ''[T]he cultural evidence of Pecos living traditions are 1) thet official tribal government position of a Second Lieutenant/Pecos Governor; 2) the possession of the Pecos Pueblo cane of office; 3) the statue and annual feast day of Porcingula (Nuestra Senora de los Angeles) on August 2; 4) the Eagle Watchers' Society; 5) the migration of Pecos people in the early nineteenth century; 6) the knowledge of the Pecos language by a few select elders.'' (Levine 1994:2-3)

Based on the above mentioned information, officials of the Peabody Museum of Arhcaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Peabody Museum of Arhcaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains

should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 022138; telephone (617) 495-2254, before May 14, 1999. Repatriation of the human remains to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: April 5, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9324 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA which meets the definition of ''unassociated funerary objects'' under Section 2 of the Act.

The eleven cultural items are ceramic vessels and ceramic fragments.

In 1929, nine of these cultural items were recovered from Pecos Pueblo by William Claflin under the auspices of Phillips Academy, Andover, MA. In 1985, William Claflin donated these nine cultural items to the Peabody Museum of Archaeology and Ethnology.

Between 1915-1929, two of these cultural items were recovered from Pecos Pueblo by Alfred Vincent Kidder under the auspices of Phillips Academy, Andover, MA. In 1936, Phillips Academy donated these two cultural items to the Peabody Museum of Archaeology and Ethnology.

Excavations records indicate that the human remains with whom these eleven cultural items were associated were not collected. Based on the ceramic types recovered from this site, Pecos Pueblo was occupied into the historic period (1300-1838). Historic records document occupation at the site until 1838 when the last inhabitants left the Pueblo and went to the Pueblo of Jemez. In 1936, an Act of Congress recognized the Pueblo of Jemez as a ''consolidation'' and ''merger'' of the Pueblo of Pecos and the Pueblo of Jemez; this Act further recognizes that all property, rights, titles, interests, and claims of both Pueblos were consolidated under the Pueblo of Jemez.

Further evidence supporting a shared group identity between the Pecos and Jemez pueblos emerges in numerous aspects of present-day Jemez life. The 1992-1993 Pecos Ethnographic Project (unrelated to NAGPRA) states: ''[T]he cultural evidence of Pecos living traditions are 1) thet official tribal government position of a Second Lieutenant/Pecos Governor; 2) the possession of the Pecos Pueblo cane of office; 3) the statue and annual feast day of Porcingula (Nuestra Senora de los Angeles) on August 2; 4) the Eagle Watchers' Society; 5) the migration of Pecos people in the early nineteenth century; 6) the knowledge of the Pecos language by a few select elders.'' (Levine 1994:2-3)

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these eleven cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, Pueblo of Cochiti, the Pueblo of Jemez, Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 022138; telephone (617) 495-2254, before May 14, 1999. Repatriation of these objects to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: April 8, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–9325 Filed 4–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on April 22, 1999, to discuss several issues including: an overview of the proposals received under the February 99 proposal solicitation package, a Battle Creek project update, an implementation and tracking system update, and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 p.m. on Thursday, April 22, 1999.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6752 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system

are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as Advisory Council BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. The BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. The BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 5, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–9277 Filed 4–13–99 8:45 am]

BILLING CODE 4310–44–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–68]

Lamb Meat

Determination

On the basis of the information in the investigation, the Commission unanimously—

(1) Determines, pursuant to section 202(b) of the Trade Act of 1974, that lamb meat [1] is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article; and

(2) Makes negative findings, pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3371(a)), with respect to imports of lamb meat from Canada and Mexico.

Recommendations With Respect to Remedy

The Commission [2] (Chairman Bragg and Commissioners Crawford and Askey) recommends:

(1) That the President impose a tariff-rate quota system, for a 4-year period, on imports of lamb meat that are the subject of this investigation, as follows (all weights are in terms of carcass-weight equivalents):

First year: 20 percent ad valorem on imports over 78 million pounds;

Second year: 17.5 percent ad valorem on imports over 81.5 million pounds;

Third year: 15 percent ad valorem on imports over 81.5 million pounds; and

Fourth year: 10 percent ad valorem on imports over 81.5 million pounds;

(2) That the President implement appropriate adjustment assistance measures, drawing on authorized programs at the U.S. Department of Agriculture and the U.S. Department of Commerce providing specialized direct payments, research, and animal health programs, in such combination as to most effectively ''facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.'' In this context, we recommend that the President look to the industry's report by PriceWaterhouseCoopers and its recommendations when considering adjustment assistance options;

(3) Having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the tariff-rate quota; and

(4) That the tariff-rate quota not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Vice Chairman Miller and Commissioner Hillman recommend:

(1) That the President increase the rate of duty, for a 4-year period, on imports of lamb meat the subject of this investigation, to the rates of duty as follow: 22 percent ad valorem in the first year of relief, 20 percent ad valorem in the second year, 15 percent ad valorem in the third year, and 10 percent ad valorem in the fourth year;

(2) That the President identify and implement adjustment measures and other action authorized under law that is likely to facilitate positive adjustment to import competition; specifically, that the President make assistance available to the lamb meat industry through Federal programs, primarily those administered by the U.S. Department of Agriculture, and take action to ensure that the National Sheep Industry Improvement Center is fully operational;

(3) Having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the increased tariffs;

(4) That the increased rates of duty not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Commissioner Koplan recommends:

(1) That the President impose a quantitative restriction, for a 4-year period, on imports of lamb meat the subject of this investigation, as follows: 52 million pounds in the first year, 56 million pounds in the second year, 61 million pounds in the third year, and 70 million pounds in the fourth year (all

[1] The imported article covered by this investigation is fresh, chilled, or frozen lamb meat. Excluded from the scope of the investigation are imports of live lambs and sheep and meat of mature sheep (mutton). Lamb meat is provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the Harmonized Tariff Schedule of the United States (HTS).

[2] The Commission notes that, pursuant to section 330(d)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(2)), the remedy recommendation of Chairman Bragg and Commissioners Crawford and Askey in this investigation is to be treated as the remedy finding of the Commission for purposes of section 203 of the Trade Act.

quantities are carcass-weight-equivalents);

(2) That the President, within the overall quantitative restriction, provide separate allocations for Australia, New Zealand, and ''all other'' countries in proportion to their average share of imports entered during calendar years 1995–1997;

(3) That the President take all action necessary to ensure that the National Sheep Industry Improvement Center is fully operational as soon as possible, and that the President make available either through the Center or directly to the industry the full measure of Federal assistance programs, including those administered by the U.S. Department of Agriculture.

(4) Having made negative findings with respect to imports of lamb meat from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the quota; and

(5) That the quota not apply to imports of lamb meat from Israel, or to any imports of lamb meat entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

The Commissioners find that the respective actions that they have recommended will address the threat of serious injury found to exist and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

Background

Following receipt of a petition filed on October 7, 1998, on behalf of the American Sheep Industry Association, Inc., Harper Livestock Company, National Lamb Feeders Association, Winters Ranch Partnership, Godby Sheep Company, Talbott Sheep Company, Iowa Lamb Corporation, Ranchers' Lamb of Texas, Inc., and Chicago Lamb and Veal Company, the Commission, effective October 7, 1998, instituted investigation No. TA–201–68, Lamb Meat, under section 202 of the Trade Act of 1974 to determine whether lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 23, 1998 (63 F.R. 56940). The hearing in connection with the injury phase of the investigation was held on January 12, 1999, and the hearing on the question of remedy was held on February 25, 1999. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the President on April 5, 1999. The views of the Commission are contained in USITC Publication 3176 (April 1999), entitled Lamb Meat: Investigation No. TA–201–68.

Issued: April 7, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9329 Filed 4–13–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1224]

RIN 1121–ZB57

National Institute of Justice Announcement of the Fifth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the fifth meeting of the National Commission on the Future of DNA Evidence.

SUPPLEMENTARY INFORMATION: The fifth meeting of the National Commission on the Future of DNA Evidence will take place beginning on Thursday, May 6, 1999, 9:00 AM–5:00 PM, Mountain Daylight Time and will continue on Friday, May 7, 1999, 9:00 AM–1:00 PM, Mountain Daylight Time. The meeting will take place at the Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, New Mexico 87501, Phone: 505–988–2811.

The National Commission on the Future of DNA Evidence, established pursuant to section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director (202) 616–8123.

Authority: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the Crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–9284 Filed 4–13–99; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

NSF2000 Steering Committee: Notice of Sunshine Act Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

NAME: NSF 50th Anniversary Public Advisory Committee Meeting (#5213).

DATE AND TIME: May 12, 1999, 10:00 a.m.–4:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, VA 22230.

TYPE OF MEETING: Open.

CONTACT PERSONS: William Line, National Science Foundation, 4201 Wilson Boulevard, Suite 1245, Arlington, VA 22230—, (703) 306–1070.

PURPOSE OF MEETING: To provide advice for the National Science Foundation's 50th Anniversary celebration.

Agenda: Wednesday, May 12, 1999

1. Introductory Remarks and Welcome New Committee Members
2. Dr. Rita Colwell, remarks, Q's & A's
3. Report on NSF 50th anniversary
4. Internal Public Advisory Committee business
5. Other business

Dated: April 8, 1999.

Julia A. Moore,

Director, Office of Legislative and Public Affairs, National Science Foundation.

[FR Doc. 99–9215 Filed 4–13–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

FirstEnergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the FirstEnergy Nuclear Operating Company (the licensee) to withdraw its April 9, 1997, application for an amendment to Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 21, 1997 (62 FR 27794).

The purpose of the licensee's amendment request was to revise the Technical Specifications to extend the existing surveillance interval for performing the Channel Functional Tests for the refueling equipment interlocks and for the one-rod-out interlock.

Subsequently, by letter dated March 10, 1999, the licensee informed the staff that the amendment was being withdrawn and would be resubmitted in the future based on an approved Standard Technical Specification Change Traveler, Number TSTF–225. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see the application for amendment dated April 9, 1997, and the licensee's withdrawal letter dated March 10, 1999. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 5th Day of April 1999.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9290 Filed 4–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Service Electric and Gas Company; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Exemption

[Docket Nos. 50–272 and 50–311]

I

Public Service Electric and Gas Company (the licensee) is the holder of Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, respectively. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

This facility consists of two pressurized water reactors located in Salem County, New Jersey.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), section 50.71, ''Maintenance of records, making of reports,'' paragraph (e)(4) states, in part, that ''Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months.'' The two units at the Salem plant share a common UFSAR, therefore, this rule requires the licensee to update the same document annually or within 6 months after each unit's refueling outage (approximately every 9 months).

III

Section 50.12(a) of 10 CFR, ''Specific exemptions,'' states that:

> The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *'' The licensee has proposed updating the unified Salem UFSAR 6 months after each Unit 1 refueling outage, provided the interval between successive updates does not exceed 24 months. The underlying purpose of the rule was to relieve licensees of the burden of filing annual UFSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its UFSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common UFSAR. Rather, the Commission stated that ''With respect to * * * multiple facilities sharing a common UFSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis'' (57 FR 39355 (1992)).

The Salem units are on an 18-month fuel cycle. As noted In the NRC Staff's Safety Evaluation, the licensee's proposed schedule for the Salem UFSAR updates will ensure that the UFSAR will be maintained current for both units within 24 months of the last revision. The proposed schedule satisfies the maximum 24-month interval between UFSAR revisions specified by 10 CFR 50.71(e)(4). The requirement to revise the UFSAR annually or within 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest.

The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the Salem UFSAR annually or within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the Salem UFSAR within 6 months after each Salem Unit 1 refueling outage, not

to exceed 24 months between successive revisions.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 16764).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of April, 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9291 Filed 4–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Bureau of Land Management

[Docket No. 72–22]

Private Fuel Storage, L.L.C., Independent Spent Fuel Storage Installation, Skull Valley Indian Reservation, Tooele County, UT; Notice of Intent to Prepare Environmental Impact Statement and Notice of Public Scoping Meeting

Private Fuel Storage, L.L.C. (PFS or the applicant) proposes to construct and operate an independent spent fuel storage installation (ISFSI) at the Skull Valley Indian Reservation, which is bordered on all sides by Tooele County, Utah. The proposed Private Fuel Storage Facility (PFSF) would be constructed on an 820-acre site that would store spent nuclear fuel (SNF) received from commercial U.S. nuclear power plants. The applicant proposes constructing a rail line on land managed by the U.S. Bureau of Land Management (BLM) as the preferred route for transportation of SNF to its site. To construct and operate the facility, the applicant must obtain a license from the U.S. Nuclear Regulatory Commission (NRC), a right-of-way (ROW) for its proposed rail line over public lands from BLM, and approval from U.S. Bureau of Indian Affairs (BIA) for the proposed lease agreement between the Skull Valley Band of Goshute Indians and PFS.

On June 20, 1997, pursuant to 10 CFR Part 72, PFS submitted an application to NRC for a license to receive, possess, store, and transfer SNF at an ISFSI to be constructed and operated on the Reservation of the Skull Valley Band of Goshute Indians. A notice of consideration of issuance of an NRC materials license for the proposed PFSF and notice of opportunity for hearing were published in the **Federal Register** on July 31, 1997 (62 FR 41099).

The applicant executed a lease agreement with the Skull Valley Band of Goshute Indians to permit construction and operation of its proposed facility on the Skull Valley Band Reservation. On May 23, 1997, BIA conditionally approved the lease agreement, contingent upon the completion of an Environmental Impact Statement (EIS), the inclusion of mitigation measures identified in the Record of Decision, and the issuance of an NRC license to construct, maintain, and operate the PFSF. The lease includes 820 acres of land where the PFSF is proposed to be located, a 202-acre utility and road ROW from the Skull Valley Road to the PFSF facility, and a buffer zone adjacent to the PFSF to the south and east of the facility including five sections of land, on the Skull Valley Indian Reservation.

By letter dated August 28, 1998, the applicant submitted an application for a ROW to BLM, to construct a rail line and related facilities for a distance of approximately 32 miles on the western side of Skull Valley, along the base of the Cedar Mountains from Skunk Ridge, Utah, to the PFSF site. The rail line would traverse land that is included within the BLM Pony Express Resource Management Plan (RMP) and would be utilized for the transportation of SNF to the proposed PFSF site. The current Pony Express RMP does not allow for major ROWs such as a rail line in this area, and the PFSF proposal would, therefore, require an amendment to the RMP prior to granting on the requested ROW. BLM will publish in the **Federal Register** a notice of intent to prepare an RMP amendment. By a separate letter dated August 28, 1998, PFS also submitted a revision to its application for an NRC license to reflect its proposal to construct and utilize a rail line over public lands managed by BLM for the transportation of SNF to its site.

The National Environmental Policy Act of 1969 requires all Federal agencies to consider the environmental impacts of their actions. Because NRC, BIA, and BLM required actions for the construction and operation of the PFSF are related, the Agencies have agreed to cooperate in the preparation of an EIS for these actions. In preparing the EIS, NRC will serve as the lead agency and BLM and BIA will serve as cooperating agencies. The NRC published a notice of intent to prepare an EIS and conduct a scoping process in the **Federal Register** on May 1, 1998 (63 FR 24197). As a part of the scoping process, a public scoping meeting was conducted on June 2, 1998, in Salt Lake City, Utah. The scoping process also provided interested parties with an opportunity to provide written comments. At the conclusion of that initial scoping process, NRC issued a scoping report, dated September 1998.

NRC's initial scoping process was based on the description of the PFSF contained in the applicant's submittal of June 20, 1997, which did not include the proposed rail line on public land administered by BLM. This rail line proposal was submitted to NRC on August 28, 1998, as an amendment to the PFS application. Similarly, BIA's conditional approval of the proposed lease agreement was issued prior to the applicant's proposal of a rail line over BLM lands adjacent to the Skull Valley Reservation.

As a result of the applicant's August 28, 1998, revision of its transportation proposal, NRC, BIA, and BLM have determined that additional scoping meetings should be conducted. Therefore, public scoping meetings will be held on April 29, 1999, from 8 a.m. to 11 a.m. at the Ballroom of the Little America Inn, 500 South Main Street, Salt Lake City, Utah 84101 and April 29, 1999, from 6:30 p.m. to 9:30 p.m. at the Tooele High School, 240 West Buffalo Boulevard, Tooele, UT 80474. The focus of the scoping meetings will be an environmental issues associated with the rail line proposed in the applicant's August 28, 1998, license application amendment, the request for issuance of a ROW over public lands managed by BLM, and any environmental concerns associated with the proposed lease agreement that may not have been addressed in the NRC's initial scoping process. Each meeting will include an NRC briefing on the proposed license and a summary of the comments received at the previous scoping meeting; a BLM briefing on the land use plan amendment and the proposed ROW; and a BIA briefing on the lease agreement. The scoping meetings will afford an opportunity for interested agencies, organizations, and individuals to submit comments or suggestions on environmental issues related to the proposed rail line and the lease agreement. Written comments on these issues will be accepted until May 28, 1999.

Persons may register to present oral comments at the scoping meeting by writing to (1) Scott C. Flanders, Sr. Environmental Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; (2) Leon

Berggren, Resource Advisor, U.S. Department of Interior, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119; or (3) Dale Hamberg, Land Operation Officer, U.S. Department of Interior, Bureau of Indian Affairs, Unitah and Ouray Agency, P.O. Box 130 Fort Duchesne, Utah 84026; or Amy Heuslein, Environmental Protection Officer, U.S. Department of Interior, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001. Information concerning the proposed actions, the scoping process, and the EIS may also be obtained from these individuals. A copy of the initial NRC scoping report dated September 1998 can be obtained by writing to Scott Flanders at 11555 Rockville Pike, Rockville, Maryland 20855, or by telephone at (301) 415–1172. Also, the NRC scoping report is available for public inspection at NRC's Public Document Room in the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the Local Public Document Room at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860. A limited number of copies of NRC's scoping report will also be available at the scoping meeting on April 29, 1999.

Participation in the scoping process does not entitle participants to become parties to the adjudicatory proceeding associated with the proposed NRC licensing action. Participation in the adjudicatory proceeding is governed by the procedures specified in 10 CFR 2.714 and 2.715 and in the aforementioned **Federal Register** Notice (62 FR 41099).

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

Dated at Salt Lake City, Utah, this 1st day of April 1999.

For the U.S. Bureau of Land Management.

Glenn A. Carpenter,

Field Manager, Salt Lake Field Office.

Dated at Fort Duchesne, Utah, this 6th day of April 1999.

For the U.S. Bureau of Indian Affairs.

David Allison,

Superintendent, Unitah and Ouray Agency.

[FR Doc. 99–9293 Filed 4–13–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Materials and Metallurgy will hold a joint meeting on May 5, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 5, 1999—8:30 a.m. until 12:00 Noon

The Subcommittees will review the proposed topical report prepared by the Electric Power Research Institute (EPRI) for risk-informed inservice inspection. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 8, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–9289 Filed 4–13–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23777; 812–11568]

American Skandia Trust and American Skandia Investment Services, Inc.; Notice of Application

April 8, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act.

SUMMARY: Applicants American Skandia Trust (the ''Fund''), on behalf of its series AST Putnam Value Growth & Income Portfolio, AST Putnam International Equity Portfolio and AST Putnam Balanced Portfolio (the ''Portfolios''), and American Skandia Investment Services, Inc. (the ''Manager'') seek an order to permit the implementation, without shareholder approval, of new investment sub-advisory agreements (''Interim Agreements'') following the resignation of the investment sub-adviser to the Portfolios. The order would cover a period beginning on the date that the termination of the existing sub-advisory agreement becomes effective (the ''Effective Date'') and continue for a period of up to 150 days (but in no event later than September 30, 1999) (the ''Interim Period''). The order also would permit the payment of fees earned under the Interim Agreements during the Interim Period, following shareholder approval.

FILING DATE: The application was filed on April 8, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

by 5:30 p.m. on April 29, 1999, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, One Corporate Drive, P.O. Box 883, Shelton, Conn. 06484–0883.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Fund is organized as a series company consisting of 29 series, including the Portfolios. The Manager is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and is the investment adviser to each of the Portfolios.

2. The advisory agreements between the Portfolios and the Manager (the ''Management Agreements'') allow the Manager to engage a sub-adviser for each Portfolio, subject to the approval of the board of trustees of the Fund (the ''Board'') and the shareholders of the Portfolios. Under this authority, the Manager entered into investment sub-advisory agreements for each Portfolio (the ''Existing Agreements'') with Putnam Investment Management, Inc. (''Putnam''), an investment adviser registered under the Advisers Act. The Existing Agreements have been approved by the Board and the shareholders of the Portfolios in accordance with section 15 of the Act. On March 4, 1999, Putnam gave written notice of its intent to resign as sub-adviser to each of the Portfolios (the ''Resignation''). The Effective Date of the Resignation is scheduled for May 3, 1999. Applicants state that the terms and timing of the Resignation were wholly determined by Putnam without advance discussion with applicants, and were not reasonably foreseeable by the Fund or the Manager.

3. Applicants state that they have conducted preliminary discussions with candidate organizations to serve as investment sub-advisers to the Portfolios (''Successor Sub-advisers'') but have not completed the evaluation process and identified the best candidate or negotiated terms and conditions of the new investment sub-advisory agreements for the Portfolios (the ''New Agreements''). Any Successor Sub-adviser will be an investment adviser registered or exempt from registration under the Advisers Act. Once applicants have identified an appropriate candidate as Successor Sub-adviser and negotiated terms and conditions of a New Agreement, the Board, including a majority of the trustees who are not interested persons (as defined in section 2(a)(19) of the Act) of the Manager or the proposed Successor Sub-Adviser (''Independent Trustees''), will meet to approve the Interim Agreements and the New Agreements in accordance with section 15(c) of the Act. The Board currently is scheduled to meet on April 21, 1999.

4. Applicants request an exemption (a) to permit the implementation during the Interim Period, without shareholder approval, of the Interim Agreements with the Successor Sub-advisers, and (b) to permit the Successor Sub-advisers to receive from the Manager, upon approval of the New Agreements by the Portfolios' shareholders, all fees earned during the Interim Period. Applicants state that the Interim Agreements will contain substantially the same terms and conditions as the Existing Agreements, except for their effective and termination dates and the name of the Successor Sub-adviser.

5. Applicants propose to enter into an escrow agreement with an unaffiliated financial institution (''Escrow Agent''). The portion of the investment advisory fees payable to the Successor Sub-adviser during the Interim Period under the Interim Agreements would be paid by the Manager into an interest-bearing escrow account maintained by the Escrow Agent. The amounts in the escrow account (including any interest earned on such paid fees) would be paid to the Successor Sub-adviser only upon approval of the New Agreements by each Portfolio's shareholders. In the absence of such approval, the amounts will be paid to the applicable Portfolio. The Board will be notified before any amounts are released from the escrow account.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by certain events set forth in section 15(a) of the Act, an adviser may serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that (a) the new contract is approved by that company's board of directors (including a majority of non-interested directors) and (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders. Applicants state that the Resignation is not a termination of an advisory contract by an event set forth in section 15(a) of the Act that is set forth in rule 15a–4 under the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that 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. Applicants believe that the requested relief meets this standard.

3. Applicants submit that the terms and timing of the Resignation and subsequent termination of the Existing Agreements were wholly determined by Putnam, without advance discussion with applicants, and were not foreseeable. Applicants state that the Effective Date does not provide the Board with sufficient time to perform adequately its responsibilities in identifying a Successor Sub-adviser, negotiating the New Agreements, soliciting proxies, and securing shareholder approval of the New Agreements. Applicants contend that, under the circumstances, acceleration of the shareholder approval process would not be in the best interests of shareholders.

4. Applicants state that the requested relief will allow for the continued conduct of the Portfolios' investment program, without disruption, during the Interim Period, and facilitate the orderly and reasonable consideration of the

New Agreements by shareholders. Applicants state that the Board, including the Independent Trustees, will undertake the review required by section 15(c) of the Act and that the scope and quality of services provided to the Portfolios by the Successor Sub-adviser during the Interim Period will be at least equivalent to that provided under the Existing Agreements. Applicants also state that such services will be provided at fees unchanged from the fees paid under the Existing Agreements.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The Interim Agreement for each Portfolio will have substantially the same terms and conditions as the Existing Agreement for such Portfolio, except for the name of the Successor Sub-adviser, the effective and termination dates and the inclusion of escrow arrangements.

2. The advisory fees payable by the Manager to the Successor Sub-adviser for each Portfolio during the Interim Period will not be greater than the fees payable under the Existing Agreement. The portion of the advisory fees payable by the Manager to the Successor Sub-adviser during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the escrow account (including interest earned on such amounts) will be paid (a) to the Successor Sub-adviser after the requisite approval of the New Agreement for such Portfolio is obtained, or (b) to the Portfolio in the absence of such approval.

3. Each Portfolio will promptly schedule a meeting of shareholders to vote on approval of its New Agreement to be held on or before the 150th day following the termination of its Existing Agreement (but in no event later than September 30, 1999).

4. The Manager will take, and the Successor Sub-adviser for each Portfolio will be required to take, all appropriate steps so that the scope and quality of sub-advisory services provided to the Portfolio during the Interim Period will be at least equivalent, in the judgment of the Fund's Board, including the Independent Trustees, to the scope and quality of services previously provided under the Existing Agreement for the Portfolio.

5. The Board of the Fund, including a majority of the Independent Trustees, will have approved the Interim Agreement and the New Agreement for each Portfolio in accordance with the requirements of section 15(c) of the Act prior to termination of the Existing Agreement for the Portfolio.

6. The costs of preparing and filing the application and the costs related to the solicitation of shareholder approval of the New Sub-advisory Agreements will be borne by the Portfolios, provided that the Board of Trustees, including a majority of the Independent Trustees, determines that the Manager or a controlling person of the Manager will not directly or indirectly receive money or other benefit, including, but not limited to, an increased portion of the fees under the Management Agreements for the Portfolios or a reduced level of responsibility, in connection with the New Sub-advisory Agreements.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9315 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23773; 812–11030–02]

AMR Investment Services Trust, et al.; Notice of Application

April 7, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from section 17(e) of the Act and rule 17e–1 under the Act, and under section 10(f) of the Act for an exemption from section 10(f).

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in offerings underwritten by a principal underwriter affiliated with one of the investment advisers. The transactions would be between a broker-dealer or principal underwriter and a portion of the investment company's portfolio not advised by the adviser affiliated with the broker-dealer or principal underwriter. Applicants also request relief to permit a portion of the portfolio to purchase securities in offering underwritten by a principal underwriter affiliated with the investment adviser to that portion if the purchase is in accordance with all of the conditions to rule 10f–3 under the Act, except for the provision that would require aggregation of certain purchases.

APPLICANTS: AMR Investment Services Trust (''AMR Trust''), AMR Investment Services, Inc. (''Adviser''), Brandywine Asset Management, Inc. (''Brandywine''), Lazard Freres & Co. LLC (''LF''), Legg Mason Wood Walker, Inc. (''LMWW''), and Howard, Weil, Labouisse, Friedrichs, Inc. (''HWLF'').

FILING DATES: The application was filed on February 26, 1998, and amended on March 26, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 3, 1999, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: AMR Trust and Adviser, 4333 Amon Carter Boulevard, MD 5645, Fort Worth, TX 76155; Brandywine, 201 North Walnut Street, Wilmington, DE 19801; LF, 30 Rockefeller Plaza, 59th Floor, New York 10112; LMWW, 100 Light Street, Baltimore, MD 21202; and HWLF, 1100 Light Street, Baltimore, MD 21202; and HWLF, 1100 Poydras Street, Ste. 3500, New Orleans, LA 70163.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Staff Attorney, at (202) 942–0578, or George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. AMR Trust is a New York common law trust registered under the Act as an open-end management investment company with nine series. Interests in AMR Trust are offered to the American AAdvantage Funds and the American AAdvantage Mileage Funds (collectively, the ''American Trusts'') and other institutions in private offerings exempt from registration under section 4(2) of the Securities Act of 1933. Each series of the American Trusts, with the exception of American AAdvantage S&P 500 Index Fund and the American AAdvantage S&P 500 Index Mileage Fund, invests all of its investable assets in a series of AMR Trust that has the same investment objectives.

2. The Adviser is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is a wholly-owned subsidiary of AMR Corporation. The Adviser provides administrative services to the American Trusts and investment advisory and administrative services to AMR Trust. The assets of certain portfolios of AMR Trust are allocated by the Adviser among two to five subadvisers (''Subadvisers''). Each Subadviser has discretion to purchase and sell securities for a discrete portion of a portfolio's assets in accordance with the portfolio's objectives, policies and restrictions, and the specific strategies provided by the Adviser [1] Each Subadviser is paid a fee by the Adviser out of the management fee received by the Adviser from AMR Trust. The Adviser also may directly advise a discrete portion of a portfolio.

3. Brandywine, a wholly owned subsidiary of Legg Mason, Inc., is an investment adviser registered under the Advisers Act that serves as Subadviser to three portfolios of AMR Trust LMWW and HWLF are broker-dealers registered under the Securities Exchange Act of 1934 (''Exchange Act'') that are also wholly owned subsidiaries of Legg Mason, Inc. LMWW and HWLF are under common control with Brandywine. LF is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Exchange Act. Lazard Asset Management (''LAM'') is an operating division of LF that serves as a Subadviser.

4. The requested relief would permit: (a) LF, LMWW, HWLF, or any broker-dealer registered under the Exchange Act that itself serves as Subadviser (either directly or through a separate operating division) or is an affiliated person (an ''Affiliated Broker-Dealer'') of LAM, Brandywine, or another investment adviser serving as Subadviser (an ''Affiliated Subadviser'') to one or more series (each a ''Portfolio'') of a Multi-managed Fund (as defined below) to engage in principal transactions with a portion of the Portfolio that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadviser (an ''Unaffiliated Subadviser'') (each such portion, an ''Unaffiliated Portion''); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to utilize such brokerage services, without complying with rule 17e–1 (b) and (c) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser (an ''Affiliated Underwriter''); and (d) a portion of the Portfolio advised by an Affiliated Subadviser (''Affiliated Portion'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.[2]

5. Applicants request that the exemptive relief apply to AMR Trust or any existing or future registered open-end management investment company (a) advised by the Adviser or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser and (b) at least one other investment adviser registered under the Advisers Act or exempt from such registration (AMR Trust and such investment companies, each a ''Multi-managed Fund''). The relief also would apply as described in the application to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter. Any entity that currently intends to rely on the order is named as an applicant. Any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Principal Transactions Between Unaffiliated Portions and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter. Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus an affiliated person of an affiliated person (''second-tier affiliated'' of a Portfolio, including the Unaffiliated Portion. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Portfolio. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser making the investment decision or any officer, director or employee of the Multi-managed Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with

[1] The specific strategies are limited to general guidelines that do not restrict a Subadviser's discretion to purchase or sell particular securities for its segment of a Portfolio's assets.

[2] The terms ''Unaffiliated Subadviser,'' ''Subadviser'' and ''Unaffiliated Portion'' include the Adviser and the discrete portion of a Portfolio directly advised by the Adviser, respectively, provided that the Adviser manages its portion of the Portfolio independently of the portions managed by the other Subadvisers to the Portfolio, and the Adviser does not control or influence any other Subadviser's investment decisions as to specific securities for the other Subadviser's portion of the Portfolio.

the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an unaffiliated portion in a principal transaction with an Affiliated Broker-Dealer any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addtion, applicants state that Subadvisers generally are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Portion would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further submit that Adviser's power to dismiss Subadvisers or to change the portion of a Portfolio allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of this own portion of the Portfolio.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Portfolio. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that the Adviser does not dictate brokerage allocation or investment decisions to any Portfolio advised by a Subadviser, or have the contractual right to do so, except with respect to a portion advised directly by the Adviser. Applicants contend that, in managing a discrete portion of a portfolio, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Portfolio, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and related investment policies of the Portfolio as described in its registration statement. Applicants also assert that permitting the transaction will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that section 17(a) was designed to prevent.

B. Payment of Brokerage Compensation by Unaffiliated Portions to Affiliated Broker-Dealers.

1. Section 17(e)(2) of the Act prohibits an affiliate or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at last quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another portion of the Portfolio) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17e–1 to the extent necessary to permit an Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Portion, without complying with the requirements of rule 17e–1(b) and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Portfolio. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Subadviser to the Unaffiliated Portion of the Portfolio, or any officer, director or employee of the Multi-managed Fund.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest of possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e–1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction of classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser, although under contract to manage only a distinct portion of a Portfolio, is considered an investment adviser to the entire Portfolios. As a result, applicants believe that all purchases of securities by an Unaffiliated Portion from an

underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Portfolio. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Portfolio, or any officer, director, or employee of the Multimanaged Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Portfolios because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Portfolio relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Portfolio) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, or any officer, director, or employee of a Multi-managed Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9245 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23774; File No. 812–11388]

The Equitable Life Assurance Society of the United States, et al.

April 7, 1999.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of credits applied to contributions made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit, under specified circumstances, the recapture of credits applied to contributions made under deferred variable annuity contracts and certificates (the ''Contracts'') that Equitable will issue through the Separate Accounts, as well as other contracts that Equitable may issue in the future through Future Accounts that are substantially similar in all material respects to the Contracts (the ''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Equitable, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through the Separate Accounts or any Future Account (''Equitable Broker-Dealer(s)'').

APPLICANTS: The Equitable Life Assurance Society of the United States (''Equitable Life''), The Equitable of Colorado, Inc. (''EOC,'' and together with Equitable Life, ''Equitable''), Separate Account No. 45 of Equitable Life (''SA 45''), Separate Account No. 49 of Equitable Life (''SA 49''), Separate Account VA of EOC (''SA VA,'' and together with SA 45 and SA49, the ''Separate Accounts''), any other separate account established by Equitable in the future to support certain deferred variable annuity contracts and certificates issued by Equitable (''Future Account''), EQ Financial Consultants, Inc. (''EQFC''), and Equitable Distributors, Inc. (''EDI'') (collectively, ''Applicants'').

FILING DATE: The application was filed on October 30, 1998, and amended and restated on March 29, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 30, 1999, and should be accompanied by proof of service on the 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Applicants, c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Mary P. Breen, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Equitable Life is a stock life insurance company organized under the laws of the State of New York. SA 45 and SA 49 were established in August 1994 and June 1996. Equitable Life serves as depositor of SA 45 and SA 49. Equitable Life may in the future establish one or more Future Accounts for which it will serve as depositor.

2. EOC is a stock life insurance company organized under the laws of the State of Colorado. SA VA was established in December 1996, pursuant to authority granted under a resolution of EOC's Board of Directors. EOC serves as depositor of SA VA. EOC may in the future establish one or more Future Accounts for which it will serve as depositor.

3. SA 45 and SA 49 are each a segregated asset account of Equitable Life, and SA VA is a segregated asset account of EOC. Each of the Separate Accounts is registered with the Commission as a unit investment trust series investment company under the Act. SA 45 filed a Form N–8A Notification of Registration under the 1940 Act on September 6, 1994, and SA 49 filed a Form N–8A under the Act on June 7, 1996. SA VA filed a Form N–8A on February 16, 1999. Each of the Separate Accounts will fund the variblabe benefits available under the Contracts funded through it. Units of interest in the Separate Accounts under the Contracts they fund will be registered under the Securities Act of 1933 (the ''1933 Act''). In that regard, SA 45 and SA 49 filed Form N–4 Registration Statements on September 30, 1998, under the 1933 Act relating to the Contracts. SA VA filed a Form N–4 Registration Statement on February 16, 1999, under the 1933 Act relating to the Contracts. Equitable may in the future issue Future Contracts through the Separate Accounts or through Future Accounts. That portion of the respective assets of the Separate Accounts that is equal to the reserves and other Contract liabilities with respect to SA 45, SA 49 or SA VA is not chargeable with liabilities arising out of any other business of Equitable Life or EOC, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts are, in accordance with the respective Separate Accounts' Contracts, credited to or charged against the Separate Accounts, without regard to other income, gains or losses of Equitable Life or EOC, as the case may be.

4. EQFC is an indirect, wholly-owned subsidiary of Equitable Life and will be the principal underwriter of SA 45 and SA VA and distributor of the Contracts funded through SA 45 (the ''SA 45 Contracts'') and through SA VA (the ''SA VA Contracts''). EQFC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The SA 45 Contracts and the SA VA Contracts will be offered through registered representatives of EQFC and its affiliate who are registered broker-dealers under the 1934 Act and NASD members. EQFC, or any successor entity, may act as principal underwriter for any Future Account and distributor for any Future Contracts issued by Equitable in the future. A successor entity also may act as principal underwriter for SA 45 and/or SA VA. During May 1999, EQFC will change its name to AXA Advisors, Inc.

5. EDI is an indirect, wholly-owned subsidiary of Equitable Life and will be the principal underwriter of SA 49 and SA VA and distributor of the Contracts funded through SA 49 (the ''SA 49 Contracts'') and the SA VA Contracts. EDI is registered with the Commission as a broker-dealer under the 1934 Act and is a member of the NASD. The SA 49 and SA VA Contracts will be offered through registered representative of EDI and its affiliates, as well as through unaffiliated broker-dealers who have entered into agreements with EDI. All of such affiliates and unaffiliated broker-dealers will be registered broker-dealers under the 1934 Act and NASD members. EDI, or any successor entity, may act as principal underwriter for any Future Account and distributor for any Future Contracts issued by Equitable in the future. A successor entity also may act as principal underwriter for SA 49 or SA VA.

6. The SA 45 Contracts and the SA 49 Contracts are part of Equitable Life's ''Accumulator'' line of annuity products and they are substantially similar in all material respects. They differ principally in the mix of mutual funds underlying each of the Separate Accounts and in the distribution channels used in the offering of the Contracts; otherwise, they are essentially identical. The SA VA Contracts are part of EOC's ''Accumulator'' line of annuity products. They are substantially similar in all material respects of the SA 45 and SA 49 Contracts, except that they: (i) Only offer variable investment options during the accumulation period of the Contracts, (ii) do not offer a ''guaranteed period account'' feature that involves a market value adjustment; and (iii) do not offer a combined guaranteed minimum income benefit and guaranteed minimum death benefit or ''baseBUILDER'' feature. EOC may, in the future, add these features to the SA VA Contracts. Contracts may be issued as individual retirement annuities (''IRAs,'' either ''Traditional IRAs'' or ''Roth IRAs''), or as non-qualified annuitiess (''NQ'') for after-tax contributions only. NQ Contracts also my be used for certain types of qualified plans (''QP''). Each of the Contracts consists of (i) a basic form of group annuity contract (the ''Group Contract'') issued to a bank or trust company whose sole responsibility will be to serve as party to the Group Contract, (ii) a basic form of certificate issued under and reflecting the terms of the Group Contract, and (iii) forms of certificate endorsements to be used for specific forms of benefits under the certificates. In some states, the certificates will be issued in the form of individual contracts, rather than under a Group Contract.

7. An IRA Contract may be purchased by rolling over or transferring a contribution of at least $25,000 or more from one or more individual retirement arrangements. Under a Traditional IRA Contract additional contributions of $1,000 or more may be added at any time subject to certain restrictions. Additional contributions under a Traditional IRA Contract are limited to $2,00 per year, but additional rollover or IRA transfer amounts are unlimited. In certain cases, additional amounts may not be added to a Roth IRA Contract. An NQ or QP Contract can be purchased with a contribution of $25,000 or more. Additional contributions of $1,000 or more can be made at any time, subject to certain restrictions. Certain restrictions also apply to the type of contribution Equitable will accept under QP Contracts. Different minimum contribution amounts may be established for other retirement plan

markets, including IRAs, or particular NQ markets, or for automatic investment programs.

8. The Contracts offered by Equitable Life permit, and in the future the Contracts offered by EOC may permit, contributions to be allocated to guarantee periods (''Guarantee Periods'') expiring on specified dates. The Guarantee Periods will be funded through an Equitable Life ''non-unitized'' separate account (the ''Guaranteed Period Account''). The assets in the Guaranteed Period Account will not be subject to claims of Equitable Life's general creditors. Each Guarantee Period will provide a guarantee of the contribution allocated thereto and interest. The guarantee is supported by Equitable Life's general account assets, including those allocated to the Guaranteed Period Account. An upward and downward adjustment, or ''market value adjustment'' (''MVA''), will be made to the annuity account value in a Guarantee Period upon a withdrawal, surrender or transfer from a Guarantee Period prior to its expiration. Death benefit amounts based on annuity account value in a Guarantee Period will reflect only any upward MVA. Guarantee Period interests are registered under the 1933 Act pursuant to a Form S–3 Registration Statement.

9. SA45 currently is subdivided into 27 sub-accounts, each of which will be available under the SA45 Contracts. SA 49 currently is subdivided into 22 sub-accounts, each of which will be available under the SA 49 Contracts. SA VA currently consists of 22 sub-accounts, each of which will be available under the SA VA Contracts. The respective sub-accounts are referred to as ''Investment Funds.'' Each Investment Fund will invest in shares of a corresponding portfolio (''Portfolio'') of The Hudson River Trust (''HRT'') or EQ Advisors Trust (''EQAT,'' and together with HRT, the ''Trusts''). The Investment Funds, and in the case of the SA 45 and 49 Contracts the Guarantee Periods, will comprise the initial ''Investment Options'' under the Contracts. Each Trust is an open-end, diversified series management investment company registered under the Act, whose shares are registered under the 1933 Act. Both Trusts are available under the Separate Accounts.

10. HRT is managed and its Portfolios are advised by Alliance Capital Management L.P. (''Alliance''), a publicly traded limited partnership. Alliance is an indirect, majority-owned subsidiary of Equitable Life. EQFC has overall responsibility for the general management and administration of each EQAT Portfolio. Various entities serve as the investment advisers to one or more of the EQAT Portfolios. Equitable, at a later date, may determine to create an additional Investment Fund or Investment Funds of the Separate Accounts to invest in any additional Portfolio or Portfolios, or other such underlying portfolios or other investments as may now or in the future be available. Similarly, Investment Funds of the Separate Accounts may be combined or eliminated from time to time.

11. The Contracts provide for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Options, dollar cost averaging, death benefit and other features. The SA 45, SA 49 and SA VA Contracts have identical charges at the separate account level consisting of (i) a withdrawal charge as a percentage of contributions declining from 8% in years one and two to 0% in year ten and thereafter, with a 15% ''free corridor'' amount, (ii) asset-based charges at the annual rates of 1.10% for mortality and expense risks, 0.25% for administration expenses, and 0.25% for distribution expenses, assessed against the net assets of each Investment Fund, and (iii) currently, for SA 45 and SA 49 Contracts only, an annual 0.30% charge for an optional ''baseBUILDER'' benefit feature. The underlying Trusts each impose investment management fees, Rule 12b–1 plan fees and charges for other expenses.

12. Each time Equitable receives a contribution from a Contract owner, it will allocate to the owner's annuity account value a credit (the ''Credit'') equal to 3% of the amount of the contribution. Equitable will allocate Credits among the Investment Options in the same proportion as the corresponding contributions are allocated by the owner. Equitable will fund the Credits from its general account assets. Equitable will recapture Credits from an owner only if: (i) the owner returns the Contract during a 10-day (or longer, if required) ''free look'' period, or (ii) the owner annuitizes within three years of making a subsequent contribution, in which case Equitable will recover the amount of any Credit applicable to such contribution. Under the terms of the Contracts, Contract owners may not annuitize, i.e., commence annuity payments, earlier than five years from the date of the Contract.

13. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Equitable to issue Contracts and Future Contracts that provide for the recapture of an amount equal to any Credits in the following two instances: (i) when an owner returns a Contract to Equitable for a refund during the ''free look'' period, and (ii) when an owner annuitizes within three years of making a subsequent contribution, in which case Equitable will recover the amount of any Credit applicable to such contribution.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that 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. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by the Separate Accounts or Future Accounts, that are issued by Equitable and underwritten or distributed by EQFC, EDI or Equitable Broker-Dealers. Applicants state that Future Contracts funded by the Separate Accounts or any Future Account will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are 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.

2. Applicants represent that it is not administratively feasible to track the Credit amount in any of the Separate Accounts after the Credit is applied. Accordingly, the asset based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the respective Separate Accounts, including the Credit amount, during the ''free look'' period and the three year period prior to annuitization. As a result, during such periods, the aggregate asset based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Credit.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principle underwriting of such

account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Credit recapture provisions of the Contracts would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the amount of the Credit allocated to his or her annuity account value upon receipt of an initial contribution is not vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the amount of any Credits allocated upon receipt of subsequent contributions made during the three years before the owner annuitizes also is not vested. Until or unless the amount of any Credit is vested, Applicants submit that Equitable retains the right and interest in the Credit amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when Equitable recaptures any Credit it is simply retrieving its own assets, and because an owner's interest in the Credit is not vested, the owner has not been deprived of a proportionate share of the applicable Separate Account assets, *i.e.*, a share of the applicable Separate Accounts assets proportionate to the owner's annuity account value (including the Credit).

5. In addition, with respect to Credit recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Credit amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that if Equitable could not recapture the Credit, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of Credits relating to subsequent contributions made within three years of annuitization is designed to provide Equitable with a measure of protection against ''anti-selection.'' Applicants state that the risk is that, rather than spreading contributions over a number of years, an owner will make very large contributions shortly before annuitizing, thereby leaving Equitable less time to recover the cost of the Credits applied, to its financial detriment. Again, the amounts recaptured equal the Credits provided by Equitable from its own general account assets, and any gain would remain as part of the Contract's value at annuitization.

7. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put 103% of their contributions to work for them in the selected Investment Options. Also, any earnings attributable to the Credit will be retained by the owner, and the principal amount of the Credit will be retained if the contingencies set forth in the application are satisfied.

8. Further, Applicants submit that the recapture of any Credit only applies in relation to the risk of anti-selection against Equitable. Applicants state that Equitable's right to recapture Credits applies to subsequent contributions made within three years of annuitization protects it against the risk that owners will contribute larger amounts as they approach an annuitization date to obtain the Credit, while avoiding Contract charges over the long term. With respect to refunds paid upon the return of Contracts within the ''free-look'' period, the amount payable by Equitable must be reduced by the allocated Credits. Otherwise, Applicants state that purchasers could apply for Contracts for the sole purpose of exercising the free-look fund provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any applicable Credit under the Contracts do not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security of redemption or of an order to purchase or sell such security.

11. Arguably, Equitable's recapture of the Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that recapture of the Credit is not violative of Section 22(c) and Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies though their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. See Adoption of Rule 22c–1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Credit, Equitable will redeem interests in an owner's annuity account at a price determined on the basis of current net asset value of the respective Separate Accounts. The amount recaptured will equal the amount of the Credit that Equitable paid out of its general account assets. Although owners will be entitled to retain any investment gain attributable to the Credit, the amount of such gain will be determined on the basis of the current net asset value of the respective Separate Accounts Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants

request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contacts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their Application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are 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, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9244 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23776, 812–11126]

Merrill Lynch Life Insurance Company, et al.

April 8, 1999.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order of approval pursuant to section 26(b) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or the ''Act''), and an order of exemption pursuant to section 17(b) of the 1940 Act from section 17(a) thereof.

APPLICANTS: Merrill Lynch Life Insurance Company (''Merrill Lynch Life''), Merrill Lynch Life Variable Annuity Separate Account A (''Annuity Account A''), ML Life Insurance Company of New York (''ML of New York''), and ML of New York Variable Annuity Separate Account A (''New York Annuity Account A'') (collectively, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution of units of beneficial interest (''Units'') issued by the Select Ten Portfolios (as defined below) of the Equity Investor Fund, Defined Asset Funds (the ''Trust'') and held by Annuity Account A and New York Annuity Account A (each an ''Account''; collectively, the ''Accounts''), to support, as applicable, certain variable annuity contracts (collectively, the ''Contracts'') issued by Merrill Lynch Life or ML of New York (collectively, the ''Companies''). Applicants also request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the 1940 Act to the extent necessary to permit the substitution of Units of the 1999 ML Select Ten V.I. Trust (the ''1999 Portfolio'') for Units of the 1998 ML Select Ten V.I. Trust (the ''1998 Portfolio'') initially held by the Accounts by redeeming Units of the terminating 1998 Portfolio for portfolio securities and cash (''redemption proceeds'') and using the redemption proceeds, after adjustment by the distribution agent (The Bank of New York or ''BONY'') acting on behalf of the Accounts, to purchase Units of the 1999 Portfolio.

FILING DATES: The application was filed on April 30, 1998. It was amended and restated on March 25, 1999 and April 7, 1999.

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 April 29, 1999, 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 issues contested. Persons who wish to be notified of a hearing may request notification by writing the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Edward W. Diffin, Jr. Esq., Vice President and Senior Counsel, Merrill Lynch Insurance Group, Inc., 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Lorna J. MacLeod, Attorney, at (202) 942–0684, or Susan M. Olson, Branch Chief, at (202) 942–0680, Office of Insurance Products, (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 29549 ((202) 942–8090).

Applicant's Representations

1. Merrill Lynch Life, a stock life insurance company organized under the laws of the State of Arkansas, is the depositor and sponsor of Annuity Account A. Annuity Account A is registered with the Commission under the Act as a unit investment trust (File No. 811–6459).

2. ML of New York, a stock life insurance company organized under the laws of the State of New York, is the depositor and sponsor of New York Annuity Account A. New York Annuity Account A is registered with the Commission under the Act as a unit investment trust (File No. 811–6466).

3. The Trust is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811–3044). The Trust consists of a number of portfolios (each a ''Portfolio''), which includes the 1998 Portfolio, and will include the 1999 Portfolio (each, a ''Select Ten Portfolio''; collectively, the ''Select Ten Portfolios''). Each Select Ten Portfolio is or will be a series of the Trust created under New York law by a Trust Indenture between Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S''), the Sponsor and depositor, and BONY acting as the Trustee. Each Select Ten Portfolio will pursue the strategy of buying approximately equal amounts of the ten highest dividend yielding common stocks of the 30 stocks on the Dow Jones Industrial Average (''DJIA'') as of a specified date each year (''Strategy Stocks'') and hold them for about one year until the Select Ten Portfolio is terminated.

4. The estimated expenses for the 1998 Portfolio consist of a deferral sales charge (the ''Transaction Fee'') ($4.70 per 1000 Units), a Trustee's fee ($0.82 per 1000 Units), Portfolio Supervision, Bookkeeping, and Administrative Expenses ($0.45 per 1000 Units), Organizational Expenses ($0.46 per 1000 Units); and Other Operating Expenses ($0.06 per 1000 Units). The Transaction Fee and the fee for Portfolio Supervision, Bookkeeping, and Administrative Expenses are paid to the Sponsor. The Transaction Fee is a sales charge that compensates the Sponsor for creating and maintaining the Trust, and includes a profit element. It is accrued daily and collected by the Sponsor, MLPF&S, on a deferred basis quarterly and any remainder at the time Units are redeemed. The Transaction Fee is not a liability of the Trust, but a liability of Unit purchasers. No unaccrued (contingent) fee amounts will be owed if Units are redeemed before the Trust terminates. Applicants represent that the fee for Portfolio Supervision, Bookkeeping and Administrative Expenses is paid at cost, consistent with Section 26(a)(2)(C) of the 1940 Act and Rule 26a–1 thereunder. Other expenses are paid to independent third parties and depend on the amounts charged by the third parties.

5. The estimated expenses for the 1999 Portfolio will be similar to those of the 1998 Portfolio. The Transaction Fee for the 1999 Portfolio will be equal to 0.47% of the initial offer price of the 1999 Portfolio. The fee for Portfolio Supervision, Bookkeeping and Administrative Expenses will be at cost. The fee for Organizational Expenses, the Trustee's fee and Other Operating Expenses may vary from those of the 1998 Portfolio depending on the amounts charged by independent third parties. These fees, however, will be without profit to the sponsor consistent with Rule 26a–1 under the Act.

6. Applicants specifically represent, as a basis for receiving the relief requested in this application, that: (a) the Transaction Fee for the 1999 Portfolio, including the nature and purpose of the fee, the manner of the imposition of the fee, the amount of the fee, and its imposition in the proposed substitution described in this application, is covered by the exemptive relief received in Inv. Co. Act Rel. No. 11494 (Dec. 26, 1980) (Order) (the ''1980 Order''), Inv. Co. Act Rel. No. 13848 (Mar. 27, 1984) (Order) (the ''1984 Order), and Inv. Co. Act Rel. No. 14717 (Sept. 12, 1985) (Order) (the ''1985 Order''); and (b) as a result, the Transaction Fee for the 1999 Portfolio is exempted by the 1980, 1984, and 1985 Orders from Sections 2(a)(32), 2(a)(35), 11(c), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder, and no relief is being requested from those Sections or that Rule by this application.

7. The Contracts are variable annuity contracts issued by Merrill Lynch Life and ML of New York. Premiums under the Contracts may be allocated to one or more subaccounts of the Accounts. The Contracts generally permit six transfers per contract year between subaccounts without imposition of a transfer charge. Each Contract reserves to Merrill Lynch Life or ML of New York, as appropriate, the right, subject to Commission approval, to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio held by a subaccount of the relevant Account.

8. Merrill Lynch Life on its own behalf and on behalf of Annuity Account A, and ML of New York on its own behalf and on behalf of New York Annuity Account A, made the 1998 Portfolio available as an investment option under the Contracts through a subaccount of each Account (each a ''Select Ten Subaccount''). As described above, each Select Ten Portfolio will hold approximately equal values of the ten stocks in the DJIA having the highest dividend yield as of a specified date each year. In light of the fluctuation in dividend rates and share prices of stocks generally, all of the Strategy Stocks are unlikely to be the same from 1998 to 1999. Consequently, Applicants anticipate that a number of the portfolio securities held by the Select Ten Portfolios will change each year. The organizational structure of the Portfolios dictates that a new Select Ten Portfolio be created that will invest in the Strategy Stocks for that year. Each Select Ten Portfolio terminates after one year, on a contemplated date. As a result, a substitution must occur in order for the Select Ten Subaccount to remain continuously invested in a Select Ten Portfolio.

9. The 1998 Portfolio will terminate on April 30, 1999, and holders of units of that Portfolio will receive Units of the 1999 Portfolio, which will acquire approximately equal values of the ten stocks in the DJIA having the highest dividend yields as of a specified date prior to April 30, 1999, and will hold those stocks for approximately one year. As holders of Units of the 1998 Portfolio, the Accounts will, absent unusual circumstances and subject to obtaining the relief requested in the application, receive units of the 1999 Portfolio on behalf of owners of the Contracts (''Owners'') on April 30, 1999. The purpose of this substitution is to provide Owners with a Select Ten Subaccount that utilizes the described investment strategy on a continuous basis under the Contracts.

10. Applicants represent that by prominent disclosure within the prospectuses for the Contracts and the Accounts, they have notified all Owners and prospective Owners of a Contract in advance of the intention of Merrill Lynch Life and ML of New York to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio. The prospectuses advised Owners and prospective Owners that the 1998 Portfolio will be replaced by the 1999 Portfolio on a specified date (the ''Rollover Date''), subject to obtaining the relief requested in the application. The prospectuses inform Owners and prospective Owners that they may continue to allocate premium payments and transfer cash value to the Select Ten Subaccount investing in the 1998 Portfolio after the Rollover Date; however, as of the Rollover Date, the Select Ten Subaccount will invest in the 1999 Portfolio (rather than in the 1998 Portfolio). The prospectuses further inform Owners and prospective Owners that from the Rollover Date to thirty days after the Rollover Date, Owners will be permitted to make one transfer from the Select Ten Subaccount of all of the cash value under a Contract invested in the Select Ten Subaccount to other available subaccounts of the relevant Account, without that transfer counting as one of the limited number of transfers among subaccounts of an Account permitted in a Contract year free of charge. The prospectuses also explain that neither Company will exercise any right reserved by it under the Contracts to impose additional restrictions on transfers until at least thirty days after the proposed substitution.

11. Applicants propose to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio initially held by the Select Ten Subaccounts by redeeming Units of the terminating 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

12. The proposed substitution will be accomplished by the in-kind redemption of Units of the terminating 1998 Portfolio. The Trust's distribution agent, acting on behalf of the relevant Account, will adjust the in-kind proceeds (Strategy Stocks and cash) so that their overall composition matches the investment profile—the Strategy Stocks—of the 1999 Portfolio. The distribution agent contributes the adjusted proceeds to the 1999 Portfolio. Following this contribution, the trustee of the 1999 Portfolio will issue the appropriate number of units in the 1999 Portfolio to the relevant Account. The

adjustment of the redemption proceeds involves brokerage expenses that will be reflected in the amount contributed to the 1999 Portfolio and, thus, will be borne by Owners remaining in the Select Ten Subaccount through the rollover. Applicants state that these brokerage expenses are customary expenses and are analogous to brokerage expenses incurred by management investment companies which sell and buy portfolio securities throughout the course of any given year.

13. As soon as reasonably practicable following the proposed substitution (but in any event, within five days after April 30, 1999), any Owners affected by the substitution will receive an updated prospectus for the Contracts accompanied by a prospectus for the 1999 Portfolio. In addition, Applicants undertake to accompany the updated prospectuses with a letter to affected Owners that highlights the substitution and the investment by the Select Ten Sub-Account in the 1999 Portfolio. The prospectus for the 1999 Portfolio will specify the Strategy Stocks of the 1999 Portfolio. The updated prospectus for the Contracts will reflect information about the 1999 Portfolio and will inform Owners that they may make one transfer of all contract value under a contract invested in a select Ten Subaccount on the date of the prospectus to another subaccount within thirty days of the substitution without that transfer counting as one of a limited number of transfers permitted in a Contract year or as one of a limited number of transfers permitted in a Contract year.free of charge. The Prospectus will also state that the Companies will not exercise any rights reserved by them under any of the Contracts to impose any additional restriction on transfers until at least thirty days after the proposed substitution.

14. Applicants state that the proposed substitution will take place at relative net asset values and, except for the brokerage expenses described above that will be incurred in establishing the 1999 Portfolio, with no other change in the amount of any Owners contract value or death benefit or in the dollar value of his or her investment in any subaccount investing the Select Ten Trust, or in any of the Accounts. No sales load deduction, other than the Transaction Fee, will be made beyond those already provided for in the Contracts. Owners will not incur addition fees or charges as a result of the proposed substitution nor will their rights, or the obligations of Merrill Lynch Life or ML of New York, as applicable, under the Contracts be altered in any way. Applicants represent that all expenses incurred in connection with the proposed substitution, including legal, accounting and other fees and expenses (except for the brokerage expenses described above), will be paid by Merrill Lynch Life or ML of New York. The proposed substitution will not impose any tax liability on Owners, and by itself, will not cause the fees and charges currently being paid by existing Owners to be greater after the proposed substitution than before the proposed substitution. Units of the 1999 Portfolio will be subject to the Transaction Fee, which will be assessed at a rate of 0.4% of the initial offer price. Applicants also represent that the proposed substitution will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. The Companies will not exercise any right either may have under the Contracts to impose additional restrictions on transfers or eliminate the transfer privilege under any of the Contracts for a period of at least thirty days following the proposed substitution.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 26(b) of the 1940 Act approving the substitution of Units of the 1999 Portfolio for Units of the terminating 1998 Portfolio currently held by the Select Ten Subaccounts by redeeming Units of the 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

2. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, section 26(b) states:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

3. Applicants assert that the proposed substitution is substantially consistent with the standards that the Commission and its staff have applied to substitutions that have been approved in the past and are consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

4. Applicants assert that the 1999 Portfolio will be suitable and appropriate investment vehicle for Owners. The 1999 Portfolio will have identical investment objectives and policies to the 1998 Portfolio. Furthermore, Applicants assert that an integral aspect of the long term investment strategy of the Select Ten Portfolios is the annual replacement of any portfolio securities that are no longer among the ten highest dividend yielding stocks in the DJIA. Under the proposed structure, this is accomplished by the creation of the 1999 Portfolio that will hold (for a one year period) approximately equal values as of the date of deposit of ten highest dividend yielding stocks in the DJIA. Applicants assert that the proposed substitution is necessary to permit Owners to pursue the long-term investment strategy for which the Select Ten Portfolios are designed.

5. In addition, Applicants note that the proposed substitution may be only temporary in character because Owners may always exercise their own judgment as to the most appropriate investment vehicle. Owners may, pursuant to the terms of their Contracts, and for 30 days after the proposed substitution without charge, transfer contract value to another subaccount.

6. Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit the substitution of Units of the 1999 Portfolio for Units of the 1998 Portfolio initially held by the Select Ten Subaccounts by redeeming Units of the terminating 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

7. The Commission has previously granted an exemption from Section 17(a) of the 1940 Act to the Trust permitting terminating series of the Trust to sell portfolio securities to new series of the Trust.[1] At the time the exemption was obtained, the use of Portfolios of the Trust as a funding vehicle for insurance company separate accounts was not contemplated.

8. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other

[1] Defined Asset Funds—Equity Income Fund, Inv. Co. Act Rel. No. 20517 (Aug. 31, 1994) (Order) (granting relief under Sections 6(c) and 17(b) of the 1940 Act for the Trust, on behalf of its present and future series, to engage in rollover transactions such as those that would occur as a result of the proposed substitution).

property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

9. Section 2(a)(3)(F) of the 1940 Act defines the term ''affiliated person of another person'' as ''if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.'' As the Trust is an unincorporated investment company that does not have a board of directors, the depositor thereof, MLPF&S, is an affiliated person of the Trust.

10. Pursuant to Section 2(a)(3)(C) of the 1940 Act, ''any person directly or indirectly controlling, controlled by, or under common control with'' another person is an ''affiliated person'' of such other person. MLPF&S is a wholly owned subsidiary of Merrill Lynch & Co., Inc. As a wholly owned subsidiary of Merrill Lynch & Co., Inc., Applicants represent that MLPF&S is ''controlled by'' Merrill Lynch & Co., Inc. within the meaning of Section 2(a)(9) of the 1940 Act.

11. Applicants further represent that each Company is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., and as such may be deemed to be controlled by Merrill Lynch & Co., Inc. Consequently, each of the Companies is an affiliated person of MLPF&S, and, as such, is an affiliated person of an affiliated person of the Trust.

12. To the extent that Strategy Stocks formerly held by the 1998 Portfolio are sold by the Trust's distribution agent to the 1999 Portfolio, Applicants submit that the proposed substitution could entail the indirect purchase of Units of the 1999 Portfolio with portfolio securities of the 1998 Portfolio, and the indirect sale of Units of the 1998 Portfolio for portfolios securities of the 1999 Portfolio by the Companies, acting as principal, from and to the Trust, and therefore would be in contravention of Section 17(a).

13. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

(3) The proposed transaction is consistent with the general purposes of the 1940 Act.

14. Applicants assert that the terms of the proposed substitution, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also assert that the proposed substitution is consistent with the policies of the Trust and of the affected Portfolios, as recited in the current registration statements and reports filed by each under the 1940 Act. Finally, Applicants assert that the proposed substitution is consistent with the general purposes of the 1940 Act.

15. Rule 17a–7 under the 1940 Act exempts from the prohibitions of Section 17(a), subject to certain enumerated conditions, a purchase or sale transaction between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers. Applicants assert that although they cannot rely on Rule 17a–7, they will comply with the substance of the rule.

Conclusion

Applicants submit that, for the reasons summarized above, the request relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9316 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23775; File No. 812–10798]

The Prudential Insurance Company of America, et al.; Notice of Application

April 7, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 11 of the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'') permitting certain exchange offers between certain unit investment trusts and certain open-end management investment companies.

APPLICANTS: The Prudential Insurance Company of America (''Prudential''), The Prudential Individual Variable Contract Account (the ''VIP Nonqualified Account''), The Prudential Qualified Individual Variable Contract Account (the ''VIP Qualified Account''), Global Utility Fund, Inc., Nicholas-Applegate Fund, Inc., Prudential Balanced Fund, Prudential Developing Market Fund, Prudential Diversified Bond Fund, Inc., Prudential Emerging Growth Fund, Inc., Prudential Equity Fund, Inc., Prudential Equity Income Fund, Inc., Prudential Europe Growth Fund, Inc., Prudential Global Genesis Fund, Inc., Prudential Global Limited Maturity Fund, Inc., Prudential Government Income Fund, Inc., Prudential Government Securities Trust, Prudential High Yield Fund, Inc., Prudential High Yield Total Return Fund, Inc., Prudential Index Series Fund, Prudential Intermediate Global Income Fund, Inc., Prudential International Bond Fund, Inc., Prudential Mid-Cap Value Fund, Prudential MoneyMart Assets, Inc., Prudential Natural Resources Fund, Inc., Prudential Pacific Growth Fund, Inc., Prudential Real Estate Securities Fund, Prudential Small-Cap Quantum Fund, Inc., Prudential Small Company Value Fund, Inc., Prudential Structured Maturity Fund, Inc., Prudential 20/20 Focus Fund, Prudential Utility Fund, Inc., Prudential World Fund, Inc., The Global Total Return Fund, Inc., The Prudential Investment Portfolios, Inc., Pruco Securities Corporation (''Pruco''), the Prudential Investment Management Services LLC (''PIMS'').

SUMMARY OF APPLICATION: Applicants seek an order to permit exchanges from individual variable annuity contracts of the VIP Nonqualified Account and the VIP Qualified Account (collectively, the ''VIP Accounts'') and similar current and future variable annuity accounts of Prudential or an affiliated insurance company to certain open-end management investment companies.

FILING DATE: The application was filed on September 24, 1997 and amended on March 22, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30

p.m. on April 29, 1999, 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 requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW Washington, DC 20549–0609. Applicants, c/o Christopher E. Palmer, Shea & Gardner, 1800 Massachusetts Ave., NW, Washington, DC 20036.

FOR MORE INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (202) 942–8090.

Applicants' Representations

1. Prudential is a mutual life insurance company organized under the laws of New Jersey. Prudential issues the individual Variable Investment Plan variable annuity contracts (the ''VIP contracts'').

2. The VIP Nonqualified Account and the VIP Qualified Account (collectively, the ''VIP Accounts'') are separate accounts of Prudential holding assets relating to the VIP contracts. They are registered as unit investment trusts under the 1940 Act. Both VIP Accounts currently have thirteen separate subaccounts, each of which invests in a single corresponding portfolio of The Prudential Series Fund, Inc. (the ''Series Fund''), an open-end management investment company. Shares of the Series Fund are currently sold exclusively to separate accounts of Prudential and certain other affiliated insurance companies to fund benefits under variable annuity and variable life contracts. The Series Fund may in the future sell its shares to unaffiliated insurance companies and qualified plans.

3. The following Applicants or series of an Applicant are each individually referred to as a ''Prudential Fund'' and collectively referred to as the ''Prudential Funds''; Global Utility Fund, Inc.; Nicholas-Applegate Growth Equity Fund of the Nicholas-Applegate Fund, Inc.; Prudential Balanced Fund; Prudential Developing Markets Equity Fund and Prudential Latin America Equity Fund of the Prudential Developing Market Fund; Prudential Diversified Bond Fund, Inc.; Prudential Emerging Growth Fund, Inc.; Prudential Equity Fund, Inc.; Equity Income Fund, Inc.; Prudential Europe Growth Fund Inc.; Prudential Global Genesis Fund, Inc.; Limited Maturity Fund of the Prudential Global Limited Maturity Fund, Inc.; Prudential Government Income Fund, Inc.; Money Market Series, U.S. Treasury Money Market Series and Short-Intermediate Term Series of the Prudential Government Securities Trust; Prudential High Yield Fund, Inc.; Prudential High Yield Total Return Fund, Inc.; Prudential Stock Index Fund of the Prudential Index Series Fund; Prudential Intermediate Global Income Fund, Inc.; Prudential International Bond Fund, Inc.; Prudential Mid-Cap Value Fund; Prudential MoneyMart Assets, Inc.; Prudential Natural Resources Fund, Inc.; Prudential Pacific Growth Fund, Inc,; Prudential Real Estate Securities Fund; Prudential Small-Cap Quantum Fund, Inc.; Prudential Small Company Value Fund, Inc.; Income Portfolio of the Prudential Structured Maturity Fund, Inc.; Prudential 20/20 Focus Fund; Prudential Utility Fund, Inc.; Global Series and International Stock Series of the Prudential World Fund, Inc.; The Global Total Return Fund, Inc.; and Prudential Active Balanced Fund, Prudential Jennison Growth Fund and Prudential Growth & Income Fund of The Prudential Investment Portfolios, Inc.

4. With the exception of three money market funds discussed below, each Prudential Fund offers four classes of shares, two of which are relevant here. Class A shares are offered with: (i) up to a 5% front-end sales charge and (ii) a fee pursuant to Rule 12b–1 under the Act (''Rule 12b–1 fee'') of up to 0.30%. Class C shares are offered with: (i) a contingent deferred sales charge of 1% on redemptions made within one year of purchase and (ii) a Rule 12b–1 fee of 1%. The three money market funds (the Money Market Series of the Prudential Government Securities Trust, the U.S. Treasury Money Market Series of the Prudential Government Securities Trust, and Prudential MoneyMart Assets, Inc.) have only two classes of shares—A shares and Z shares. Each Prudential Fund currently pays an investment advisory fee and certain other expenses.

5. Pruco is an indirect, wholly-owned subsidiary of Prudential and is a registered broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act''). Pruco distributes the VIP contracts.

6. PIMS is a direct, wholly-owned subsidiary of Prudential and is a registered broker-dealer under the 1934 Act. It distributes the shares of each class of the Prudential Funds.

7. Prudential offers the VIP contracts through the VIP Qualified Account for use in connection with retirement arrangements that qualify for federal tax benefits under sections 401, 403(b), 408, or 457 of the Internal Revenue Code of 1986, as amended (the ''Code''). Prudential offers nonqualified VIP contracts through the VIP Nonqualified Account. A contract owner may choose to have purchase payments invested in any of the respective Account's subaccounts. Subject to certain limitations, contract owners may transfer subaccount units at net asset value among the various subaccounts.

8. Applicants request an order to allow VIP contract owners to exchange any or all of their subaccount units for shares of a Prudential Fund under one of the two following exchange offers. Exchange offer ''A'' would be available only for exchanges of aggregate subaccount units worth $1,000,000 or more. Contract owners would exchange subaccount units for Prudential Fund Class A shares, and any front-end sales charge customarily assessed on purchases of Class A shares would be waived. Any such exchange would be effected at the relative net asset values of the securities exchanged, and would be priced in accordance with Rule 22c–1 under the 1940 Act. No sales load, administrative fee, redemption fee, or other transaction charge would be imposed at the time of the exchange, and Prudential would waive: (1) any recapture of any bonus amount exchanged; and (2) any annual maintenance charge that would otherwise be deducted upon withdrawal of the full value of the contract. Exchange offer ''C'' would be available only for exchanges of aggregate subaccount units worth less than $1,000,000. Contract owners would exchange subaccount units for Prudential Fund Class C shares. Any such exchange would be effected at the relative net asset values of the securities exchanged and would be priced in accordance with Rule 22c–1 under the Act. No sales load, administrative fee, redemption fee, or other transaction charge would be imposed at the time of the exchange, and Prudential would waive: (1) any recapture of any bonus amount exchanged; and (2) any annual maintenance charge that would otherwise be deducted upon withdrawal of the full value of the contract. Moreover, any contingent deferred sales charge that might otherwise be

applicable to the Class C shares when subsequently sold would be waived.

9. With respect to both exchange offers, Prudential would limit the offer to exchanges in which the following two criteria were met. First, the exchange must involve a group plan. Second, the plan sponsor must agree that, if it terminates its recordkeeping arrangement with Prudential or the affiliate when the VIP contract surrender charge or bonus amount recapture provision would have been applicable had the exchange not occurred (or, for those plans that do not use Prudential or an affiliate for recordkeeping, if the plan withdraws a set portion of its investment in the Prudential Funds during that time period), the plan sponsor will pay Prudential a negotiated amount designed to approximate the VIP surrender charge and/or recapture of bonus amount that would have been applicable. The plan sponsor must agree that any such payment would not be assessed directly or indirectly against plan participants. Applicants represent that the purpose of this second requirement is to prevent plan sponsors from using the exchange offer simply to avoid sales charges that would be applicable if the plan sponsor surrendered the VIP contract for its cash surrender value and ended its business relationship with Prudential.

10. Prudential would, in its sole discretion, determine to whom an exchange offer would be made, the time period which the exchange offer would be in effect, and when to terminate an exchange offer. Also, with respect to both offers, Prudential may establish fixed periods of time for exchanges under a particular contract or group of contracts (a ''window'') of at least 60 days in length. Any pre-sect window would be at least 60 days in length, and no open-ended exchange offer would be terminated or its terms amended materially without prominent notice to any contract owners subject to that offer of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment; provided, however, that no such notice would be required if, under extraordinary circumstances, either: (a) there were a suspension in redemption of the exchange security under section 22(e) of the 1940 Act or rules thereunder; or (b) the offering company were temporarily to delay or crease the sale of the security because it was unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

11. Applicants respensent that at the commencement of the exchange offers, and as long as the offers remain in effect, the prospectus of each VIP Account will: (1) Describe the terms of each offer; (2) disclose that no redemption or administrative fee would be imposed in connection with the exchange program; (3) disclose that each exchange offer is subject to termination and its terms are subject to change; and (4) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange. Applicants anticipate that the exchange offers would be extended only to persons that have been provided a copy of the current VIP Qualified Account or VIP Nonqualified Account prospectus. As long as that were the case and the disclosure about the exchange offers were in the respective prospects, no additional disclosure about the exchange offers would be included in the prospectuses for the Prudential Funds, because the Prudential Funds are offered to a significant number of persons who would not be given the exchanges offers. Applicants represent that if the exchange offers are extended to persons that have not been provided copies of a current VIP Account prospectus, the prospectus(es) for the relevant Prudential Fund(s) will also; (1) describe the terms of each offer; (2) disclose that no redemption or administrative fee would be imposed in connection with the exchange program; (3) disclose that each exchange offer is subject to termination and its terms are subject to change; and (4) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange.

12. With respect to the exchange security, Applicants request that the Commission order extend to all other current and future variable annuity contracts issued by Prudential or an affiliated insurance company, to the separate accounts relating to any such contracts, and to underwriters distributing the contracts (''Future Contracts'').

Applicants' Legal Analysis

1. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, Commission approval is required for any offer of exchange of any security of a registered unit investment trust for the securities of any other investment company. Accordingly, although Applicants believe that the proposed exchanges are at relative net asset value, Commission approval is required for the proposed exchanges because of the involvement of the VIP Accounts, each of which is a registered unit investment trust. Applicants state that they cannot rely on existing exemptive rules because neither Rule 11a–2 nor Rule 11a–3 permits exchanges between a unit investment trust separate account and an open-end investment company that is not a separate account.

2. The legislative history of Section 11 indicates that its purpose is to provide the Commission with an opportunity to review the terms of certain offers of exchange to ensure that a proposed offer is not being made ''solely for the purpose of exacting additional selling charges.'' H. Rep. No. 2639, 76th Cong., 2d Sess. 8 (1940). One of the practices Congress sought to prevent through Section 11 was the practice of inducing investors to switch securities so that the promoter could charge investors another sales load. Applicants assert that the proposed exchange offers involve no possibility of such abuse because the acquired shares would be subject to neither a front-end nor deferred sales charge. With respect to Exchange offer ''A,'' the acquired Class A shares would have no deferred sales charge and any front-end sales charge would be waived. Similarly, with respect to Exchange offer ''C,'' the acquired Class C shares have no front-end sales charge and the deferred sales charge would be waived.

3. Applicants assert that the Commission, in adopting Rule 11a–3, did not prohibit or restrict exchange offers where the acquired mutual fund shares involve a fee under Rule 12b–1. They further assert that the Commission recognized the possibility that the acquired security might have a 12b–1 fee, by considering that as a factor in calculating the holding period for deferred sales charges in Rule 11a–3(b)(5)(i).

4. Applicants submit that providing class relief with respect to the exchanged security is appropriate. All exchanges that would be permitted under the order would be on the same terms as the exchanges between the VIP Accounts and the Prudential Funds,

including waiving any front-end sales charge or contingent deferred sales charge on the exchanged security and the acquired security. Therefore, there would be no possibility of the switching abuses Congress sought to prevent through Section 11. Without class relief, before Prudential annuity contract owners could be given additional exchange options, Applicants would have to apply for and obtain additional exemptive orders. Applicants believe that these additional applications would present no new issues under the 1940 Act not already addressed in their application.

5. Applicants submit that the proposed offers of exchange meet all the objectives of Section 11, and would provide a benefit to contract owners by providing new investment options, and an attractive way to exchange existing interests in variable contracts for interests in open-end management investment companies.

Conclusion

For the reasons summarized above, Applicants request that the Commission issue an order under sections 11(a) and 11(c) of the Act approving the exchange offers described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–9243 Filed 4–13–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Prime Contracts Program Quarterly Report, Part A Traditional PCR and Part B Breakout PCR.''

Form No's: 843A & 843B.

Description of Respondents: Procurement Center Representatives.

Annual Responses: 4.

Annual Burden: 1,340.

Comments: Send all comments regarding this information collection to Susan Monge, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street SW, Suite 8800, Washington, DC 20416. Phone No: 202–205–7316.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: ''Small Business Development Centers Project. Officer's Checklist.''

Form No: 59.

Description of Respondents: Small Business Development Centers.

Annual Responses: 456.

Annual Burden: 456.

Comments: Send all comments regarding this information collection to Terry Nelson, Business Development Specialist, Office of Small Business Development, Small Business Administration, 409 3rd Street SW, Suite 8800, Washington, DC 20416. Phone No: 202–205–7304.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: ''U.S. Small Business Administration's Application Survey.''

Form No's: 1843.

Description of Respondents: Individuals seeking employment.

Annual Responses: 7,500.

Annual Burden: 1,275.

Comments: Send all comments regarding this information collection to Carol Cordova, Employment Specialist, Office of Human Resources, Small Business Administration, 409 3rd Street SW, Suite 4200, Washington, DC 20416. Phone No: 202–205–6162.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: ''SBA Guaranty Lender's Customer Satisfaction Survey.''

Form No's: 1984.

Description of Respondents: Guaranty Lenders.

Annual Responses: 1.

Annual Burden: 2,779.

Comments: Send all comments regarding this information collection to George Price, Director Marketing Research, Office of Communications & Public Liaison, Small Business Administration, 409 3rd Street SW, Suite 7450, Washington, DC 20416. Phone No: 202–205–7124.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: ''Office of Women's Business Ownership Year-End Follow-up Survey.''

Form No's: 1976.

Description of Respondents: Women-owned Businesses.

Annual Responses: 6,850.

Annual Burden: 770.

Comments: Send all comments regarding this information collection to Tonya Smith, Program Specialist, Office of Woman Business Ownership, Small Business Administration, 409 3rd Street SW, Suite 4400, Washington, DC 20416. Phone No: 202–205–6676.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–9264 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0372]

Zero Stage Capital VI, L.P. Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, L.P., 101 Main Street, Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Art''), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. Zero Stage Capital VI, L.P., proposes to provide equity financing to Kinetix Pharmaceuticals, Inc., 200 Boston Avenue, Suite 4700,

Medford, MA 02155. The financing is contemplated for funding growth.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Zero Stage Capital V, L.P., as Associate of Zero Stage Capital VI, L.P., owns greater than 10 percent of Kinetix Pharmaceuticals, Inc. and therefore Kinetix Pharmaceuticals, Inc. is considered an Associate of Zero Stage Capital VI, L.P. as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than April 29, 1999, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.830(g), in the **Federal Register** by SBA.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: April 14, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–9269 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5 percent for the April–June quarter of FY 99.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 99–9267 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Pioneer Ventures Limited Partnership (License No. 01/01–0337); Notice of Surrender of License

Notice is hereby given that Pioneer Ventures Limited Partnership, 60 State Street, Boston, Massachusetts 02109, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Pioneer Ventures Limited Partnership was licensed by the Small Business Administration on November 20, 1986.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: April 7, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–9266 Filed 4–13–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 99–1p. Title II: Termination of Entitlement Based on Presumed Death

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 99–1p. This Ruling explains that the Social Security Administration (SSA) will terminate entitlement for those beneficiaries whose benefits have remained in suspension for at least 7 years because the beneficiary's whereabouts are unknown. Presumption of death is widely accepted in State and Federal courts and is codified in SSA's regulations. SSA uses this regulatory presumption to establish the fact of death for entitlement purposes and will use it to determine that entitlement ends. Publication of this Ruling will prevent benefits from remaining in suspension indefinitely, thereby reducing the possibility of fraudulent payment of suspended benefits and assuring the continued integrity of SSA's records.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Jeanne O'Connor, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7963.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004 Social Security—Survivors Insurance.)

Dated: December 1, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Policy Interpretation Ruling; Title II: Termination of Entitlement Based on Presumed Death

Purpose

This Policy Interpretation Ruling explains the Social Security Administration's (SSA) planned use of an established policy for presuming a person dead, after the person has been absent from his or her residence and has not been heard from for a period of 7 years, to terminate entitlement for such individuals. The presumption of death, founded on common law, is widely accepted in State and Federal courts to determine entitlement to property and is codified in our regulations. We use this regulatory presumption to establish the fact of death for entitlement purposes, and will also use it to determine that entitlement ends.

Citations (Authority)

Sections 205(a) and 702(a) of the Social Security Act; 20 CFR, sections 404.705 and 404.721.

Pertinent History

Currently, SSA suspends benefits to beneficiaries reported missing when notified by a first party reporter, that is, a relative, representative or another beneficiary on the record who establishes that he/she is an acceptable reporter.

In addition, benefits can be suspended if mail is returned because it

is undeliverable. Suspensions of this type follow prescribed development to locate the individual. In such cases, SSA first makes a reasonable effort to locate the beneficiary and then sends a notice to the beneficiary's last known address advising him or her that benefits will be stopped if he or she does not respond within 15 days. If these efforts fail, and there is no response from the beneficiary, benefits are suspended.

In situations where benefits are suspended for whereabouts unknown, unless the presumption of death after 7 years is used to terminate benefits, the benefits can remain in suspension indefinitely. Studies by the Office of the Inspector General (OIG) indicate that suspensions should be resolved as a deterrent to fraudulent payment to the wrong individuals. In addition, studies by SSA show that suspensions for lack of address are usually resolved within 24 months, and that benefits left in suspense for longer than 24 months, because the continuing eligibility of the beneficiary cannot be determined, are rarely ever resolved. SSA now has the capability to indicate the reason for suspension on its payment records. Where that reason is whereabouts unknown and benefits are in continuous suspense for at least 7 years, SSA will assume that the reason the beneficiary failed to request payment during that 7 year period is death.

Terminating entitlement for presumed death ensures that suspended payments will not be fraudulently issued to someone other than the beneficiary. That is because erroneous terminations for death can be reinstated only after a face-to-face interview with the beneficiary. However, payment of suspended benefits does not involve the same stringent development before release of payment and is more vulnerable to fraud. By applying the presumption of death policy to terminate entitlement, SSA will ensure that a final resolution to suspension occurs for those cases which otherwise would remain in suspension indefinitely.

Following continuous suspension for 7 years based on whereabouts unknown, entitlement will be terminated for presumed death. Absent evidence to the contrary, death will be presumed to have occurred on the date of disappearance, the date ending the 7 year period, or some other date depending upon what the evidence shows is the most likely date of death.

Policy Interpretation

SSA will presume that a beneficiary has died and will terminate entitlement after the individual's payments have been suspended continuously for 7 years or more because the individual's whereabouts are unknown. This policy interpretation will apply to all individuals whose entitlement is not based on disability. The policies for terminating entitlement for disabled beneficiaries whose whereabouts are unknown are addressed in 20 CFR 404.1594. This policy interpretation on presumed death termination, however, will apply to those individuals who have been converted to retirement benefits following an established period of disability. If the benefits are suspended for whereabouts unknown based on a reported disappearance by a first party reporter, that is, a relative, another beneficiary on the record, or a representative of the beneficiary who is an acceptable reporter, the date of presumed death generally will be the date of disappearance, barring some convincing evidence that establishes a more likely date of death.

For cases where suspension for whereabouts unknown originated through undeliverable mail, and benefits have remained in suspension for a period of 7 years or more, the date of presumed death will be the date SSA determined that the individual disappeared, barring some evidence to the contrary.

Effective Date: This Ruling is effective upon publication in the **Federal Register**.

Cross-References

Program Operations Manual System, sections GN 02605.055 and GN 00304.050.

[FR Doc. 99–9226 Filed 4–13–99; 8:45 am]

BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment Regarding Negotiations on Market Access and Other Issues in the World Trade Organization (WTO) and Under the Free Trade Area of the Americas

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments and notice of public hearings.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene public hearings and seeks additional public comment as part of its efforts to develop proposals and positions concerning the agenda of the third Ministerial Conference of the World Trade Organization (WTO), including articles that may be the subject of market access negotiations. A request was made in March 1999 to the U.S. International Trade Commission (ITC) to consider various scenarios for the modification, reduction and or elimination of duties on all articles in the Harmonized System Tariff Schedule of the United States (HTSUS), in the context of WTO or FTAA negotiations. This is the second invitation by the TPSC seeking public comment with respect to the development of the agenda, scope, content and timetables for negotiations or further work in the WTO, including additional consultations with non-governmental statekholders. The Administration seeks views on the broadest possible range of issues for consideration, including possible subject matter and approaches to any new negotiations or future work in the WTO. The WTO General Council has been instructed to prepare recommendations regarding the launch of further trade negotiations and work in the WTO, which will be considered and approved by WTO Members meeting at their next Ministerial to be held in the United States during the fourth quarter of 1999. The TPSC request for public comments and convocation of public hearings regarding the FTAA negotiations will be issued at a later date.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and/or public hearings contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the WTO negotiations should be addressed to the agency's Office of WTO and Multilateral Affairs at (202) 395–6843; questions concerning the FTAA negotiations should be addressed to the agency's Office of Western Hemisphere Affairs at (202) 395–6135.

SUPPLEMENTARY INFORMATION:

1. Background

A. WTO Negotiations

On May 18–20, 1998, the World Trade Organization (WTO) held its second ministerial conference in Geneva, Switzerland, along with a commemoration of the 50th anniversary of the post-World War II multilateral trading system. President Clinton, and a number of heads of state or government addressed the gathering, and WTO Members accepted the U.S. invitation to host the third ministerial conference in late 1999. That meeting will be held in Seattle on November 30–December 3, 1999.

The general Ministerial Declaration, agreed on May 20, 1998, instructs the WTO's General Council to begin preparations for the launch of negotiations and consideration of the WTO's forward agenda for approval at its 1999 ministerial meeting. A second Declaration, also agreed on May 20, 1998, commits Members to not impose customs duties on electronic transmissions and calls for the establishment by the General Council of a work program in the WTO on the trade-related aspects of electronic commerce. To prepare for U.S. participation in the General Council meetings, the TPSC requested public comment (63 FR 160, August 19, 1998).

The United States has participated actively in the preparations to date with the benefit of substantial comments from, and consultations with, the statutorily mandated advisory committees established pursuant to section 135 of the Trade Act of 1974, as amended. In August 1998, the Trade Policy Staff Committee published a solicitation for public comment regarding the development of the agenda, scope, content and timetables for negotiations or further work in the WTO, including additional consultations with non-governmental stakeholders. The Administration sought views on the broadest possible range of issues for consideration, including possible subject matter and approaches to any new negotiations or future work in the WTO. U.S. Submissions regarding the work of the WTO can be found on the USTR Web site at *www.ustr.gov*. In preparing for the submissions, the Administration requested comments on the following issues, and additional comments on these issues is relevant to the hearings that will now be convened by the TPSC.

Implementation of Existing Agreements and Work Programs

Additional views are requested with respect to experience in implementation, including where WTO Agreements have been successful in addressing U.S. interests, and in areas where changes would facilitate better enforcement and adherence to rules and commitments, or otherwise advance U.S. policy objectives. Particular attention is drawn to the various rules encompassed in the GATT 1994 (all GATT Articles), the Marrakesh Protocol to the General Agreement, the Agreements on Agriculture, Sanitary and Phytosanitary Measures, Textiles and Clothing, Technical Barriers to Trade, Trade-Related Investment Measures (TRIMS), Antidumping Practices, Customs Valuation, Preshipment Inspection, Import Licensing, Subsidies and Countervailing Measures, Safeguards, the General Agreement of Trade in Services (GATS), Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Understanding on the Rules and Procedures Governing the Settlement of Disputes, Trade Policy Review Mechanism and Ministerial Decisions and Declaration, including those undertaken at Marrakesh. Thus far, implementation has been a major issue in the preparatory process.

Mandated Negotiations

Additional comments are requested regarding U.S. priorities for the Agreements concluded as part of the Uruguay Round that contain express agreement to conduct further negotiations. The Agreement on Agriculture contains provisions for further negotiations and identifies issues for consideration, including market access, domestic support and export subsidies. The General Agreement on Trade in Services provides for further negotiations on specific commitments to liberalize trade in services. The Agreement on Trade-Related Intellectual Property Rights (TRIPS) provides for negotiations in certain areas. For all of these mandated negotiations, particular attention should be given to the range of additional issues not mentioned in the Agreements that should be considered, and the modalities for conducting further negotiations. It is noted that the advice from the U.S. International Trade Commission noted above includes all agricultural articles.

Reviews of Existing Agreements and Work Programs

Comments are requested regarding U.S. priorities pursuant to the Agreements from the Uruguay Round that specifically provide for reviews and other work as part of their individual work programs: Agriculture, Antidumping, Customs Valuation, Dispute Settlement Understanding, Import Licensing, Preshipment Inspection, Rules of Origin, Trade and the Environment, Sanitary and Phytosanitary Measures, Safeguards, Subsidies and Countervailing Measures, Technical Barriers to Trade, Textiles and Clothing, Trade Policy Review Mechanism, Trade-Related Aspects of Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMS), and the General Agreement on Trade in Services (GATS). The Committee on Trade and the Environment has thus far been the focal point for consideration of environment-related issues in the WTO. The Dispute Settlement Understanding (DSU) and the Agreement on Subsidies and Countervailing Measures, for example, contain review provisions as a first step in taking further decisions with respect to the Agreements. Comments received thus far have drawn attention to the improvements necessary to the operation of the various Agreements and Work Programs.

Singapore Ministerial Work Program

Comments are requested on what, if any, next steps should be taken with respect to the issues raised in the context of the work of the working groups established on trade and investment, trade and competition policy, transparency in government procurement and the exploratory work undertaken by the WTO regarding trade facilitation. Particularly relevant are next steps in the above-mentioned areas, including the nature and scope of any future work. In the case of procurement, Ministers at Singapore directed the General Council to identify the elements for a multilateral transparency agreement, which the United States believes could be realized this year. The Working Groups on competition and investment were extended into 1999 and have not yet completed their work.

Integration of Least-Developed Countries

Comments are requested on ways to facilitate the participation of least developed countries in the WTO, taking into account work that has been conducted to integrate the technical assistance provided by various international organizations, including the WTO. The Administration sought views with respect to additional initiatives related to capacity building in least developed countries, market access opportunities, and the possible graduation of countries from preferences.

Electronic Commerce

Consistent with the Declaration issued at the May 1998 WTO Ministerial Conference, additional comments are solicited with respect to the commitment by WTO Members not to impose customs duties on electronic commerce and the agreement to establish a work program for further consideration of the relationship between trade and electronic commerce.

Other Trade Matters of Interest

Consistent with the Ministerial Declaration, comments are also solicited with respect to the range of issues where the United States might choose to seek,

or be asked to join a consensus, to add additional items to the WTO's post-1999 agenda for negotiations or further work. The Administration indicated our strong interest in considering the broadest range of issues as the agenda for the next century is developed. The issues identified thus far include:

(1) *Industrial market access*: comments are requested with respect to conducting further tariff negotiations and possible modalities for such negotiations (e.g., pursuit of additional sectoral initiatives to reduce or harmonize duties, the application of formula or request/offer approaches and related issues). (Further negotiations on market access are already envisioned for products covered by the Agricultural Agreement.) This is relevant to the request made of the ITC.

(2) *Consultations with Non-Governmental Stakeholders:* Additional comments are requested as to possible approaches that the WTO could undertake with respect to non-governmental stakeholders. In his speech to the WTO, President Clinton challenged the WTO to consider improving the opportunities for the public to participate in the development of the WTO's forward agenda, and to develop a more regular mechanism for consultation. The WTO has begun to take steps to broaden the interaction with non-governmental organizations in the regard, including the dissemination of information received from such organizations to the WTO's membership. Similarly, a number of steps have been taken by the United States to promote greater transparency in the operation of the WTO that would be of benefit to stakeholders (e.g., with respect to making WTO documents more available to the public).

(3) *Relationship Between Trade and Labor:* Additional comments are requested regrading various approaches to be considered in developing a consensus for further consideration of this issue on the WTO's forward agenda. WTO Ministers at Singapore renewed their commitment to the observance of internationally recognized core labor standards, noting that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of core labor standards. At the same time, they recognized the important role of the International Labor Organization (ILO) in this area and rejected the use of labor standards for protectionist purposes, and agreed that the comparative advantages of countries, particularly low-wage developing countries, must not be put into question. Section 131 of the Uruguay Round Agreements Act, addresses U.S. activity in the WTO in this area.

(4) *Institutional Issues:* Additional comments are requested on the general institutional improvements that the United States should be contemplating for the WTO, particularly as its membership expands to nearly 160 early in the next century. Achieving greater transparency in the WTO's operation has already been identified as a priority issue for the Administration. The United States has consistently sought to expand the range of WTO documents available to the public, and is continuing to promote broader derestriction of documents in a more timely fashion, including in the areas of access to dispute settlement panel reports. Similarly, as the membership expands to include Members with less experience operating as market economies, new challenges arise to the WTO's system of operations and its decision-making process. As a result of the Uruguay Round, the WTO entered into cooperation agreements with the International Monetary Fund (IMF) and the World Bank to ensure greater coherence in international economic policy; further cooperation may be desirable.

B. FTAA Negotiations

On December 11, 1994, President Clinton and the 33 other democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. They agreed to conclude negotiations on a Free Trade Area of the Americas by the year 2005, and to achieve concrete progress toward that objective by the end of this century. Since that time, the 34 Western Hemisphere ministers responsible for trade have met on several occasions, most recently in March 1998 in San Jose, Costa Rica.

At the San Jose meeting, the trade ministers recommended that the Western Hemisphere leaders initiate the negotiations and provided them recommendations on the structure, objectives, principles, and venues of the negotiations. On April 18–19, 1998, President Clinton and his 33 counterparts initiated the Free Trade Area of the Americas negotiations at the Summit of the Americas meeting in Santiago, Chile. The leaders agreed to the general framework proposed by the 34 trade ministers, which include the establishment initially of nine negotiating groups to be guided by general principles and objectives and specified objectives as agreed by the ministers in March 1998.

The work of the negotiating groups began in September 1998. In anticipation of that activity, the TPSC requested public comment (63 FR 128, July 6, 1998) on what should be the U.S. positions and objectives with respect to each of the negotiating groups. The **Federal Register** notice also stated that USTR would seek additional public comment separately on other issues related to the FTAA, including the economic effects of the removal of duties and nontariff barriers to trade among FTAA participating countries. As noted above, this request for public comment will be issued separately at a later date.

2. Advice From the U.S. International Trade Commission Regarding Market Access

On March 15, 1999 the U.S. Trade Representative, pursuant to Section 332(g) of the Tariff Act of 1930, requested that the U.S. International Trade Commission (''Commission'') provide advice to the President, with respect to each item listed in the HTSUS where tariffs remain in effect after full implementation of the results of the Uruguay Round or subsequent WTO agreements, as to the probable economic effect of modification of tariffs on industries producing like or directly competitive articles and on consumers, based on the following parameters and scenarios: (1) the effect resulting from changes in dutiable imports from all U.S. trading partners if all tariffs were reduced by at least 50 percent, with tariffs of 5 percent reduced to zero; (2) the effects resulting from changes in dutiable imports from all U.S. trading partners if tariffs were eliminated; and (3) the effects resulting from tariff elimination on dutiable imports from FTAA trading partners alone.

These scenarios either replicate the tariff proclamation authority provided under the Omnibus Trade and Tariff Act of 1988 and the 1974 Trade Act, or provide information for possible WTO sectoral duty elimination initiatives and FTAA tariff negotiations. At the same time, it should be noted that this request by no means implies that we intend to take action on all of these tariff measures. It merely indicates our interest in obtaining factual advice from the Commission on the probably economic effects of their reduction or elimination.

The USTR requested that the Commission provide its advice no later than November 17, 1999.

3. Public Comments and Testimony

In conformity with section 133 of the 1974 Trade Act, the regulations promulgated under the 1974 Act and the regulations of the Trade Policy Staff

Committee (15 CFR part 2003), the Chairman of the TPSC invites the written comments and/or oral testimony of interested parties in public hearings on the possible market access commitments along with other issues for negotiation or further work in the WTO, as described above. Parties should not resubmit submissions presented in response to the August 1998 FR notice.

4. Requests To Participate in Public Hearings

Hearings will be held on Wednesday, Thursday and Friday, May 19–21, in Washington, D.C.; Monday and Tuesday, June 7 and 8 in Chicago, IL; Thursday and Friday, June 10 and 11 in Atlanta, GA; Monday and Tuesday, June 21 and 22 in Los Angeles, CA; and Thursday and Friday, June 24 and 25 in Dallas, TX. The number of days for each hearing may change depending on the volume of requests to testify. The time and location of the hearings will be announced at a later date.

Parties wishing to testify orally at the hearings must provide written notification or their intention by Wednesday, May 5, 1999 to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 122, 600 Seventeenth Street, NW, Washington, DC 20508. The notification should include: (1) The specific hearing to be attended; (2) name of the person presenting the testimony, their address and telephone number; and (3) a brief summary of their presentation, including the product(s), with HTSUS numbers, and/or other subjects to be discussed.

Those parties presenting oral testimony must also submit a written brief, in 20 copies, by noon, Wednesday, May 12, 1999. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the Chairman and the interagency panel. Participants should provide thirty typed copies of their oral statement at the time of the hearings. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

5. Written Comments

Those persons not wishing to participate in the hearings may submit written comments, in twenty typed copies, no later than noon, Wednesday, May 26, 1999 to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representatives, Room 122, 600 Seventeenth Street, NW, Washington, DC 20508. Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–9288 Filed 4–13–99; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting to be held May 4–7, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: Tuesday, May 4: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda. (9:30 a.m.) (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space Minimum Aviation System Performance Standards, continue work on VDL Mode 3. Wednesday, May 5: (a.m.) (5) WG–2 continues work on VDL Mode 3; (p.m.) (6) WG–3, Review of VHF Digital Radio Minimum Operational Performance Standards Document progress and furtherance of work. Thursday, May 6: Plenary Reconvenes at 9:00 a.m.: (7) Review Summary Minutes of Previous Plenary of SC–172; (8) Reports from WG–2 and WG–3 on Activities; (9) Report on ICAO Aeronautical Mobile Communications Panel 6; (10) EUROCAE WG–47 Report and discuss schedule for further work with WG–3; (10) Review Issues List and Address Future Work; (11) Other Business; (12) Dates and Places of Future Meetings; (p.m.) (13) WG–13 continues. Friday, May 7: (14) WG's Continue as Required.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 8, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–9300 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following information collection was published on November 5, 1998 [63 FR 59837].

DATES: Comments must be submitted on or before May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Nelda Bravo, LTAP Program Manager, (202) 366–9633, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Local Technical Assistance Program Extent of Coverage

Type of Request: Approval of a new information collection.

Affected Public: Employees of local and tribal government transportation providers.

Abstract: The Local Technical Assistance Program (LTAP) provides for training, technology transfer and technical assistance to local and tribal government transportation providers. This information collection will be in the form of a survey that will document the extent of coverage of the LTAP and provide a baseline from which to measure the Program's progress in expanding that coverage between now and the year 2002. The LTAP has established a network of 57 technology transfer centers at universities and state departments of transportation for the purpose of improving the skills and knowledge of local and tribal transportation providers through training, technical assistance and technology transfer. The LTAP Strategic Plan, adopted in 1997, calls for increasing usage of the program to 75 percent of local and tribal governments by the year 2002. Information is needed to document the extent to which local and tribal transportation agencies recognize, utilize, and are satisfied with the services provided by their LTAP Centers. The information will establish the baseline from which progress towards the goal of increasing coverage to 75 percent of all local and tribal transportation agencies will be measured.

The information will be collected through a mail survey. Respondents will be asked to complete a brief, standardized questionnaire asking if employees of their agency are aware of the existence of their local or tribal LTAP Center, have read its newsletter, attended training sessions or utilized other technology transfer services provided by the Center within the past year, and their satisfaction with those services. Information will be collected from a simple random sample of 6,500 respondents from local and tribal governments in the U.S.

The results of the survey will be retained by the Federal Highway Administration for comparison with the results of a subsequent collection in the year 2002. The results of the survey will also be presented in a report for dissemination to LTAP partners, including national associations, state departments of transportation, LTAP centers, and local and tribal governments.

Estimated Burden: 20 minutes, per respondent, to read and respond to the mail survey. 367 total estimated annual burden hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: April 9, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–9304 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Inspection Requirement for Richmond-Built Tank Car Tanks Originally Equipped with ''Foam-In-Place'' Insulation

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of inspection requirement.

SUMMARY: This document publishes the text of a letter/notice sent by FRA to owners of record of tank cars originally built under a series of Certificates of Construction during the period from January 1, 1972, through December 31, 1982, and originally built with foam-in-place insulation and without a protective tank shell exterior coating, requiring inspections of such cars for listed unsafe conditions. The letter/notice was mailed individually to owners of record of the affected cars and is published in the **Federal Register** to provide notice to current and subsequent owners of the cars in the event that ownership of a car has been transferred, or is subsequently transferred, from the owner of record to another entity.

DATES: Inspections required under the notice must be completed on or before April 16, 2001.

FOR FURTHER INFORMATION CONTACT: Edward W. Pritchard (telephone 202–493–6247), Office of Safety Assurance and Compliance, or Thomas A. Phemister (telephone 202–493–6050), Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On September 21, 1995, the Research and Special Programs Administration published a final rule in Dockets HM 175a and 201, Crashworthiness Protection Requirements for Tank Cars; this rule was a comprehensive revision of the requirements for building railroad tank cars and for inspecting and maintaining them in hazardous materials service. The requirements for inspecting and testing specification tank cars are stated at 49 CFR 180.509; that rule states the ''Conditions requiring inspection and test of tank cars'' are as follows:

> Without regard to any other periodic inspection and test requirement, a tank car must have an appropriate inspection and test according to the type of defect and the type of maintenance or repair performed if:
>
> (1) The tank car shows evidence of abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation. * * *
>
> (2) The tank car was in an accident and damaged to an extent that may adversely affect its capability to retain its contents.
>
> (3) The tank bears evidence of damage caused by fire.
>
> (4) The Associate Administrator for Safety, FRA, requires it based on the existence of probable cause that a tank car or a class or design of tank cars may be in an unsafe operating condition. (49 CFR 180.509(b))

Acting on the authority granted in this regulation, on September 9, 1998, FRA's Associate Administrator for Safety issued a requirement for the inspection of the outer shell of certain cars originally built between January 1, 1972, and December 31, 1982, with foam-in-place insulation and without a protective tank shell coating. The letter was mailed directly to each owner of record of every car meeting the defining characteristics, but FRA has learned that clerical errors in addressing the letters may have delayed or misdirected their delivery. Accordingly, the date listed above in this notice, under the heading **DATES,** extends the period within which inspections and tests must be completed. The letter is republished here in the event that ownership of a car has been transferred, or is subsequently transferred, from the owner of record to another entity. The text of the letter follows:

Notice of Inspection Requirement for Richmond-Built Tank Car Tanks Originally Equipped With "Foam-in-Place" Insulation

To: Owners of Record of Tank Cars Originally Built under Certificates of Construction Listed in Attachment A

This notice imposes a requirement, pursuant to 49 CFR 180.509(b)(4) and effective with the date on which it is issued, that owners of Department of Transportation (DOT) specification tank cars, built by Richmond Tank Car Company during the period from January 1, 1972, through December 31, 1982, and originally constructed with foam-in-place insulation and without a protective tank shell exterior coating must inspect all such cars for unsafe conditions on or before two (2) years from the date this notice is issued, as stated in greater detail below. This requirement applies to current and subsequent owners of the cars. This notice is being mailed to each of the entities listed on the certificate of construction as the owner of record of such a car; a similar notice will soon be published in the **Federal Register** in order to provide notice to current and subsequent owners of the cars in the event that ownership of a car has been transferred, or is subsequently transferred, from the owner of record to another entity.

Background

During inspections to detect cracks in the head pads of Richmond-built tank cars, requested in a December 5, 1988 letter from the Association of American Railroads (AAR) to tank car owners, several major owners reported that their inspections also revealed significant incidence of corrosion on the tank shells, both in areas void of foam and in cars built with foam and ceramic fiber applied to uncoated tank shells. On January 11, 1990, AAR wrote tank car owners requesting information on the integrity and condition of their foam-in-place insulated tank cars. Responding to the information furnished by the owners, AAR added to its Manual of Standards and Recommended Practices, Specifications for Tank Cars (M–1002) (the Tank Car Manual) a requirement for a protective coating to the outside of the tank and the inside of the metal tank jacket whenever a tank is insulated.

On March 5, 1996, a tank car loaded with liquefied petroleum gas (propane) catastrophically failed during a switching operation at a Consolidated Rail Corporation classification yard at Selkirk, New York. The car split in two around its circumference. One end remained in place and the other, coupled to several cars, rocketed down the tracks for several hundred feet spewing flames and smoke as fire consumed the entire contents of the car. This was a Richmond-built DOT105J300W tank car, originally constructed as a DOT105A300W with foam-in-place insulation. During the conversion process, the owner had discovered considerable outer-surface tank shell corrosion and had applied weld overlay to restore the contour and thickness of the tank shell. The FRA and National Transportation Safety Board's (NTSB) preliminary investigations discovered that the site of the origin of the tank failure was a point near the termination of one of the courses of weld overlay applied earlier to an area of the tank that had experienced exterior shell corrosion.

On March 12, 1996, the AAR issued an Early Warning Letter requiring the owner of the Selkirk car to capture and inspect other cars (a group of about 80) built under the same or similar Certificates of Construction. All of the cars were inspected, except for two in storage, and several exhibited poor workmanship, weld porosity, lack of weld fusion, and cracking. On May 14, 1996, AAR wrote the tank car owner directly expressing concerns about other Richmond-built tank cars in its fleet and converted from 105A and 105S specifications to 105J cars. The car owner developed an inspection program, including acoustic emission testing, for all Richmond-built cars that had shell repairs made using the weld overlay method. As of June 4, 1998, 708 cars have been inspected, using nondestructive methods. These sister cars were inspected for weld overlay defects and cracking associated with weld overlay defects as well as exterior shell corrosion. No tank weld overlay defects, cracks, or significant corrosion have been detected on this block of more than 700 cars. Final inspections under this program are to be completed by December 31, 1998.

Using information developed by the owner of the Selkirk car and information gathered in response to the January 11, 1990 AAR letter, FRA sent a letter on September 28, 1996, to all known owners of Richmond-built foam-in-place tank cars built without a protective coating on the outer surface of the tank shell. The letter sought details about this fleet, the shell inspections performed on the cars, and, if corrosion was present, the efforts made to repair the cars. Owners who had inspected the cars and elected to retire them were asked whether or not corrosion was a contributing factor in the retirement decision. Many of the tank car owners have responded to FRA. The data they furnished shows that approximately 19 percent of the inspected cars had over 25 square feet of exterior shell corrosion repaired with weld overlay; several other cars were retired due to excess corrosion.

On October 15, 1997, an owner of 11 Richmond-built tank cars voluntarily notified FRA that one of its cars began leaking from a through-wall pit in the tank shell during a liquefied petroleum gas loading operation in Manhattan, Illinois, during July of that year. The car owner investigated the incident and discovered that the car had passed an ultrasonic thickness test (UTT) within 6 months of the tank shell failure. The owner also inspected the remaining tanks for corrosion and pitting. An internal UTT did not disclose any indication of corrosion or pitting following more than 70 individual tests on each car. However, after complete removal of the tank jacket and foam-in-place insulation, the owner found severe exterior shell corrosion and pitting on four of the cars just tested. In several locations the tanks did not meet the minimum shell thickness requirements.

FRA's investigation of the tank car that failed at Manhattan, Illinois, concluded, on December 21, 1997, that

> After observation of and review of the records for the cars discussed in this report, it is believed that the cars in this series do not comply with 49 CFR 179.100–4(a), as there appears to be no protective coating applied to the exterior surface of the carbon steel tank and the inside surface of the carbon steel jacket. If, at the time of manufacture, the foam was thought to provide this protective coating, both the service life of these cars and other anecdotal information show that the application of this urethane foam alone was ineffective in providing the required protective coating.

Although it is fortunate that neither the car failure in Selkirk, New York, nor the one in Manhattan, Illinois, caused fatalities, FRA draws no comfort from that fact. FRA believes that, because the foam-in-place insulation did not adhere completely to the outer shell, so that there are void spaces between the insulation and the shell, the cars did not comply with 49 CFR § 179.100–4 in effect at the time of construction. Because of this, moisture can be retained in the void spaces and can exacerbate widespread corrosion of the exterior tank shell. Upon review of the information obtained from tank car owners and FRA's own investigation, it is FRA's opinion that widespread exterior shell corrosion and pitting may exist on a high number of the

approximately 2,307 cars remaining in service of the original 2,800 cars built by Richmond under the Certificates of Construction listed in Attachment A.

Regulatory Authority

The Hazardous Materials Regulations, at 49 CFR 180.509, state in relevant part:

§ 180.509 Requirements for inspection and test of specification tank cars.

* * * * *

(b) *Conditions requiring inspection and test of tank cars.* Without regard to any other periodic inspection and test requirements, a tank car must have an appropriate inspection and test according to the type of defect and the type of maintenance or repair performed if:

* * * * *

(4) The Associate Administrator for Safety, FRA, requires it based on the existence of probable cause that a tank car or a class or design of tank cars may be in an unsafe operating condition.

FRA's Determination and Basis

FRA has determined that uninspected Richmond-built tank cars originally built with foam-in-place insulation and without a protective tank shell exterior coating constructed under the Certificates of Construction in Attachment A, may be in an unsafe operating condition. As used in this requirement for inspection and test, the word ''uninspected'' when describing a car means that the car has not had its jacket and foam insulation removed and that the exterior surface of its tank shell, heads, and nozzles have not been inspected for corrosion and pitting. FRA bases its determination on the historical record of these cars as set forth in the ''Background'' section of this letter, specifically, the following: (1) The significant incidence of shell corrosion discovered during the post-December 5, 1988 inspections to detect head pad cracks in Richmond-built foam-in-place tank cars; (2) the catastrophic failure of a car from this series at Selkirk, New York, on March 5, 1996, and the data developed from inspections requested after that accident by both FRA and AAR, including the presence of exterior shell corrosion requiring weld overlay repairs in excess of 25 square feet on 19 percent of the sample fleet; and (3) the July 1997 discovery in Manhattan, Illinois, of a car from this series with a through-wall corrosion pit and the October 15, 1997, reporting of the subsequent discovery of similar corrosion on 4 of 11 sister cars.

Appropriate Inspection and Test

Based on the foregoing, I order and require the following inspection and test:

1. The ''class or design of tank cars'' subject to this inspection and test requirement is uninspected DOT specification cars originally built during the period from January 1, 1972, through December 31, 1982, by Richmond Tank Car Company with foam-in-place insulation and without a protective tank shell exterior coating.

2. Each car to be inspected under this order and requirement must have the tank jacket and foam insulation removed prior to inspection. This requirement is based on the Manhattan, Illinois, experience, that voids in the foam insulation and non-adhesion of the foam to the outer tank shell are conditions not reliably detectable by an ultrasonic thickness test (UTT).

3. After the jacket and foam insulation have been removed, the exterior of the tank shell must be inspected for corrosion, pitting, and any other condition that would render the exterior of the tank shell out of compliance with the Federal tank car regulations (49 CFR part 179 and part 180, Subpart F) or the AAR Tank Car Manual.

4. An ''appropriate inspection and test'' required by 49 CFR 180.509(b) is also subject to the quality assurance program requirements of 49 CFR 180.505 and the reporting requirements of 49 CFR 180.517.

5. In order to ensure tank car safety, FRA finds that the appropriate inspection and test required by this notice must be completed on or before August 14, 2000.

6. A car found not in compliance with the Federal tank car regulations or the AAR Tank Car Manual must be returned to a complying condition before it is loaded and offered for shipment.

Additional Maintenance Suggestion

The owner of the Selkirk car has inspected more than 700 sister cars for weld overlay defects and cracking associated with weld overlay defects, as well as for exterior shell corrosion. Although structural cracks and weld defects have been discovered in the stub sill areas of the tank cars, no tank weld overlay defects or cracks have been detected on this block of cars. In order to maintain this assurance of tank car safety, FRA believes the possible existence of surface and subsurface weld overlay defects warrants inclusion of non-destructive examination, by a qualified individual using a qualified procedure, of any existing weld overlay repair area prior to the application or reapplication of a tank jacket.

If you have questions regarding these inspection requirements, please contact Edward Pritchard (202–493–6247) or Brenda Hattery (202–493–6326) of my staff.

Issued in Washington, DC, on September 9, 1998.

George A. Gavalla,

Acting Associate Administrator for Safety, Federal Railroad Administration.

ATTACHMENT A.—OWNERS OF RECORD OF FOAM-IN-PLACE TANK CARS BUILT UNDER RICHMOND TANK CAR COMPANY'S ORIGINAL CERTIFICATES OF CONSTRUCTION

Certificate of construction	Owner of record of cars originally built under the listed certificate of construction
A734030	PLM International, Inc.
A734030A	PLM International, Inc. U S L Capital Rail Services
A734031	PLM International, Inc.
A734031A	PLM International, Inc.
A744000	E.I. Du Pont De Nemours & Co., Inc. PLM International, Inc.
A754014	General Electric Railcar Services Corporation GLNX Corporation SGA Leasing Company Transportation Equipment, Inc. U S L Capital Rail Services
A754014A	PLM International, Inc.
A754014B	Transportation Equipment, Inc.
A754015	GLNX Corporation On-Track Railcar Services Corporation PLM International, Inc.
A764008	PLM International, Inc.
A774006	GLNX Corporation PLM International, Inc. Transportation Equipment, Inc. Union Tank Car Company
A7740066	Transportation Equipment, Inc.
A774006C	On-Track Railcar Services Corporation PLM International, Inc. Shell Oil Company
A774019	Union Tank Car Company
A774020B	Exxon Chemical Americas
A784002	The Dow Chemical Company
A794001A	The Dow Chemical Company
A794002	General American Transportation Corporation GLNX Corporation Transportation Equipment, Inc. Union Tank Car Company
A7940026	Transportation Equipment, Inc.

ATTACHMENT A.—OWNERS OF RECORD OF FOAM-IN-PLACE TANK CARS BUILT UNDER RICHMOND TANK CAR COMPANY'S ORIGINAL CERTIFICATES OF CONSTRUCTION—Continued

Certificate of construction	Owner of record of cars originally built under the listed certificate of construction
A794017	C. W. Brooks, Inc.
	General American Transportation Corporation
	GLNX Corporation
	Martin Gas Sales, Inc.
	Union Tank Car Company
A794024	The Dow Chemical Company
A804002	PLM International, Inc.
	Union Tank Car Company
A804013	Union Carbide Corporation
	Union Tank Car Company
A804021	Phillips Petroleum Company
	Union Tank Car Company
A814004	Union Tank Car Company
A814007	Union Tank Car Company
A814007A	PLM International, Inc.
A814014A	Allied Chemical Company (Allied Corporation)
F734037	PLM International, Inc.
F764007	Union Tank Car Company
F774001	Union Tank Car Company
F774012	Aeropress Corporation
	GLNX Corporation
	PLM International, Inc.
	Transportation Equipment, Inc.
	Union Tank Car Company
F7740126	PLM International, Inc.
	Transportation Equipment, Inc.
F814001	Exxon Chemical Americas
F814009	PLM International, Inc.
	Union Tank Car Company
F814012	Union Tank Car Company
F824003	PLM International, Inc.
F824003A	PLM International, Inc.

Issued in Washington, DC, on April 8, 1999 under the authority delegated in 49 CFR 1.49 and under 49 CFR 180.509(b).

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 99–9282 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility

AGENCY: Federal Transit Administration, DOT.

ACTION: Program guidance revision, extension of application deadline.

The Federal Transit Administration provided program guidance and application procedures in a **Federal Register** Notice dated February 8, 1999, ''Over-the-road Bus Accessibility Program Grants.'' That notice stated that ''applicants should not incur costs prior to grant approval by FTA.'' Based upon comments from representatives of the over-the-road bus industry, that statement is rescinded and the guidance is hereby revised: the incremental capital cost for adding wheelchair lift equipment to any new vehicles delivered on or after June 9, 1998, the effective date of the Transportation Equity Act for the 21st Century, is eligible for funding under the over-the-road bus accessibility program. In addition, the deadline for submitting grant applications to the FTA regional offices has changed from April 16, 1999 to May 14, 1999. Applicants must comply with all other program guidance provided in the February 8, 1999 **Federal Register** Notice.

Issued on: April 8, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–9305 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 26, 1999, [64 FR 3997].

DATES: Comments must be submitted on or before May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher Krusa, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2648 or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Supplementary Training Course Application.

OMB Control Number: 2133–0030.

Type of Request: Extension of a currently approved collection.

Affected Public: U.S. Merchant Seamen, both officers and unlicensed personnel, and other U.S. citizens employed in other areas of waterborne commerce.

Forms(s): MA–823.

Abstract: Section 1305 (a) of the Maritime Education and Training Act of 1980 states that the Secretary may provide additional training on maritime subjects and may make such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine. In addition, the U.S. Coast Guard (USCG) requires a fire-fighting certificate for U.S. merchant marine officers pursuant to 46 CFR 10.205(g) and 10.207(f). This information collection is necessary for eligibility assessment, enrollment, attendance verification and recordation. Without this information, the courses would not be documented for future reference by the program or individual student. This application form is the only document of record and is used to verify that students have attended the course.

Annual Estimated Burden Hours: 100 Hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: April 8, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–9283 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5495]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1997 Mercedes-Benz E500 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1997 Mercedes-Benz E500 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1997 Mercedes-Benz E500 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 14, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1995–1997 Mercedes-Benz E500 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1995–1997 Mercedes-Benz E500 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1997 Mercedes-Benz E500 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1997 Mercedes-Benz E500 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1997 Mercedes-Benz E500 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1995–1997 Mercedes-Benz E500 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* replacement of the entire instrument cluster with a U.S.-model component that includes a speedometer/odometer calibrated in miles per hour and other U.S.-model gauges.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

301 *Fuel System Integrity:* inspection of all vehicles to ensure that they are

equipped with a rollover and check valve that complies with the standard.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard found in 49 CFR part 541, and that anti-theft devices that meet the standard will be installed on all vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 9, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9330 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5497]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1999 Cadillac DeVille Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1999 Cadillac DeVille passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1999 Cadillac DeVille passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 14, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1994–1999 Cadillac DeVille passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1994–1999 Cadillac DeVille passenger cars that were manufactured for sale in the United States and certified by their manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1999 Cadillac DeVille passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1999 Cadillac DeVille passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1999 Cadillac DeVille passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1994–1999 Cadillac DeVille passenger cars comply with the Bumper Standard found in 49 CFR part 581, and with the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration

of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams if the vehicle is not already so equipped.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1994–1999 Cadillac DeVille passenger cars to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 9, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9331 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5496]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1999 Mercedes-Benz S600 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1999 Mercedes-Benz S600 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1999 Mercedes-Benz S600 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 14, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1999 Mercedes-Benz S600m passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with

most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 Roof Crush Resistance, 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars comply with the Bumper Standard found in 49 CFR part 581, and with the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and the rear door locking buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams if the vehicle is not already so equipped.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1995–1999 Mercedes-Benz S600 passenger cars to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 9, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9332 Filed 4–13–99; 8:45 am]

BILLING CODE 4910–59–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATIONS

Sunshine Act Meeting

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation will hold a meeting beginning at 9:00 a.m. on Thursday, April 22, 1999 at the offices of the U.S. Institute for Environmental Conflict Resolution, 110 South Church, Ste. 3350, Tucson, AZ 85701.

The matters to be considered will include (1) A report on the U.S. Institute of Environmental Conflict Resolution, and (2). A report from the Udall Center for Studies and Public Policy and (3) Program Reports. The meeting is open to the public.

Contact Person for More Information: Christopher L. Helms, 110 South Church, Ste. 3350, Tucson, Arizona 85701. Telephone (520) 670–5608.

Dated this 9th day of April, 1999.

Christopher L. Helms,

Director.

[FR Doc. 99–9380 Filed 4–12–99; 12:05 pm]

BILLING CODE 6820–FN–M

Corrections

Federal Register

Vol. 64, No. 71

Wednesday, April 14, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency For International Development

48 CFR Parts 722, 732 and 752

[AIDAR Notice 98–3]

RIN 0412–AA39

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 99–2032 beginning on page 5005, in the issue of Tuesday, February 2, 1999, make the following corrections:

722.805–70 [Corrected]

1. On page 5007, in the third column, in 722.805–70(e), in the fourth line, ''the'' should read ''that''.

732.406–73 [Corrected]

2. On page 5008, in the second column, in 732.406–73(b), in the first line, ''offices'' should read ''officers''.

752.7005 [Corrected]

3. On page 5010, in th second column, in 752.7005, in paragraph (b)(2)(iv) of the clause, in the fifth line, ''format'' should read ''Format''.

[FR Doc. C9–2032 Filed 4–13–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 270

[Release Nos. 33-7656, 34-41189, IC-23745; File No. S7-10-99; International Series Release No. 1188]

RIN 3235-AH32

Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts

Correction

In proposed rule document 99–7237, beginning on page 14648, in the issue of Friday, March 26, 1999, make the following correction:

On page 14649, in the second and third columns, the text ''The Commission and its staff have interpreted section 7(d) to generally prohibit a foreign fund from making a U.S. private offering if that offering would cause the securities of the fund to be beneficially owned by more than 100 U.S. residents. See Resale of Restricted Securities, Securities Act Release No. 6862 (Apr. 23, 1990) [55 FR 17933 (Apr. 30, 1990)] at text following n.64; Investment Funds Institute of Canada, SEC No-Action Letter (Mar. 4, 1996); Touche Remnant & Co., SEC No.-Action Letter (Aug. 27, 1984). Given the large number of Canadian/U.S. Participants, it is unlikely that a Candadian fund could sell securities to Canadian retirement accounts of Canadian/U.S. Participants without exceeding the limit of 100 U.S. beneficial owners.'' should be removed and placed above footnote 11.

[FR Doc. C9–7237 Filed 4–13–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–20]

Proposed Establishment of Class E Airspace; De Kalb, IL

Correction

In proposed rule document 99–8246, beginning on page 16370, in the issue of Monday April 5, 1999, make the following correction:

§ 71.1 [Corrected]

On page 16371, in the second column, in § 71.1, under the heading **AGL IL E5 De Kalb IL [New]**, in the second line, ''Lat. 41° 42′ 30″W'' should read ''Lat. 41° 55′ 55″N., Long. 88° 42′ 30″W''.

[FR Doc. C9–8246 Filed 4–13–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Wednesday
April 14, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 283

Implementation of Section 403(a)(2) of Social Security Act; Bonus To Reward Decrease in Illegitimacy Ratio; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 283

RIN 0970–AB79

Implementation of Section 403(a)(2) of Social Security Act; Bonus To Reward Decrease in Illegitimacy Ratio

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule

SUMMARY: The Administration for Children and Families is issuing a final rule describing how we will award a bonus to those States that experience the largest decreases in out-of-wedlock childbearing and also reduce their abortion rates. The total amount of the bonus will be up to $100 million in each of fiscal years 1999 through 2002, and the award for each eligible State in a given year will be $25 million or less.

This incentive provision is a part of the welfare reform block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program.

DATES: This regulation is effective June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Kelleen Kaye, Senior Program Analyst, Office of the Assistant Secretary for Planning and Evaluation, at (202) 401–6634; or Ken Maniha, Senior Program Analyst, Administration for Children and Families, at (202) 401–5372.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 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 law (Pub.L. 104–193) established a comprehensive welfare reform program designed to change the nation's welfare system dramatically. The program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limited assistance.

PRWORA repealed the prior 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 program (JOBS) and Emergency Assistance (EA).

The 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. 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.

It also gives States the authority to use Federal welfare funds ''in any manner that is reasonably calculated to accomplish the purpose'' of the new program (see Legislative History below). It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate, and it offers States 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 Bonus Award

A. Legislative History

One of the greatest concerns of Congress in passing the PRWORA was the negative effect of out-of-wedlock births. This concern is reflected in the Congressional findings at section 101 of PRWORA. Here, Congress described the need to address issues relating to marriage, the stability of families, and the promotion of responsible fatherhood and motherhood. The issues cited were: the increasing number of children receiving public assistance; the increasing number of out-of-wedlock births; the negative consequences of an out-of-wedlock birth to the mother, the child, the family, and society; and the negative consequences of raising children in single-parent homes.

Congressional concern is also reflected in the goals of the TANF program and the inclusion of a performance bonus entitled ''Bonus to Reward Decrease in Illegitimacy Ratio.'' One purpose of the TANF program, as stated in section 401(a)(3) of the Social Security Act, is to ''prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies.'' In enacting the bonus provision, Congress intended to provide greater impetus to State efforts in this area and encourage State creativity in developing effective solutions.

B. Summary of the Bonus Award Process

This final rule implements section 403(a)(2) of the Social Security Act (the Act), ''Bonus to Reward Decrease in Illegitimacy Ratio.'' In this final rule, we use the term ''bonus'' to refer to the bonus in section 403(a)(2) of the Act. We use the term ''ratio'' to refer to the ratio of out-of-wedlock births to total births.

As specified in section 403(a)(2) of the Act, we will award up to $100 million annually, in each of fiscal years 1999 through 2002. The amount of the bonus for each eligible State in a given year will be $25 million or less. For the purposes of this award, States include the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, and American Samoa. While the criteria for determining bonus eligibility for Guam, the Virgin Islands, and American Samoa are the same as for the remaining States, their eligibility is determined separately and the determination of their bonus amount is different, as specified in the statute in sections 403(a)(2)(B)(ii) (Amount of Grant) and 403(a)(2)(C)(i)(I) (definition of eligible State).

Briefly, we will award the bonus as follows:

- We will calculate the ratio of out-of-wedlock births to total births for each State for the most recent two-year period for which data are available and for the prior two-year period. To compute these ratios, we will use the vital statistics data compiled annually by the National Center for Health Statistics and based on records submitted by the States.
- For States other than Guam, the Virgin Islands, and American Samoa, we will identify the five States that had the largest proportionate decrease in

their ratios between the most recent two-year period for which data are available and the prior two-year period. These States are potentially eligible.

- For Guam, the Virgin Islands, and American Samoa, we will identify which jurisdictions had a comparable decrease in their ratios (i.e., a decrease at least as large as the smallest decrease among the other qualifying States or a decrease that ranks among the top five decreases when all States and Territories are ranked together). These additional States will also be potentially eligible.
- We will notify the potentially eligible States that, to be considered for the bonus, they need to submit data and information on the number of abortions performed in their State for the most recent year and for 1995.
- We will determine which of the potentially eligible States also experienced a decrease in their rate of abortions (defined for the purposes of this bonus to be ratio of the abortions to live births) for the most recent calendar year compared to 1995, the base year specified in the Act. These States will receive a bonus award.

III. Development of the Final Rule

A. Consultations

In the spirit of both regulatory reform and PRWORA, we implemented a broad consultation strategy prior to the drafting of all proposed regulations for the TANF program, including this bonus provision. We discussed major issues related to the proposed rulemaking with outside parties at several meetings. We spoke with a number of different audiences including representatives of State and local government, State TANF agencies, national advocacy organizations, and data collection experts. These consultations were helpful to us in identifying key issues and evaluating policy options.

B. Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review (now the National Partnership for Reinventing Government) to encourage Federal agencies to produce more reader-friendly regulations and regulations written in plain language. In drafting this final 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.

In the spirit of facilitating understanding, we have included some of the preamble discussion from the NPRM as well as additional information related to the final rule to provide further explanation and context for the reader. This information is under the heading ''Additional Information Related to This Section.'' We also have exercised some editorial discretion to make the discussion more succinct or clearer in places. However, where we made significant changes in the preamble material or the regulatory text, the preamble explains these changes.

C. Notice of Proposed Rulemaking

On March 2, 1998, the Administration for Children and Families published a Notice of Proposed Rulemaking (NPRM) to implement section 403(a)(2) of the Act. We provided a 60-day comment period which ended on May 1, 1998 (63 FR 10264).

We offered those interested the opportunity to submit comments either by mail or electronically via our Web site. Several commenters took advantage of the electronic access, but we received most comments by mail.

In addition, we held a briefing on the provisions of the NPRM for interested organizations and entities on March 12, 1998. The purpose of the briefing was to answer questions on the NPRM and provide clarifying information.

We received 17 letters commenting on the NPRM from five States, one local government agency, one State legislator, one national organization representing State interests, seven national nonprofit research and advocacy organizations, and three individuals. (One letter was signed by two national organizations.)

In general, the comments expressed qualified approval for our proposed approach to this highly technical statutory provision. Some commenters recognized that we were constrained by the statute in developing the NPRM, but, within those limitations, commended our approach for ''in some instances, minimizing the potential problems posed by the bonus.'' Other commenters supported specific aspects of the NPRM, such as:

- The proposed use of existing data (no new data collection requirements);
- Not ranking States based on their abortion data;
- Our stated preference for residence data on abortions while proposing to accept either occurrence or residence data;
- Recognizing the differences in the States' methods of collecting data on abortions and providing for State changes in State methodology; and
- Designing a process which would allow all States to compete for the bonus, if they so choose.

Several commenters, however, expressed serious concern about possible unintended effects of the bonus and about the quality of the abortion data on which the bonus award would be based. They urged increased attention to and recommended that we place additional requirements on the collection of abortion data. They also urged greater Departmental involvement to prevent, for example, actions that might restrict access to abortion. Several commenters recommended specific steps the Department might take to help assure that the bonus award was not based on a State's legislation or policies to restrict abortion services. They also recommended ways in which the Department might use this bonus award process to evaluate out-of-wedlock and teen pregnancy prevention programs, improve the quality of the abortion data, and disseminate information on best practices.

We appreciate the thoughtful and policy-focused comments we received and have seriously considered all concerns and recommendations. We have made several changes in the final rule based on the comments. We will discuss all comments below. Briefly, however, we have:

- Revised the definition of ''abortion'' to exclude spontaneous abortions;
- Specified that if a State changes its methodology for the collection of abortion data, it must describe the nature of the change and submit this explanatory information along with the number of abortions performed after adjusting for these changes;
- For changes in the collection of data on out-of-wedlock births implemented prior to 1998, reduced the period of time States have to submit this information from one year following publication of the final rule to 60 days following publication of the final rule;
- Clarified the time limit on the expenditure of the bonus award funds;
- Clarified the scope of the activities and services that may be funded using bonus award funds and the limitations on the use of these funds;
- Clarified that, for Puerto Rico, Guam, the Virgin Islands, and American Samoa, bonus award funds are not subject to the mandatory funding ceilings established in section 1108(c)(4) of the Act. (Section 1108(c)(4) limits the total amount of TANF block grant funding for these jurisdictions.)

We were not able to accept recommendations that were inconsistent with the statute or our regulatory authority. Examples of these recommendations included:

- That we design a process to ensure that five States (other than Guam, the

Virgin Islands, and American Samoa) would receive bonus awards annually;

- That States that do not collect abortion data be allowed to submit abortion data based on a sub-state population such as Medicaid recipients;
- That we require States to submit information on the policy measures they followed to lower their out-of-wedlock births; and
- That, when determining eligibility, we discount changes in abortion that result from changes in availability of abortion services.

These and other comments and recommendations will be discussed below.

D. Section-By-Section Discussion of the Final Rule

Section 283.1 What Does This Part Cover?

This section of the NPRM provided a summary of the content of part 283 covering how we would determine which States qualify for the bonus award, what data we would use to make this determination, and how we would determine the amount of the award.

We received no specific comments on and have made no changes in this section.

Section 283.2 What Definitions Apply to This Part?

This section of the NPRM proposed definitions of the terms used in part 283. Some of these definitions assigned a one-word term to represent a frequently used phrase. For example, ''bonus'' is defined to mean the Bonus to Reward Decrease in Illegitimacy Ratio authorized under section 403(a)(2) of the Act. Other definitions add clarity and precision to key technical terms. For example, we defined the ''most recent year for which abortion data are available'' as the year that is two calendar years prior to the current calendar year.

We received several comments relating to definitions in this part. These comments referred to definitions for ''abortion,'' ''most recent period for which birth data are available,'' most recent year for which abortion data are available,'' and ''number of out-of-wedlock births.''

Comment: One commenter recommended that we modify the definition of ''abortion'' to make clear that spontaneous abortions, i.e., miscarriages, are not included in this definition.

Response: We agree and have revised the definition accordingly.

Comment: One commenter interpreted the definition of ''most recent two-year period for which birth data are available'' as variable across States. This commenter recommended that we measure potential State eligibility for the bonus based on identical time periods across States.

Response: We agree that the determination of eligibility will be based on birth data for an identical time period across States. We have clarified the definition of ''most recent two-year period for which birth data are available'' to indicate that this will be the most recent period for which the National Center for Health Statistics (NCHS) has released final birth data by State. Final data released by NCHS covers the same year for all reporting States, as noted in the NPRM.

Comment: One commenter objected to this same definition on different grounds. In the NPRM, we said in the preamble discussion to § 283.4 that in bonus year 1999, we would likely compare births in calendar years 1996 and 1997 to births in years 1994 and 1995. The commenter believed that this would not provide a fair comparison among States, particularly those States that had implemented programs to reduce out-of-wedlock births since enactment of PRWORA. The commenter also believed that it did not make sense to compare years prior to enactment of the TANF program and suggested that we use more recent birth data that would reflect recent State efforts to reduce out-of-wedlock births, delaying the bonus award if necessary.

Response: We recognize the importance of basing the bonus on the most recent data available and incorporating data that reflect State efforts to reduce out-of-wedlock childbearing. The rule clearly states that eligibility will be based on the most recent data released by NCHS. In all but the first bonus year, eligibility will likely be based on data that reflect post-TANF outcomes. For example, in the first bonus year, FY 1999, we will base awards on a data period including 1997; awards in FY 2000 will reflect data for 1998.

However, after carefully considering this matter, we have determined that the Department must obligate the first-year bonus funds in fiscal year 1999, and therefore determination of eligibility in the first year cannot be delayed beyond fiscal year 1999.

Comment: One commenter objected to the definition of ''most recent year for which abortion data are available.'' The NPRM defined this term as ''the year that is two calendar years prior to the current calendar year.'' We provided the example that in calendar year 1999, the most recent year for which abortion data are available would be calendar year 1997. The commenter recommended that we change the definition to read: ''the year that is no later than two calendar years prior to the current calendar year.'' The commenter believed that if more timely data were available, States should be allowed to use these data, particularly if the data would have a positive effect on the State's eligibility for the bonus, since the data would not affect another State's eligibility.

Response: The definition stated in the NPRM bases eligibility on reasonably current abortion data gathered for a consistent time period. While States do not compete directly with respect to their abortion measures, it is important to define this period consistently. If each State were to use their most recent year of abortion data, eligibility could be affected not only by changes in the abortion rate but also by changes in the State's decision regarding when to release the next year of data, which is not the intent of the bonus provision. The final rule was not changed with respect to this comment.

Comment: One commenter objected to the definition of ''number of out-of-wedlock births'' and ''number of total births'' because she interpreted the definitions to mean the number of births occurring in the State. The commenter recommended that the number of births be measured according to the state of residence rather than the state of occurrence.

Response: We agree that the number of out-of-wedlock and total births will be measured according to state of residence rather than state of occurrence, and the definitions proposed in the NPRM for out-of-wedlock and total births already reflect this. Therefore, no changes were needed in the final rule. We retained the two pertinent definitions proposed in the NPRM as follows:

''Number of out-of-wedlock births for the State'' means the final number of births occurring outside of marriage to residents of the State, as reported in NCHS vital statistics data. ''Number of total births for the State'' means the final total number of live births to residents of the State, as reported in NCHS vital statistics data.

Section 283.3 What Steps Will We Follow to Award the Bonus?

This section of the NPRM described the process we proposed to follow for identifying which States would be eligible for the bonus and what the amount of the bonus would be. This process was based on the definition of ''eligible State'' in section 403(a)(2)(C)(i)(I). This definition

indicates that a State must have a qualifying decrease in its ratio (i.e., its ratio of live out-of-wedlock births to total births) and also experience a decrease in its abortion rate (i.e. its ratio of abortions to live births). We proposed to base the bonus award on birth and abortion data for the State population as a whole, not on data for TANF recipients or other sub-state populations.

We received several comments in support of the general process for awarding the bonus. Commenters supported the two-year comparison period for State birth data. They also supported the use of NCHS data on births because it avoids duplicate State data collection and allows the bonus to be awarded based on statistics similar for all States. Commenters also supported the use of the proportionate ratio method in ranking States based on birth data because it allows States to compete on a more level playing field, regardless of population size or previous decreases in out-of-wedlock birth ratios.

We also received several comments expressing concerns related to this section. These included comments regarding the determination of eligibility for Guam, American Samoa and the Virgin Islands, comments regarding the number of potentially eligible States, and comments that the final rule should include an appeals process for those who do not receive the bonus.

Comment: One commenter questioned our preamble discussion on how the bonus for Guam, the Virgin Islands, and American Samoa would be computed and recommended that the process for making awards to these jurisdictions be the same as for other States.

Response: We agree that, for these jurisdictions, the criteria for how bonus eligibility will be determined is the same as for other States, and we have clarified this in paragraph (a)(3). It is only the amount of the award that will be different.

Comment: One commenter recommended that the Department design a process that would ensure that the maximum number of States (five other than Guam, American Samoa and the Virgin Islands) receive a bonus each year. They suggested informing more than just five States (e.g., between 7–10 States) that they were potentially eligible for the bonus based on their birth data. Among this larger group of potentially eligible States, even if some States were not eligible based on their abortion data, DHHS would still be able to identify five eligible States.

Response: Section 403(a)(2)(C)(i)(I) of the Act clearly indicates that an eligible State must meet two criteria; it must be among the top five States with the largest decrease in the ratio of out-of-wedlock to total births and it must have a reduction in its abortion rate. A State that is not among the top five States would not meet the definition of eligibility stated in the Act, and the Act clearly provides for the possibility that fewer than five States will receive the bonus. We did not change the final rule with respect to this comment.

Comment: Another comment that did not directly reference § 283.3 but is related most closely to this section, recommended that the final rule include an appeals process for those States that did not qualify for the bonus.

Response: We recognize the importance of awarding the bonus fairly. To accomplish this, the final rule bases eligibility on widely accepted and standard measures of births and clearly describes the objective criteria we will follow in ranking and identifying those States with the largest decrease in the ratio of out-of-wedlock to total births. The final rule also clearly defines what abortion data the State must submit to be eligible for the bonus and assigns to the States the responsibility of collecting those data and calculating any necessary adjustment. Because eligibility is based on nondiscretionary, objective criteria and data that are largely submitted by the States, we do not believe an appeals process is appropriate.

Therefore, the final rule does not provide for an appeals process and no changes to the final rule were made with respect to this comment. While section 410 of the Act does provide for an appeals process, this section applies only to adverse actions such as the imposition of penalties and does not apply to bonus awards.

Finally, we have made editorial changes for clarity.

Additional Information Related to This Section

This final rule places no mandates on States with respect to data collection. Competition for the bonus is entirely voluntary. Also, where possible, this final rule uses existing data sources or data that are the least burdensome to collect and report.

When calculating decreases in the ratios of out-of-wedlock to total births, we will use the NCHS vital statistics data for total births and out-of-wedlock births, which are based on data submitted by the States. Vital statistics data include information on virtually all births occurring in the United States and are already reported by State Health Departments to NCHS through the Vital Statistics Cooperative Program (VSCP). Hospitals and other facilities report this information to the State health departments on a standard birth certificate, following closely the format and content of the U.S. Standard Certificate of Live Birth. The States process all of their birth records and send their files to NCHS in electronic form in a standard format. The mother of the child or other informant provides the demographic information on the birth certificate.

We chose vital statistics data to measure births because we viewed them as the most reliable and standard data available across States. Also, using vital statistics data from NCHS will allow us to measure the same years for all States and will give States a reasonable and standard time frame in which to submit the data. This is particularly important for birth data because we will rank States on their decreases in the ratio based on these data.

We also determined that obtaining these data directly from NCHS rather than from the individual States will avoid a duplicate information collection activity and will be less burdensome for the States and for us. In most cases, States will not need to provide any new data or information related to births beyond what they already submit to NCHS.

As specified in section 403(a)(2) of the Act, once we have identified the potentially eligible States with the largest decreases in their ratios, we will notify those States that, to be considered for eligibility for the bonus award, they must submit the necessary data on the number of abortions for both 1995 and the most recent year as well as information on any adjustment to these data.

There is no need for all States to submit data on abortions, based on the definition of ''eligible State'' in section 403(a)(2)(C)(i)(I). A State cannot qualify for the bonus unless it is among the top five with the largest decrease in the ratio of live out-of-wedlock to total births (or it is one of the previously mentioned territories and has a comparable decrease).

Even if some potentially eligible States later become ineligible based on their abortion data, all States that were previously ineligible based on their birth data remain ineligible. Therefore, one State's abortion rate does not affect whether another State qualifies. Thus, while abortion data affects whether an individual State receives the bonus, competition among States for the bonus depends on the birth data.

Section 283.4 If a State Wants To Be Considered for Bonus Eligibility, What Birth Data Must It Submit?

This section of the NPRM described in more detail what birth data a State must have submitted to NCHS for each year in the calculation period as a first step in qualifying for the bonus. This section also described what the State must do if it changed its methodology for collecting or reporting birth data, i.e., the method for determining marital status at the time of birth.

Several commenters agreed with the proposed approach in this section. They were pleased that we proposed to rely on statistics already submitted by States. They also were pleased that we recognized that some States may have changed (or may plan to change) their methodology or classification procedures for collecting out-of-wedlock birth data and agreed with our proposed approach that would allow those States to be eligible to compete for the bonus. However, commenters also expressed several concerns.

Comment: One commenter was concerned that the NPRM included no standards by which NCHS ''must fairly evaluate the adjustment methods used by a State which had changed its reporting methodology'' for birth data. They suggested that the final rule clarify these standards in order to assure fair and consistent review of the additional information submitted by a State.

Response: We recognize the importance of fairly adjusting for changes in data collection. The NPRM proposed in § 283.4(b) that if a State changed its data collection methodology regarding nonmarital births, it would have to submit additional detailed information regarding this change, in addition to submitting the number of out-of-wedlock and total births. This information included an alternative calculation showing, to the greatest extent possible, what the number of out-of-wedlock births would have been under the prior methodology, documentation of the changes in data collection methodology, and how it determined the alternative number.

In the preamble we stated that NCHS would then calculate an adjustment factor based on this information. NCHS has extensive expertise in working with the State vital statistics data and working with States regarding the collection of these data.

Specifying in greater detail how NCHS will calculate the adjustment is not feasible until more specific information is available regarding the actual changes a State might make in data collection. However, NCHS will examine all information submitted with respect to this requirement to ensure that it is statistically valid.

Comment: Two commenters believed that the final rule should require States seeking the bonus to submit information regarding the policies they undertook to reduce their out-of-wedlock births, and that we should evaluate these efforts and disseminate the findings. The commenters cited sections 413(a) (research) and 413(c) (dissemination) of the Act in support of this suggestion. They believed that without such information, the Federal government might award significant sums of money without learning sufficiently about effective practices to lower out-of-wedlock births. Another commenter expressed the importance of learning from best practices regarding reduction in unintended pregnancies and out-of-wedlock births, but did not recommend that such information be required as part of this final rule.

Response: We recognize the importance of disseminating information on effective practices regarding efforts to reduce out-of-wedlock births and unintended pregnancies, and the Department has made it a priority to continue facilitating the collection, review, and dissemination of this information in the future. We will build on our existing efforts described in section IV of the preamble, ''Departmental Activities Related to Out-of-Wedlock Births'' and explore further ways to disseminate information on State best practices and winning strategies. The final rule was not changed to reflect our research and dissemination efforts because they are beyond the scope of section 403(a)(2) of the Act, to which this final rule pertains.

Also, the final rule does not require States to submit information on the policies they undertook to reduce out-of-wedlock births because such a requirement would be inconsistent with the eligibility requirements specified in section 403(a)(2) of the Act. The Act specifies that if a State is among the top five States with the largest decrease in its ratio of out-of-wedlock to total births and its abortion rate is lower than the rate in 1995, they are eligible for the bonus. This definition does not provide for making eligibility contingent on supplying information regarding policies aimed at reducing out-of-wedlock births.

Sections 413(a) and 413(c) of the Act direct the Secretary to conduct research on ''the benefits, effects and costs of State programs funded under [TANF]'' and disseminate information. However, these sections do not give us the authority to require such information from States, or to make bonus eligibility contingent on this information. In addition, efforts initiated by States to reduce out-of-wedlock births may be, but are not necessarily, ''programs funded under TANF.''

In addition, after reviewing the language of the NPRM, we have made two changes in paragraph § 283.4(b) of the final rule. The first change gives States greater flexibility regarding the information they submit with respect to changes in methodology for collecting birth data. In paragraph (b)(2) of the NPRM, we proposed that, in a year when a State changed its methodology for collecting birth data, the State must generate an alternative number of out-of-wedlock births based on a consistent methodology for the year of the change and the previous year. In the final rule, States for which NCHS agrees it would be technically infeasible to produce the alternative number would have the option of accepting an NCHS estimate of the alternative number. We made this change based on our identification of several complexities regarding the changes in birth data collection that have occurred. This change reflects our efforts to be accommodating of technical difficulties that States might face, while maintaining an award process that is fair and methodologically sound. Because NCHS will evaluate all information submitted by States to ensure it is methodologically valid, we strongly encourage States to work with NCHS as they respond to this eligibility criterion. Paragraphs (b)(2) and (3) reflect this change.

The second change affects when information must be submitted to NCHS on changes in a State's methodology for collecting birth data. Paragraph (b)(4) of the NPRM proposed that States must submit documentation on such changes made prior to 1998 and prior to the publication of the final rule within one year of publication of the final rule.

In the final rule, we have reduced this time period to two months for changes pertaining to 1997 or earlier years. Information pertaining to changes in data for 1998 or later years will not be due until the end of calendar year 1999 or the deadline that normally applies to the State's submission of vital statistics data for that year, whichever is later. This changes reflects a balance between our need to base the 1999 award on timely information and our efforts to allow States as much time as possible to submit the required information. This change is reflected in paragraph (b)(4).

Additional Information Related to This Section

As specified in section 403(a)(2)(C)(i)(I)(aa) of the Act, the calculation period for each bonus year covers four years, i.e., the most recent two calendar years for which NCHS has final data and the prior two calendar years. Consider the hypothetical example where bonus eligibility is being determined in July of 1999 and the most recent year for which NCHS has final data for all reporting States is 1997. In this example, the calculation period would be calendar years 1997, 1996, 1995, and 1994.

If a State did not change its method for determining marital status at any time during the calculation period, it will not need to submit any additional information beyond the information submitted to the NCHS as part of the vital statistics program. States must have submitted these vital statistics files for each year in the calculation period. NCHS will use these data to tabulate the number of total and out-of-wedlock births occurring to residents of each State.

While the determination of marital status at the time of birth is fairly standard across States, there is some variation. Most States use a direct question on marital status, while a few infer marital status based on various pieces of information.

Section 403(a)(2)(C)(i)(II)(aa) of the Act requires us to disregard changes in a State's birth data due to changed reporting methods. Examples of such changes in data collection include replacing an inferential procedure with a direct question on marital status, or changing the data items from which marital status is inferred.

Accordingly, if a State implemented changes that affected its data on out-of-wedlock births for the calculation period, the State must provide additional information to NCHS as specified in § 283.4. This additional information is necessary only if a State chooses to be considered for the bonus. It is not required as part of the Vital Statistics Cooperative Program.

Section 283.5 How Will We Use These Birth Data to Determine Bonus Eligibility?

This section of the NPRM explained how we would identify which States have the largest decrease in their ratios.

The comments we received on this section expressed support for the use of the proportionate ratio calculation and recommended that we design a process to award bonus funds to the maximum number of States each year. These latter comments were addressed in a prior section of the preamble.

We have made only editorial changes in the final rule for clarity.

Section 283.6 If a State Wants To Be Considered for Bonus Eligibility, What Data on Abortions Must It Submit?

This section of the NPRM described the data that a potentially eligible State also must submit on abortions in order to qualify for the bonus. As noted above, only those States that are potentially eligible based on their ratios of out-of-wedlock to total births would need to submit abortion data in each year. Other States cannot be eligible and, therefore, do not need to submit abortion numbers.

We received a number of comments in support of various provisions of this section. Various commenters supported:

- The proposal to review State abortion data only for those States with a decrease in out-of-wedlock births large enough to make them potentially eligible;
- The proposal that States will not be ranked according to their abortion data;
- The 60-day time period to report abortion data after a State is notified that it is potentially eligible;
- The approach in the NPRM which gave States flexibility to change their abortion data collection methodology over time and provide appropriately adjusted data to account for the change;
- The proposal that abortion data based on state of residence is preferred, but that States have flexibility to submit data based on either state of residence or state of occurrence; and
- The proposal that the responsibility for certifying the validity of abortion data lies with the Offices of the Governors and that ACF would not conduct further review or analysis of the data.

We also received several comments recommending changes in this section of the final rule. These include recommendations that state of residence data be required, that abortion data should not be required to cover the entire State population, that States should be allowed to adjust 1995 abortion data, and that there should be more Federal oversight regarding abortion data.

Comment: Several commenters questioned the provision that would allow States to submit data on either the total number of abortions performed within the State, or the total number of abortions performed within the State on in-state residents. Some commenters strongly recommended that the final rule require States to count only abortions to in-state residents. Other commenters recommended that the final rule should require States to count out-of-state abortions obtained by their residents as well. Some commenters believed that these changes were the only method to assure fairness, while other commenters believed these changes would reduce the unintended consequences that the bonus may have regarding the availability of abortion services.

Response: We recognize the value of using abortion data based on state of residence and the final rule continues to emphasize this as the preferred measure. However, the final rule does not require data based on state of residence because numerous States did not have data based on state of residence for the base year of 1995 and, therefore, would have no opportunity to compete for the bonus. In addition, we also did not accept the recommendation that a potentially eligible State obtain data from other States on abortions obtained by its residents in other States. This is because the degree to which neighboring States will have information on state of residence for abortions will vary across States, and because we have no authority to require all States to report this information. The final rule was not changed with respect to these comments.

Comment: One commenter urged that, for a State that does not have mandatory statewide reporting of abortion data and does not collect abortion statistics, the final rule permit such a State to report less than total population data, e.g., abortion data on the title XIX (Medicaid) population.

Response: Section 403(a)(2) of the Act clearly indicates that eligibility shall be based on the number of abortions performed in the State and does not provide for a measure based on other more narrowly defined populations. We did not change the final rule with respect to this comment.

Comment: One commenter observed that NCHS, through its Vital Statistics Cooperative Program, previously supported abortion data collection by grants to 14 States, and that the funding support was discontinued in the commenter's State during 1994. The commenter observed that this cessation in funding caused a reduction in effort to collect 1995 abortion data, and the 1995 abortion rate is a low point for that State. This has implications for that State in terms of the bonus, as 1995 is the base year for comparison purposes.

Response: We recognize that this Federal funding for collection of abortion data in 14 States was eliminated in 1995. To the extent that this elimination of funding led to

differences in data collection or reporting between 1995 and subsequent years in the bonus period, the final rule allows States to adjust their number of abortions to account for these differences. No change in the final rule was necessary in response to this comment.

Comment: Several commenters recommended more specific Federal requirements with respect to the submission of abortion data for the bonus and any adjustments to that data. (The Act states that States must adjust their abortion data if the data reporting methodology changed between 1995 and the evaluation year.) These commenters made the following recommendations:

- That the final rule provide guidelines for how a State should calculate the adjustment;
- That we make clear that States should adjust for changes in reporting among providers (e.g. changes in the proportion or makeup of providers reporting);
- That the final rule require States to report any legislative or policy changes in the State that could impact the collection or reporting of abortion data; and
- That we review the abortion data and information provided by States regarding changes in data collection.

Response: We agree that we should be more specific regarding adjustments for changes in abortion data collection and should require additional information from those States that adjust their abortion data. We have revised paragraph (d) of the final rule to reflect this.

We have stated more specifically in paragraph (d) what changes in data collection or reporting entails, including such things as changes in the response rate of providers in reporting abortion data. We have also stated that to qualify for the bonus, States must indicate whether or not they have adjusted their abortion data and, if so, give the rationale for the adjustment (e.g. describe how legislative, policy or procedural changes impacted data collection and necessitated the adjustment).

The final rule does not give more specific requirements regarding how States should adjust for changes in data collection because it is not feasible at this time to anticipate what these changes might be and how to best adjust for them. In the final rule, the States remain responsible for calculating any adjustment and certifying as to the correctness of the abortion data submitted.

Comment: Another commenter suggested that when submitting data on the number of abortions for the most recent year, the State should demonstrate that any decreases were not the result of restrictions in access to abortion services. The commenter expressed strong concern that without such an adjustment, the bonus provision could encourage States to restrict access to abortion services, given that States must have an abortion rate lower than their 1995 rate in order to qualify for the bonus.

Response: Section 403(a)(2)(C)(i)(I) of the Act specifies that if a State is among the top five States with the largest decrease in its ratio of out-of-wedlock to total births and its abortion rate (i.e., ratio of abortions to live births) is lower than the rate in 1995, it is eligible for the bonus. This definition does not provide for making eligibility contingent on access to abortion services. Therefore, we have not changed the final rule with respect to this comment.

Finally, we have deleted the phrase ''by the end of calendar year 1997'' in paragraph (c) as no longer applicable, and made other editorial changes for clarity in paragraph (d).

Additional Information Related to This Section

The information the State must submit for 1995 and the most recent year is either the number of all abortions (i.e., both medically and surgically induced abortions) performed within the State, or the number of all abortions performed within the State on in-state residents. We will accept either measure. However, we prefer the second measure because the population of in-state residents is more relevant for the intent of this provision. We assume that State policies to reduce out-of-wedlock childbearing will affect in-state residents most directly.

We received numerous comments during our external consultation, prior to publication of the NPRM, that the measure should be based on in-state residents, if possible. We understand, however, that some States collect data only on total abortions that occurred within the State and do not separately identify abortions provided to in-state or out-of-state residents. While such States could begin to collect the data on a state-resident basis in the future, their 1995 data would not have been collected on this basis. We investigated whether a State could adjust its 1995 data to make it comparable to future data based on in-state residents. After extensive consultation, we concluded this would not be technically feasible. We have retained this policy position in the final rule.

The State must use the same definition to measure abortions in later years as it chooses for 1995. For example, if a State submitted data on abortions performed in the State in 1995, it also must submit data on abortions performed in the State in 1999.

Most States have reporting systems in place for abortion data and these are the preferred data to use for purposes of this bonus. However, States have the flexibility to choose the source of the abortion data they submit, allowing States that do not already have their own reporting system in place to compete for the bonus using data from other sources. Regardless of the data source, the data must cover the entire State population, and not be limited to other more narrowly defined populations such as Medicaid recipients.

The State also has some flexibility to change its abortion reporting over time. However, the State must adjust for effects of these changes. This flexibility allows States to improve their abortion reporting systems without making them ineligible for the bonus. The Governor, or his or her designee, must certify that the State has made the appropriate adjustments.

These abortion reporting restrictions, including the need to adjust for changes in data reporting and the need to define the population consistently over time, apply only to the number of abortions reported to ACF for purposes of this bonus. Therefore, the number of abortions reported for purposes of the bonus might or might not equal the number of abortions reported in public health statistics.

The NPRM did not specify what methodology States must use to adjust for changes in data collection. After extensive consultation, we do not believe it is feasible to design a single methodology that would address all possible changes in data reporting. In addition, we understand that some State privacy laws restrict the types of abortion provider information that can be reported. Some of the more specific reporting requirements we considered as a way of ensuring a more uniform methodology appeared to conflict with these State confidentiality laws.

Our aim in this section of the final rule is to obtain from States the best quality and most standard abortion data possible. We believe this is necessary for the fair and equitable distribution of these bonus awards. We also believe, however, that this rule provides States with important flexibility that would

make it technically feasible for States to submit the necessary data if they choose to compete for the bonus. We believe that this flexibility better incorporates State program knowledge and expertise in measuring abortions.

This flexibility could introduce variation in measurement of abortions across States for purposes of the bonus and could raise concerns about fair competition for the bonus. However, these concerns are greatly mitigated by the fact that States are not competing with each other on their abortion rates. As noted above, a State's abortion rate affects its own qualification only, not the qualification of any other State.

A State cannot be eligible for the bonus unless it submits the necessary abortion data. However, as competition for the bonus is voluntary, this provision places no requirement on States to submit these data.

Section 283.7 How Will We Use These Data on Abortions To Determine Bonus Eligibility?

This section of the NPRM described how we would use the abortion data to identify which States are eligible for the bonus.

Comment: We received one comment specifically on this section. Two organizations recommended an alternative ratio for computing the abortion ratio. The NPRM proposed to calculate the rate of abortions for 1995 and for the most recent year for which abortion data are available. The rate would be equal to the number of abortions divided by the total number of live births in the State. The commenters believed that this ratio might encourage States to manipulate birth rates. They recommended that the ratio be based on abortions per 1,000 women ages 15 to 44. They stated that this is a standard measure, consistent with the statute, and would more directly reflect the number of abortions and would not unnecessarily incorporate birthrate data into the calculation.

Response: We recognize the importance of using standard measures to calculate changes in abortion rates, and in developing the NPRM, we considered using the number of abortions per 1,000 women ages 15 to 44. However, the number of women ages 15 to 44 in each State is difficult to measure precisely between census years. Typically, these measures come from intercensal population estimates. The degree of error in these data varies from year to year and from State to State, and the estimates decline in reliability as the interval since the last census increases. This makes it difficult to separate actual changes in the abortion rate from year to year changes in estimation error. The number of births occurring to residents of the State is highly reliable because it is based on a complete count of all births in the State. In contrast, data on the number of women in the State are based on intercensal population estimates. We made no changes to the final rule with respect to this comment.

Additional Information Related to This Section

We will use the abortion data that States provide to calculate a rate of abortions. This rate would equal the number of abortions in a State for the most recent year, divided by the number of total resident live births for the same year as reported by NCHS. This statistic is also known as the ''abortion to live birth ratio.'' It is a standard statistic used to measure abortions and incorporates the same denominator as the ratio of live out-of-wedlock births to total births.

Section 283.8 What Will be the Amount of the Bonus?

This section of the NPRM explained how we would determine the amount of the bonus for eligible States. These amounts are specified in section 403(a)(2)(B) of the Act.

For Guam, the Virgin Islands, and American Samoa, the award would be 25 percent of their mandatory ceiling amount as defined in section 1108 of the Act. Any bonuses paid to the these States would be subtracted from $100 million (the total annual amount available for the bonus awards), and the remainder would be divided among the other qualifying States up to a maximum award of $25 million per State. If Guam, the Virgin Islands, and American Samoa are not among the qualifying States, the bonus for each State would be $20 million if five States qualified and $25 million if fewer States qualified.

Consider the hypothetical example where American Samoa and four States other than American Samoa, Guam and the Virgin Islands qualify for the bonus. In this case, American Samoa would receive $250,000 (25 percent of their mandatory ceiling amount of $1,000,000) and the remaining eligible States would each receive $24,937,500 ($100,000,000 minus $250,000 all divided by four). If American Samoa and two States other than Guam, American Samoa and the Virgin Islands qualified for the bonus, American Samoa would receive $250,000 and the remaining States would receive $25 million, which is the maximum amount that any State can receive.

We received no comments on and have made no changes in this section of the final rule.

Section 283.9 What Do Eligible States Need To Know To Access and Use the Bonus Funds?

This section of the NPRM specified additional information on how we would pay the bonus and how States may use bonus award funds. In the NPRM, we proposed to pay the award to the Executive Office of the Governor. We also specified that States must use bonus funds to carry out the purposes of the TANF program and that bonus award funds are subject to the limitations in, and the requirements of, sections 404 and 408 of the Act.

We made one change in this section after further internal ACF discussion and made other changes in response to comments. In the final rule, we deleted the proposed provision to pay the bonus to the Executive Office of the Governor. We continue to believe that the Governor, as Chief Executive Officer of the State, is responsible not only for the TANF block grant program but for the well-being of all citizens of the State, including efforts to reduce out-of-wedlock childbearing for the State population as a whole. Therefore, we will award the bonus to the Governor of the winning State(s) and other jurisdiction(s), but, for uniform fiscal reporting and accounting purposes, we will issue the bonus award grant funds to the TANF agency.

Comment: Several commenters asked for a clarification of and more information on how bonus funds may be used and what limitations apply to the use of these funds. One commenter suggested that the final rule direct States to use bonus funds only on specific programs, i.e., public family planning education and contraception services, child health and child day care, and job training for women. Other commenters questioned why the prohibitions and limitations in sections 404 and 408 of the Act applied to bonus award funds given that the funds related to the State's entire population, not just the TANF population.

Response: We agree that clarification is needed regarding the provisions of this section. First, in the context of the flexibility provided to States under the TANF block grant program, we decline to specify how States must use these bonus award funds. We want to make clear that the State has the same flexibility on the use of these funds that it has in the use of the TANF block grant funds. We have added an example in paragraph (a) of the final rule to clarify that States may use bonus award funds

for statewide programs to prevent and reduce the incidence of out-of-wedlock pregnancies, a purpose of the TANF program in section 401 of the Act.

Second, the prohibitions and limitations in sections 404 and 408 are statutory requirements. Grants made to a State under section 403 of the Act—whether TANF block grant funds, bonus award funds, or Welfare-to-Work grants—are subject to these conditions, as applicable. Section 404(a)(1) of the Act provides that the State may use grants made under section 403 (including the bonus award) ''. . . in any manner that is reasonably calculated to accomplish the purpose of this part . . .'' The purposes of this part (i.e., title IV, Part A, of the Act) are found in section 401 of the Act. The funds may also be used ''. . . in any manner that the State was authorized to use the funds . . . under prior programs'' (i.e., title IV–A and title IV–F of the Act).

However, sections 404 (b) through (j) and section 408 of the Act specify a number of limitations on the use of TANF funds. For example, if a State uses bonus funds to provide assistance, the prohibitions against providing assistance to certain individuals in section 408 of the Act will apply. If a State uses bonus funds for activities that are not defined as assistance, then these prohibitions are not applicable.

Finally, some of the general requirements in sections 404 and 408 of the Act will apply regardless of how the State chooses to use these funds. For example, the 15 percent limitation on the use of TANF grant funds for administrative purposes (section 404(b)) means that any bonus award funds will be added to the State's total TANF grant funds and the administrative cost percentage will be computed based on the total.

Comment: We received several comments asking us to clarify the expenditure period for bonus award funds. One commenter suggested that the State be allowed three years to expend these funds.

Response: Because there is no expenditure period for TANF funds, and because bonus award funds are a part of the total TANF funds awarded to States under section 403 of the Act, there is no expenditure period for bonus award funds. In using bonus award funds, States must report on the use of these funds as they do other TANF funds.

Comment: One commenter recommended that we state explicitly in the rule that bonus award funds to Puerto Rico, Guam, the Virgin Islands, and American Samoa are not subject to the mandatory funding ceilings for these jurisdictions in section 1108(c)(4) of the Act.

Response: We agree and have added a new paragraph (c) to this section to specify this information. It is important to clarify this provision because section 1108(c)(4) sets a statutory limit on the TANF funds these jurisdictions may receive. We provide explicitly that any bonus funds received by Puerto Rico, the Virgin Islands, Guam or American Samoa will not be counted toward this limitation.

E. Response to Comments That Were Beyond the Scope of the Final Rule

Several comments we received were outside the scope of this rulemaking. These include comments expressing concern that a competitive bonus is not the appropriate way to try to reduce out-of-wedlock childbearing, that efforts to reduce out-of-wedlock births should not place the burden solely on women, and that policies addressing single parent families should not place unreasonable burdens on men. Because these comments focused on general criticisms of the statutory language or criticisms of other policies (which cannot be addressed within this final rule), we made no changes to the final rule with respect to these comments.

IV. Departmental Activities Related to Out-of-Wedlock Births

The Department has various activities underway related to reducing out-of-wedlock births. Given public comments on the Department's role in providing information on this important topic, we summarize some of these activities below, and have made materials regarding these efforts available to the public.

In 1995, the Department produced the *Report to Congress on Out-of-Wedlock Childbearing,* and *Beginning too Soon: Adolescent Sexual Behavior, Pregnancy and Parenthood,* both reports that contained valuable information regarding the occurrence of out-of-wedlock and teen pregnancy as well as strategies for addressing these concerns. Since then, the Department has undertaken many additional initiatives to support programs and research focused on reducing out-of-wedlock childbearing.

In 1997, the Department developed the National Strategy to Prevent Teen Pregnancy, as required in section 905 of PRWORA. The Department has recently released its first annual report to Congress, citing, among other things, that HHS has funded teen pregnancy prevention programs in at least 31 percent of communities across the country. The report also lists more than twenty departmental programs aimed at educating teens and preventing pregnancy, including Girl Neighborhood Power! and demonstration grants to communities in 11 States funded through The Center for Disease Control and Prevention Community Coalition Partnership Programs.

To help disseminate information on efforts to reduce teen pregnancy, the Department is currently working with the National Campaign to Prevent Teen Pregnancy to develop a ''Tool Kit'' that will provide States and communities with practical advice on how to implement a wide range of teen pregnancy prevention initiatives. The Department will be disseminating additional information to communities regarding programs that specifically target boys and young men.

HHS is also administering the State Abstinence Education Program as authorized by section 912 of the PRWORA. This program authorizes $50 million per year beginning in FY 1998. By July 1997, every State had applied for this money to build on their State efforts to prevent teen pregnancy (although New Hampshire has now declined their funding for FY 1998). As mandated in the Balanced Budget Act of 1997, the Department is conducting an evaluation of these programs, and will include five sites involving random assignment and one involving a rigorous evaluation of comprehensive community approaches.

The Office of the Assistant Secretary for Planning and Evaluation also is providing additional funding to three existing rigorous teen pregnancy prevention evaluations. These three programs each have a unique approach, including differing levels of pregnancy prevention services, a statewide program targeted at siblings of adolescent mothers, and a statewide teen pregnancy prevention program that allows each local community to develop its own intervention.

The Department also is actively supporting expanding pregnancy prevention efforts to include a focus on boys and young men. Through the HHS Regional Offices $2 million in small grants have been awarded to Title X Family Planning Clinics to develop pilot programs designed to prevent premature fatherhood. These projects employ male high school students as interns to provide them with on-the-job training in clinic operations and allied health occupations and provide education about male responsibility, family planning and reproductive health.

In addition to these programmatic initiatives, the Department has supported numerous research and

evaluation projects. The National Study of Adolescent Health, the National Survey of Family Growth, and the National Survey of Adolescent Males have all provided important insight into adolescent risk behaviors including sexual activity and response to pregnancy.

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 rule is consistent with these priorities and principles. This 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.

To a considerable degree, this final rule reflects the comments we received in response to the NPRM. We appreciate and have seriously considered all of the detailed and thoughtful comments we received.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) 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 Act to include small businesses, small non-profit organizations, and small governmental agencies. This rule will affect only States. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

This rule does not contain information collection activities that are subject to review and approval by the Office of Management and Budget. The birth data on which we will base the computation of the bonus are currently available from the NCHS. Therefore, no new data collection is required to measure out-of-wedlock birth ratios. The abortion data would be solicited only for up to eight States, i.e., five States and three Territories. This does not meet the criteria for OMB review and approval.

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.

We have determined that this 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 final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 283

Health statistics, Family planning, Maternal and child health, Public assistance programs.

(Catalogue of Federal Domestic Assistance Programs: 17.253 Employment and Training Assistance—Welfare-to-Work Grants to States and Local Entities for Hard-to-Employ Welfare Recipient 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; 93.559-Loan Fund; and 93.595-Welfare Reform Research, Evaluations and National Studies)

Dated: December 24, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: January 11, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR chapter II by adding Part 283 to read as follows:

PART 283—IMPLEMENTATION OF SECTION 403(A)(2) OF THE SOCIAL SECURITY ACT BONUS TO REWARD DECREASE IN ILLEGITIMACY RATIO

Sec.

283.1 What does this part cover?
283.2 What definitions apply to this part?
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283.8 What will be the amount of the bonus?
283.9 What do eligible States need to know to access and use the bonus funds?

Authority: 42 U.S.C. 603

§ 283.1 What does this part cover?

This part explains how States may be considered for the ''Bonus to Reward Decrease in Illegitimacy Ratio,'' as authorized by section 403(a)(2) of the Social Security Act. It describes the data on which we will base the bonus, how we will make the award, and how we will determine the amount of the award.

§ 283.2 What definitions apply to this part?

The following definitions apply to this part:

Abortions means induced pregnancy terminations, including both medically and surgically induced pregnancy terminations. This term does not include spontaneous abortions, i.e., miscarriages.

Act means the Social Security Act.

Bonus refers to the Bonus to Reward Decrease in Illegitimacy Ratio, as set forth in section 403(a)(2) of the Act.

Calculation period refers to the four calendar years used for determining the decrease in the out-of-wedlock birth ratios for a bonus year. (The years included in the calculation period change from year to year.)

Most recent two-year period for which birth data are available means the most recent two calendar years for which the National Center for Health Statistics has released final birth data by State.

Most recent year for which abortion data are available means the year that is two calendar years prior to the current calendar year. (For example, for eligibility determinations made during calendar year 1999, the most recent year for which abortion data are available would be calendar year 1997.)

NCHS means the National Center for Health Statistics, of the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

Number of out-of-wedlock births for the State means the final number of births occurring outside of marriage to residents of the State, as reported in NCHS vital statistics data.

Number of total births for the State means the final total number of live births to residents of the State, as reported in NCHS vital statistics data.

Rate of abortions means the number of abortions reported by the State in the

most recent year for which abortion data are available divided by the State's total number of resident live births reported in vital statistics for that same year. (This measure is also more traditionally known as the ''abortion to live birth ratio.'')

Ratio refers to the ratio of live out-of-wedlock births to total live births, as defined in § 283.5(b).

State means 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, as provided in section 419(a)(5) of the Act.

Vital statistics data means the data reported by State health departments to NCHS, through the Vital Statistics Cooperative Program (VSCP).

We (and any other first person plural pronouns) means the Secretary 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.

§ 283.3 What steps will we follow to award the bonus?

(a) For each of the fiscal years 1999 through 2002, we will:

(1) Based on the vital statistics data provided by NCHS as described in § 283.4, calculate the ratios for the most recent two years for which final birth data are available, and for the prior two years, as described in § 283.5;

(2) Calculate the proportionate change between these two ratios, as described in § 283.5.

(3) Identify as potentially eligible a maximum of eight States, i.e., Guam, the Virgin Islands, and American Samoa, and five other States, that have qualifying decreases in their ratios, using the methodology described in § 283.5;

(4) Notify these potentially eligible States that we will consider them for the bonus if they submit data on abortions as stated in § 283.6; and

(5) Identify which of the potentially eligible States that submitted the required data on abortions have experienced decreases in their rates of abortion relative to 1995, as described in § 283.7. These States will receive the bonus.

(b) We will determine the amount of the grant for each eligible State, based on the number of eligible States, and whether Guam, American Samoa, or the Virgin Islands are eligible. No State will receive a bonus award greater than $25 million in any year.

§ 283.4 If a State wants to be considered for bonus eligibility, what birth data must it submit?

(a) To be considered for a bonus, the State must have submitted data on out-of-wedlock births as follows:

(1) The State must have submitted to NCHS the final vital statistics data files for all births occurring in the State. These files must show, among other elements, the total number of live births and the total number of out-of-wedlock live births occurring in the State. These data must conform to the Vital Statistics Cooperative Program contract for all years in the calculation period. This contract specifies, among other things, the guidelines and time-lines for submitting vital statistics data files; and

(2) The State must have submitted these data for the most recent two years for which NCHS reports final data, as well as for the previous two years.

(b) If a State has changed its method of determining marital status for the purposes of these data, the State also must have met the following requirements:

(1) The State has identified all years for which the method of determining marital status is different from that used for the previous year;

(2) For those years identified under paragraph (b)(1) of this section, the State has either:

(i) Replicated as closely as possible a consistent method for determining marital status at the time of birth, and the State has reported to NCHS the resulting alternative number of out-of-wedlock births; or

(ii) If NCHS agrees that such replication is not methodologically feasible, the State may chose to accept an NCHS estimate of what the alternative number would be;

(3) The State has submitted documentation to NCHS on what changes occurred in the determination of marital status for those years and, if appropriate, how it determined the alternative number of out-of-wedlock births for the State; and

(4) For methodological changes that were implemented prior to 1998 and applicable to data collected for the bonus period, the State has submitted the information described in paragraphs (b)(1), (2) and (3) of this section within two months after April 14, 1999. For such changes implemented during or after 1998, the State must submit such information either by the end of calendar year 1999 or according to the same deadline that applies to its vital statistics data for that year, whichever is later.

§ 283.5 How will we use these birth data to determine bonus eligibility?

(a) We will base eligibility determinations on final vital statistics data provided by NCHS showing the number of out-of-wedlock live births and the number of total live births among women living in each State and a factor provided by NCHS to adjust for changes in data reporting for those States that have changed their methodology for collecting data on out-of-wedlock births during the bonus period.

(b) We will use the number of total live births and the number of out-of-wedlock births, adjusted for any changes in data collection or reporting, to calculate the decrease in the ratio of out-of-wedlock to total births for each State as follows:

(1) We will calculate the ratio as the number of out-of-wedlock births for the State during the most recent two-year period for which NCHS has final birth data divided by the number of total births for the State during the same period. We will calculate, to three decimal places, the ratio for each State that submits the necessary data on total and out-of-wedlock births described in § 283.4.

(2) We will calculate the ratio for the previous two-year period using the same methodology.

(3) We will calculate the proportionate change in the ratio as the ratio of out-of-wedlock births to total births for the most recent two-year period minus the ratio of out-of-wedlock births to total births from the prior two-year period, all divided by the ratio of out-of-wedlock births to total births for the prior two-year period. A negative number will indicate a decrease in the ratio and a positive number will indicate an increase in the ratio.

(c) We will identify which States have a decrease in their ratios large enough to make them potentially eligible for the bonus, as follows:

(1) For States other than Guam, American Samoa and the Virgin Islands, we will use this calculated change to rank the States and identify which five States have the largest decrease in their ratios. Only States among the top five will be potentially eligible for the bonus. We will identify fewer than five such States as potentially eligible if fewer than five experience decreases in their ratios. We will not include Guam, American Samoa and the Virgin Islands in this ranking.

(2) If we identify more than five States due to a tie in the decrease, we will

recalculate the ratio and the decrease in the ratio to as many decimal places as necessary to eliminate the tie. We will identify no more than five States.

(3) For Guam, American Samoa and the Virgin Islands, we will use the calculated change in the ratio to identify which of these States experienced a decrease that is either at least as large as the smallest qualifying decrease identified in paragraph (c)(1) of this section, or a decrease that ranks within the top five decreases when all States and Territories are ranked together. These identified States will be potentially eligible for the bonus also.

(4) We will notify the potentially eligible States, as identified under paragraphs (a) through (c) of this section that they must submit the information on abortions specified under § 283.6 if they want to be considered for the bonus.

§ 283.6 If a State wants to be considered for bonus eligibility, what data on abortions must it submit?

(a) To be considered further for bonus eligibility, each potentially eligible State, as identified under § 283.5, must submit to ACF data and information on the number of abortions for calendar year 1995 within two months of this notification. This number must measure either of the following:

(1) For calendar year 1995, the total number of abortions performed by all providers within the State; or

(2) For calendar year 1995, the total number of abortions performed by all providers within the State on the total population of State residents only. This is the preferred measure.

(b) States must have obtained these data on abortions for calendar year 1995 within 60 days of publication of the final rule and must include with their submission of 1995 data an official record documenting when they obtained the abortion data.

(c) Within two months of notification by ACF of potential eligibility, the State must submit:

(1) The number of abortions performed for the most recent year for which abortion data are available (as defined in § 283.2 to mean the year that is two calendar years prior to the current calendar year). In measuring the number of abortions, the State must use the same definition, either under paragraph (a)(1) or paragraph (a)(2) of this section, for both 1995 and the most recent year; or

(2) If applicable, the adjusted number and information specified in paragraph (d) of this section.

(d) If the State's data collection or reporting methodology changed between 1995 and the bonus year in such a way as to reflect an increase or decrease in the number of abortions that is different than what actually occurred during the period, the State must:

(1) When submitting the number of abortions for the most recent year under paragraph (c)(2), adjust the number to exclude increases or decreases in the number due to changes in methodology for collecting or reporting the data. For example, this calculation should include adjustments for increases or decreases in response rates for providers in reporting abortion data;

(2) Provide a rationale for the adjustment, i.e., a description of how the data collection or reporting methodology was changed. This could include a description of how legislative, policy or procedural changes affected the collection or reporting of abortion data, or an indication of changes in the response rate of providers in reporting abortion data; and

(3) Provide a certification by the Governor, or his or her designee, that the number of abortions reported to ACF accurately reflects these adjustments for changes in data collection or reporting methodology.

§ 283.7 How will we use these data on abortions to determine bonus eligibility?

(a) For those States that have met all the requirements under §§ 283.1 through 283.6, we will calculate the rate of abortions for calendar year 1995 and for the most recent year for which abortion data are available as defined in § 283.2. These rates will equal the number of abortions reported by the State to ACF for the applicable year, divided by total live births among women living in the State reported by NCHS for the same year. We will calculate the rates to three decimal places.

(b) If ACF determines that the State's rate of abortions for the most recent year for which abortion data are available is less than the rate for 1995, and, if the State has met all the requirements listed elsewhere under this part, the State will receive the bonus.

§ 283.8 What will be the amount of the bonus?

(a) If, for a bonus year, none of the eligible States is Guam, American Samoa or the Virgin Islands, then the amount of the grant shall be:

(1) $20 million per State if there are five eligible States; or

(2) $25 million per State if there are fewer than five eligible States.

(b) If for a bonus year, Guam, the Virgin Islands, or American Samoa is an eligible State, then the amount of the grant shall be:

(1) In the case of such a State, 25 percent of the mandatory ceiling amount as defined in section 1108 of the Act; and

(2) In the case of any other State, $100 million, minus the total amount of any bonuses paid to Guam, the Virgin Islands, and American Samoa, and divided by the number of eligible States other than Guam, American Samoa and the Virgin Islands, not to exceed $25 million per State.

§ 283.9 What do eligible States need to know to access and use the bonus funds?

(a) States must use the bonus funds to carry out the purposes of the Temporary Assistance for Needy Families Block Grant in section 401 and 404 of the Act. This may include statewide programs to prevent and reduce the incidence of out-of-wedlock pregnancies.

(b) As applicable, these funds are subject to the requirements in, and the limitations of, sections 404 and 408 of the Act.

(c) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

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April 14, 1999

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 46 and 48

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines; Proposed Rules

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 46 and 48

RIN 1219–AB17

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend MSHA's existing health and safety training regulations by establishing new training requirements for shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines. Congress has prohibited MSHA from expending funds to enforce training requirements at these mines since fiscal year 1980. This proposed rule would implement the training requirements of section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) and provide for effective miner training at the affected mines once Congress has removed the appropriation's prohibition from MSHA's budget. At the same time, the proposed rule would allow mine operators the flexibility to tailor their training programs to the specific needs of their miners and operations.

DATES: Submit comments on or before June 14, 1999.

ADDRESSES: Send comments on the proposed rule—

(1) By mail to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By facsimile to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or

(3) By electronic mail to comments@msha.gov. If possible, please supplement written comments with computer files on disk; contact the Agency with any format questions.

Submit written comments on the information collection requirements directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA; and to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, at 703–235–5551; or by electronic mail to comments@msha.gov.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Plain Language

We (MSHA) wrote this proposed rule in the more personal style advocated by the President's executive order on ''plain language.'' ''Plain language'' encourages the use of—

- personal pronouns (we and you);
- sentences in the active voice;
- a greater use of headings, lists, and questions, as well as charts, figures, and tables.

In this proposed rule, ''you'' refers to production-operators and independent contractors because they have the primary responsibility for compliance with MSHA regulations. In addition, we recognize and appreciate the value of comments, ideas, and suggestions from labor organizations, industry associations, and other parties who have an interest in health and safety training for miners. We would appreciate comments and suggestions from all parties on this proposed rule and on our use of ''plain language.'' How could we improve the clarity of this style?

II. Paperwork Reduction Act

This proposed rule contains collection of information requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA 95). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. We invite comments on—

(1) Whether the proposed collection of information is necessary for proper performance of our functions, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to us.

Submission

MSHA has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for MSHA; and to Carol J. Jones, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Submit written comments on the information collection no later than June 14, 1999.

Description of Respondents

Those required to provide the information are mine operators and individuals who are paid to perform tasks for the mine operator (e.g., instructors).

Description of Information Collection Burden

The proposal contains information collection requirements in §§ 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11. The proposed rule imposes first year total burden hours and costs of 239,188 hours and $8,291,569. The first year burden hours and costs are composed by summing the figures in Tables VII–1, VII–2, and VII–3. After the first year, the annual burden hours and costs would be 226,685 hours and $7,865,469, which is shown in Table VII–2

Table VII–1 presents one-time burden hours and costs by provision and mine size.

TABLE VII–1.—MINE OPERATORS' ONE-TIME BURDEN HOURS AND COSTS

Prov.	Mines (1–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.3	7,509	$256,290	3,277	$111,830	1,207	$42,250	11,993	$410,370

Table VII–2 presents annual burden hours and cost by provision and mine size.

TABLE VII–2.—MINES OPERATORS' ANNUAL BURDEN HOURS AND COSTS

Prov.	Mines (1–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.5	41,007	$1,676,058	21,458	$1,016,502	4,860	$297,170	67,325	$2,989,730
46.6	7,898	284,341	4,240	152,627	978	35,192	13,116	472,159
46.7	5,599	201,579	7,980	287,297	7,111	256,008	20,691	744,884
46.8	34,551	1,243,839	15,433	555,582	5,461	196,582	55,445	1,996,003
46.9	2,765	73,267	5,876	155,725	5,704	151,164	14,346	380,156
46.11	25,208	579,773	22,005	506,115	8,550	196,650	55,763	1,282,538
Total	117,028	4,058,857	76,992	2,673,847	32,664	1,132,765	226,685	7,865,469

Table VII–3 presents miners and miners' representatives one-time burden hours and costs.

TABLE VII–3.—MINERS AND MINERS' REPRESENTATIVES—ONE-TIME BURDEN HOURS AND COSTS

Prov.	Mines (–5)		Mines (6–19)		Mines (≥20)		Totals	
	Hrs.	Costs	hrs.	Costs	Hrs.	Costs	Hrs.	Costs
46.3	336	$7,728	146	$3,358	28	$644	510	$11,730

Paragraph (a) of § 46.3 requires you to develop and implement a written training plan that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;

(2) 1,467 mines that employ between 6 and 19 workers; and

(3) 285 mines that employ 20 or more workers.

MSHA estimates that a mine supervisor, earning $36 per hour, would take 2 hours to write a plan in mines that employ fewer than 20 persons, and 4 hours in mines that employ 20 or more persons. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by you who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by us. For each size category, we estimate that 20 percent of you will choose to write a plan and send it to us for approval. Thus, the mines affected by this provision are—

(1) 672 mines that employ 5 or fewer workers;

(2) 293 mines that employ between 6 and 19 workers; and

(3) 57 mines that employ 20 or more workers.

MSHA estimates that it would take a clerical worker, earning $17 per hour, about 0.1 hours per mine to photocopy and mail the training plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (d) requires you to provide miners' representatives with a copy of the training plan. At mines where no miners' representative has been designated, you must post a copy of the plan at the mine or provide a copy to each miner. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;

(2) 1,467 mines that employ between 6 and 19 workers; and

(3) 285 mines that employ 20 or more workers.

MSHA estimates that a clerical worker, earning $17 per hour, would take 0.1 hours to photocopy the plan and either deliver or post the plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to you, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by you, but by miners and their representatives.

MSHA estimates that a miner or miners' representative would submit comments for 5 percent of the affected mines in each size category. The mines affected by this provision are—

(1) 168 mines that employ 5 or fewer workers;

(2) 73 mines that employ between 6 and 19 workers; and

(3) 14 mines that employ 20 or more workers.

MSHA estimates that a miner or miners' representatives, earning $23 per hour, would take 2 hours per affected mine to prepare written comments. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (g) allows you, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal. The mines affected by this provision are—

(1) 13 mines that employ 5 or fewer workers;
(2) 6 mines that employ between 6 and 19 workers; and
(3) 1 mine that employees 20 or more workers.

MSHA estimates that for 90% of you who would appeal a decision, a mine supervisor would write the appeal. MSHA estimates that a mine supervisor, earning $36 per hour, would take 4 hours to write the appeal. The one-time costs are annualized using an annualization factor of 0.07.

MSHA further estimates that for the remaining 10% of you who would appeal a decision, an attorney (a third party) would write the appeal. There are no mine operator burden hours in this case, because you would pay the third party for its services. The attorney fee to handle an appeal process is estimated to be $2,000 per appeal, and this cost is annualized using an annualization factor of 0.07.

Paragraph (h) requires you to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you must have the capability to provide the plan upon request by MSHA, miners, or their representatives. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that a clerical worker, earning $17 per hour, would take 0.1 hours to photocopy and file the training plan. The one-time costs are annualized using an annualization factor of 0.07.

Paragraph (a) of § 46.5 requires you to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work under the close supervision of an experienced miner. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning $36 per hour, would take 6 hours annually to prepare for the new miner training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

(1) 0.46 sessions for mines that employ 5 or fewer workers;
(2) 0.64 sessions for mines that employ between 6 and 19 workers; and
(3) 0.82 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 13.48 hours.

Additionally, we estimate that part of new miner training would be provided off-site by a third party. You would pay the third party for providing this part of the new miner training; thus you would incur burden costs but no burden hours. The number of miners receiving off-site training are—

(1) 1,537 miners in mines that employ 5 or fewer workers;
(2) 1,877 miners in mines that employ between 6 and 19 workers; and
(3) 940 miners in mines that employ 20 or more workers.

The annual costs for off-site training are $130 per miner. This consists of the following: a $35 training fee; $30 for transportation to off-site training; $30 per diem for meals; and $35, on average, for overnight lodging (We assume that half of the miners receiving off-site training will require overnight lodging for one night at $70 per night, or 0.5 × $70).

Paragraph (a) of § 46.6 requires you to provide each newly-hired experienced miner with certain training before the miner begins work. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that it would take a mine supervisor, earning $36 per hour, 1 hour annually to prepare to give the experienced miner training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

(1) 0.45 sessions for mines that employ 5 or fewer workers;
(2) 0.63 sessions for mines that employ between 6 and 19 workers; and
(3) 0.81 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 3 hours.

Paragraph (a) of § 46.7 requires that before a miner performs a task for which he or she has no experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes. The mines affected by this provision are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning $36 per hour, would take 0.25 hours annually to prepare for the task training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

(1) 2.36 sessions for mines that employ 5 or fewer workers;
(2) 8.65 sessions for mines that employ between 6 and 19 workers; and
(3) 41.17 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 0.6 hours.

Paragraph (a) of § 46.8 requires that at least every 12 months, you must provide each miner with no less than 8 hours of refresher training. The mines affected by this provision in each size category are—

(1) 3,361 mines that employ 5 or fewer workers;
(2) 1,467 mines that employ between 6 and 19 workers; and
(3) 285 mines that employ 20 or more workers.

MSHA estimates that for each mine, a mine supervisor, earning $36 per hour, would take 3 hours to prepare for the task training. MSHA further estimates that the average number of training sessions the mine supervisor would provide annually are—

(1) 0.91 sessions for mines that employ 5 or fewer workers;
(2) 0.94 sessions for mines that employ between 6 and 19 workers; and
(3) 2.02 sessions for mines that employ 20 or more workers.

On average, each training session is estimated to last 8 hours.

Paragraph (a) of § 46.9 requires you, upon completion of each training program, to record and certify on MSHA Form 5000–23, or on a form that contains the required information, that the miner has completed the training. False certification that training was

completed is punishable under § 110(a) and (f) of the Act. For all records required to be kept in §§ 46.5, 46.6, 46.7, and 46.8, MSHA estimates that for each mine, a mine supervisor, earning $36 per hour, would take 0.05 hours to record and certify each miner's training record. In addition, it would take a clerical worker, earning $17 per hour, 0.05 hours to prepare, copy, and distribute the certificate.

The annual number of training records required to be kept under § 46.5 (New miner training) are—

(1) 1,537 in mines that employ 5 or fewer workers;
(2) 1,877 in mines that employ between 6 and 19 workers; and
(3) 940 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.6 (Newly-hired experienced miner training) are—

(1) 1,516 in mines that employ 5 or fewer workers;
(2) 1,856 in mines that employ between 6 and 19 workers; and
(3) 930 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.7 (New task training) are—

(1) 18,446 in mines that employ 5 or fewer workers;
(2) 41,273 in mines that employ between 6 and 19 workers; and
(3) 41,380 in mines that employ 20 or more workers.

The annual number of training records required to be kept under § 46.8 (Annual refresher training) are—

(1) 6,149 in mines that employ 5 or fewer workers;
(2) 13,758 in mines that employ between 6 and 19 workers; and
(3) 13,793 in mines that employ 20 or more workers.

During the public meetings, numerous commenters stated that records should not have to be retained at the mine site. MSHA agrees and the proposed rule provides that records are not required to be maintained at the mine site, and therefore can be electronically filed in a central location, so long as the records are made available to the authorized representative of the Secretary upon request within a reasonable time, in most cases one day.

Although the proposed rule does not require backing up the data, some means are necessary to ensure that electronically stored information is not compromised or lost. MSHA encourages mine operators who store records electronically to provide a mechanism that will allow the continued storage and retrieval of records in the year 2000.

MSHA solicits comment on what actions would be required, if any, to facilitate the maintenance of records in electronic form by those mine operators who desire to do so, while ensuring access in accordance with these requirements.

Paragraph (a) of § 46.11 requires you to provide site-specific hazard training to—

(1) Scientific workers;
(2) Delivery workers and customers;
(3) Occasional, short-term maintenance or service workers, or manufacturers' representatives; and
(4) Outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

The annual number of non-miners to be trained are—

(1) 50 non-miners in each of the 3,361 mines that employ 5 or fewer workers;
(2) 100 non-miners in each of the 1,467 mines that employ between 6 and 19 workers; and
(3) 200 non-miners in each of the 285 mines that employ 20 or more workers.

No record is required for this type of training. The burden is for the time the miner takes to provide the training. MSHA estimates that for each mine, a miner, earning $23 per hour, would take 0.15 hours annually, on average, to provide hazard training.

III. Executive Order 12866 and Regulatory Flexibility Act

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. Based upon the economic analysis, we have determined that this proposed rule is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866. MSHA does consider the proposed rule to be significant under section 3(f)(4) of the E.O. because of widespread interest in the rule, and has submitted the proposal to OMB for review.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. In this proposed rule, none of the affected mines have 500 or more employees. Therefore for the purposes of the RFA, all of the affected mines are considered small. MSHA has analyzed the impact of the proposed rule on mines with 20 or more employees, mines with 6–19 employees, and mines with 1–5 employees. MSHA has determined that this proposed rule would not impose a substantial cost increase on small mines.

MSHA has prepared a Preliminary Regulatory Economic Analysis (PREA) and Regulatory Flexibility Certification Statement to fulfill the requirements of E.O. 12866 and the Regulatory Flexibility Act. This PREA is available from MSHA upon request and is posted on our Internet Homepage at www.msha.gov.

Regulatory Flexibility Certification Statement

Based on MSHA's analysis of costs and benefits, the Agency certifies that this proposed rule would not impose a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

General approach: The Agency's analysis of impacts on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of the proposed rule for small mine operators in the affected sector to the estimated revenues for that sector. When estimated compliance costs are less than 1 percent of estimated revenues (for the size categories considered) the Agency believes it is generally appropriate to conclude that there is no significant impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1 percent of revenue, it tends to indicate that further analysis may be warranted. The Agency welcomes comment on its approach in this regard.

Derivation of costs and revenues: In the case of this proposed rule, because the compliance costs must be absorbed by the nonmetal mines affected by this rule, the Agency decided to focus its attention exclusively on the relationship between costs and revenues for these mines, rather than looking at the entire metal and nonmetal mining sector as a whole.

In deriving compliance costs there were areas where different assumptions had to be made for small mines in different employment sizes in order to account for the fact that the mining operations of small mines are not the same as those of large mines. For example, different assumptions for mine size categories were used to derive compliance costs concerning: the number of persons trained per mine and the number of training sessions a mine would have annually. In determining revenues for the nonmetal mines

affected by this rulemaking, MSHA multiplied the production data (in tons) by the price per ton of the commodity.

The Agency welcomes comment on sources that can help it more accurately estimate revenues for the final rule or other rules confined to this sector.

Results of screening analysis. As shown in Table V–1 with respect to the nonmetal mines affected by this rule that have 1 through 5 workers, the estimated costs of the rule as a percentage of their revenues are 0.30 percent. For nonmetal mines covered by this rule that have 6 through 19 workers, the estimated costs of the rule as a percentage of their revenues are 0.13 percent. For nonmetal mines covered by this rule that have 20 or more workers, the estimated costs of the rule as a percentage of their revenues are 0.03 percent. Finally, for all nonmetal mines covered by this rule (which are mines that have 500 or less workers), the estimated costs of the rule as a percentage of their revenues are 0.09 percent.

In every case, the impact of the proposed compliance costs is substantially less than 1 percent of revenues, well below the level suggesting that the proposed rule might have a significant impact on a substantial number of small entities. Accordingly, MSHA has certified that there is no such impact for small entities that mine the commodities that are covered by this rule.

As required under the law, MSHA is complying with its obligation to consult with the Chief Counsel for Advocacy on this proposed rule, and on the Agency's certification of no significant economic impact on the mines affected by this rule. Consistent with Agency practice, notes of any meetings with the Chief Counsel's office on this proposed rule, or any written communications, will be placed in the rulemaking record. The Agency will continue to consult with the Chief Counsel's office as the rulemaking process proceeds.

TABLE V–1.—EXEMPT NONMETAL MINES COVERED BY THE PROPOSED RULE [a]

[Dollars in thousands]

Employment size	Estimated costs	Estimated revenues [b]	Costs as percentage of revenues
(1–5)	5,857	1,949,366	0.30
(6–19)	5,883	4,555,543	0.13
(20 or more)	3,154	9,756,081	0.03
All Mines [c]	14,894	16,260,990	0.09

[a] All mines covered by the proposed rule are surface mines.
[b] Data for revenues derived from U.S. Department of the Interior/U.S. Geological Survey. *Mining and Quarrying Trends, 1997 Annual Review.* 1997. Tables 2 and 3.
[c] Every mine affected by rule has 500 or fewer employees.

Compliance Costs

MSHA estimates that the total net cost of the proposed new 30 CFR part 46 training requirements would be approximately $16.2 million annually, of which about $14.9 million would be borne by mine operations in the following surface nonmetal mining sectors: shell dredging, sand, gravel, stone, clay, colloidal phosphate, and limestone. Since fiscal year 1980, Congress has prohibited MSHA from enforcing existing MSHA health and safety training regulations in 30 CFR part 48 at mines (''exempt mines'') in these sectors of the surface nonmetal mining industry. The exempt mines that are not currently in compliance with the existing part 48 training requirements would incur costs of approximately $17 million annually to comply with the proposed rule, while those currently in compliance with the existing part 48 training requirements would derive savings of approximately $2.1 million annually.

Over the past 20 years, MSHA has consistently categorized a mine as being small if it employs fewer than 20 workers and as being large if it employs 20 or more workers. For the purposes of this PREA, however, MSHA has identified three mine size categories based on the number of employees, which are relevant to the estimation of the cost of the proposed rule: (1) Mines employing 5 or fewer workers; (2) mines employing between 6 and 19 workers; and (3) mines employing 20 or more workers. These mine categories are important because they are believed to have significantly different compliance rates for existing part 48 training requirements. For this proposed rule, MSHA estimates that the following percentages of exempt mines by size category are currently not in compliance with existing part 48 requirements: 60 percent of mines with 5 or fewer workers; 40 percent of mines with between 6 and 19 workers; and 20 percent of mines with 20 or more workers.

In 1997, there were 10,152 exempt mines covered by the proposed rule. MSHA estimates that the average cost per exempt mine to comply with the proposed rule would be approximately $1,500 annually. For the 5,297 exempt mines with 5 or fewer workers, MSHA estimates that the average cost of the proposed rule per mine would be approximately $1,100 annually. For the 3,498 exempt mines with between 6 and 19 employees, MSHA estimates that the average cost of the proposed rule per mine would be approximately $1,700 annually. For the 1,357 exempt mines with 20 or more employees, MSHA estimates that the average cost of the proposed rule per mine would be approximately $2,300 annually.

These costs per mine may be slightly misleading insofar as the exempt mines currently in compliance with part 48 training requirements would also be substantially in compliance with the proposed rule and would therefore incur no compliance costs. In fact, as noted above, these mines would derive savings of approximately $2.1 million annually as a result of the proposed rule. For the exempt mine operators (including independent contractors that employ miners) not currently in compliance with part 48 training requirements, the annual cost of complying with the proposed rule would, on average, be approximately $1,800 per mine operator with 5 or fewer workers; $4,400 per mine operator with between 6 and 19 workers; and $15,500 per mine operator with 20 or more workers.

Table IV–1 from the PREA summarizes the yearly costs of the proposed rule by mine size and by provision.

TABLE IV–1.—SUMMARY OF YEARLY COMPLIANCE COSTS FOR THE PROPOSED RULE *

Requirement/provision	Mines with 1–5 employees	Mines with 6–19 employees	Mines with 20+ employees	Total cost for all mines	Total cost for other parties	Total cost
§ 46.3	$18,567	$8,102	$3,013	$29,682	$841	$30,523
§ 46.5	2,431,069	1,943,402	762,385	5,136,856	.....	5,136,856
§ 46.6	389,353	281,137	99,589	770,079	.....	770,079
§ 46.7	225,783	450,693	441,197	1,117,672	.....	1,117,672
§ 46.8	2,131,047	2,520,492	1,482,488	6,134,027	.....	6,134,027
§ 46.9	81,563	173,352	168,280	423,195	.....	423,195
§ 46.11	579,807	506,046	196,788	1,282,641	1,282,641	2,565,282
Total	5,857,188	5,883,255	3,153,740	14,894,153	1,283,482	16,177,635

* Source: Table IV–12, Table IV–17, Table IV–19, Table IV–20; Table IV–23, Table IV–25, and Table IV–26.

Benefits

Safety and health professionals from all sectors of industry recognize that training is a critical element of an effective safety and health program. Training informs miners of safety and health hazards inherent in the workplace and enables them to identify and avoid such hazards. Training becomes even more important in light of certain factors that can exist when production demands increase, such as an influx of new and less experienced miners and mine operators; longer work hours to meet production demands; and increased demand for contractors who may be less familiar with the dangers on mine property.

Although there may be some differences in production technology and the production environment between the exempt mining industry and other surface nonexempt mining industries, the data presented in Chapter III of the PREA show that the lack of training in exempt mines contributes significantly to the disproportionate number of fatalities that occur at such mines. From 1993 to 1997, there were 200 fatalities at surface mines, of which 163 occurred at exempt mines. Thus, exempt mines accounted for 82 percent of all fatalities at surface mines. During the same period, however, employees at exempt mines accounted for only 64 percent of the total number of hours worked at surface mines.

One of the major reasons that exempt mines experience a higher fatality rate than the surface mining industry as a whole is that smaller operations, those which employ fewer than 20 workers, make up the vast majority of exempt mines. These small operations have the highest rates of noncompliance with part 48 training and, not surprisingly, the highest fatality rates.

It is plausible to assert that at least some of these fatalities may have been prevented if victims had received appropriate, basic miner safety training. Similarly, MSHA believes that compliance with the requirements of this proposed training rule would, in turn, reduce the number of fatalities at exempt mines. As discussed in greater detail in Chapter III of the PREA, MSHA estimates that compliance with the proposed rule would prevent about 10 fatalities per year. Although not quantified, MSHA further expects that better trained exempt miners would have a positive impact on reducing mining accidents, injuries, and illnesses. MSHA believes that this proposed rule would make training more responsive to the needs of the industry and more effective for individual miners, thereby raising the compliance rate and reducing mine injuries and fatalities.

IV. Executive Order 12875: Enhancing the Intergovernmental Partnership

Executive Order (E.O.) 12875 requires executive agencies and departments to reduce unfunded mandates on State, local, and tribal governments; to consult with these governments prior to promulgation of any unfunded mandate; and to develop a process that permits meaningful and timely input by State, local, and tribal governments in the development of regulatory proposals containing a significant unfunded mandate. E.O. 12875 also requires executive agencies and departments to increase flexibility for State, local, and tribal governments to obtain a waiver from Federal statutory or regulatory requirements.

There are 152 sand and gravel, surface limestone, and stone operations that are run by State, local, or tribal governments for the construction and repair of highways and roads. We believe that all of these state-owned mines are in compliance with the proposed rule's provisions. The Agency specifically solicits comments and any data to either support or refute this assumption.

V. Unfunded Mandates Reform Act of 1995

We have determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this proposed rule does not significantly or uniquely affect these entities.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist federal agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in the Agency's PREA, the net compliance cost of this proposed rule for the surface nonmetal mine operators is about $14.9 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the proposed regulation. MSHA estimates that approximately 185 sand and gravel, surface limestone, and stone operations are run by State, local, or tribal governments. The Agency believes that all of these state-owned mines are in compliance with the proposed rule's provisions.

When MSHA issues the proposed rule, we will affirmatively seek input of any State, local, and tribal government which may be affected by this

rulemaking. This would include state and local governmental entities that operate sand and gravel, surface limestone, and stone operations in the construction and repair of highways and roads. MSHA will mail a copy of the proposed rule to approximately 185 such entities.

VI. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

In accordance with E.O. 13045, MSHA has evaluated the environmental health and safety effects of the proposed rule on children. MSHA has determined that the proposed rule would have no effect on children.

VII. Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

VIII. Statutory and Rulemaking Background

Until 1977, the metal and nonmetal mining industries and the coal mining industry were covered by separate occupational health and safety statutes. The Federal Coal Mine Health and Safety Act of 1969 (1969 Coal Act) governed the coal mining industry. The Federal Metal and Nonmetallic Mine Safety Act of 1966 (1966 Metal Act) governed the metal and nonmetal mining industries. The 1966 Metal Act was the first federal statute directly regulating non-coal mines. The 1969 Coal Act authorized promulgation of mandatory safety and health standards for coal mines, but the safety and health regulations promulgated under the 1966 Metal Act for metal and nonmetal mines were largely advisory.

Passage of the Federal Mine Safety and Health Act of 1977 (1977 Act), 30 U.S.C. 801 *et seq.*—

(1) placed coal mines and metal and nonmetal mines under a single statute;

(2) substantially increased the health and safety protections afforded all miners, but particularly metal and nonmetal miners; and

(3) applied to all mining and mineral processing operations in the United States, regardless of size, number of employees, or method of extraction.

Thus, the Mine Safety and Health Administration (MSHA), the agency charged with carrying out the mandates of the 1977 Mine Act, regulates and inspects two-person sand and gravel pits, as well as large underground coal mines and processing plants employing hundreds of miners.

Neither the 1969 Coal Act nor the 1966 Metal Act contained comprehensive requirements for health and safety training of miners. However, in the 1977 Mine Act, Congress clearly recognized training as an important tool for preventing accidents and avoiding unsafe and unhealthful working conditions in the nation's mines. Consistent with this determination, section 115 of the 1977 Act directed the Secretary of Labor to promulgate regulations requiring that mine operators subject to the Act establish a safety and health training program for their miners.

MSHA published regulations in 30 CFR part 48 on October 13, 1978 (43 FR 47453), implementing section 115 of the 1977 Mine Act. At that time, certain segments of the mining industry strongly believed that the new training regulations were designed for large and highly technical operations and, therefore, were inappropriate and impractical for smaller surface nonmetal mines. Industry representatives expressed their concern over the difficulties that many small nonmetal operators would have in complying with part 48 and requested relief from its comprehensive specifications.

In 1979, various segments of the metal and nonmetal mining industry raised concerns with Congress regarding the appropriateness of applying the requirements of part 48 to their operations. Congress responded by inserting language in the Department of Labor's appropriations bill that prohibited the expenditure of appropriated funds to enforce training requirements at approximately 10,200 surface nonmetal work sites. Congress has inserted this language into each Department of Labor appropriations bill since fiscal year 1980. This language specifically prohibits the use of appropriated funds to:

* * * carry out § 115 of the Federal Mine Safety and Health Act of 1977 or to carry out that portion of § 104(g)(1) of such Act relating to the enforcement of any training requirements, with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine.

This language remains in place under our appropriations contained in the Omnibus Appropriations Act for 1999, P.L. 105–277, signed by the President on October 21, 1998. The 1999 training rider, however, authorizes us to expend funds to propose and promulgate final training regulations by September 30, 1999, for operations affected by the prohibition.

IX. General Discussion

Crushed stone and sand and gravel account for the majority of operations where we cannot enforce training requirements. The United States Geological Survey, United States Department of the Interior (USGS), derives domestic production data for crushed stone and sand and gravel from voluntary surveys of U.S. producers. USGS makes these data available in quarterly Mineral Industry Surveys and in annual Mineral Commodities Summaries. Annual crushed stone tonnage ranks first in the nonfuel minerals industry, with annual sand and gravel tonnage ranking second. USGS data show that domestic production of sand and gravel and crushed stone increased every year between 1991 and 1999, an indication of the continuing strong demand for construction aggregates in the United States.

The number of hours worked at sand and gravel and crushed stone operations has been increasing steadily since 1991. In 1991, the hours worked at crushed stone operations totaled approximately 104 million employee-hours, rising to 117 million employee-hours in 1997. Similarly, the number of employee-hours at sand and gravel operations rose from approximately 65 million in 1991 to 72 million in 1997. Based on hours reported for the first nine months of 1998, the total hours worked for 1998 will exceed the total hours worked in 1997. Although some of the increase in hours worked may result from longer workdays, the data strongly suggest that the aggregates industry workforce is growing.

Crushed stone and sand and gravel are essential and used widely in all major construction activities, including highway, road, and bridge construction and repair projects, as well as residential and nonresidential construction. Although crushed stone is also used as a basic raw material in agricultural, and chemical and metallurgical processes, it is used mostly by the construction industry. The construction industry also is by far the largest consumer of sand and gravel. Consequently, the level of construction activity largely determines the demand for, and resulting production levels of, these aggregate materials.

On June 9, 1998, President Clinton signed the Transportation Equity Act for the 21st Century, commonly known as ''TEA–21'' (Pub. L. 105–178), which authorizes highway, highway safety, transit, and other surface transportation programs for the fiscal years 1998 to 2003. The demand for materials

produced by the surface nonmetal mining industry is anticipated to increase substantially due to, in significant part, transportation infrastructure construction resulting from the recent enactment of TEA–21. TEA–21 builds on the initiatives established in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was the last major authorizing legislation for surface transportation. As the largest public works legislation in the nation's history, appropriating almost $218 billion for highway and transit programs, TEA–21 provides a 40 percent funding increase over the ISTEA levels for such programs.

In addition to the passage of TEA–21, other factors may also contribute to the continued growth in construction activity and, thus, the demand for aggregate materials. These include a healthy U.S. economy in general, low interest rates, and adverse weather conditions, such as from El Niño and La Niña, which have damaged and destroyed homes, roads, and bridges in various parts of the country.

Since fiscal year 1980, the year in which the congressional appropriations rider took effect, more than 600 miners have been killed in occupationally related incidents at mines where we cannot enforce miner training requirements (''exempt mines''). The rider affects approximately 10,200 surface nonmetal mines and 120,000 miners. Approximately 9,200 of these sites are surface aggregate operations (sand and gravel and crushed stone); the remainder are surface operations mining other commodities such as clay or colloidal phosphate.

Our data indicate that, of the 200 miners involved in fatal accidents at surface metal and nonmetal mines from 1993 to 1997, about 80% (163 miners) worked at exempt mines. During this same period, the annual number of fatal accidents at exempt mines almost doubled (from 24 fatalities in 1993 to 45 fatalities in 1997). In each of the years 1996 and 1997, 90% of fatalities at surface metal and nonmetal mines occurred at operations affected by the appropriations rider.

A large proportion of exempt mines are smaller operations, which experience a higher fatality rate than larger operations. For example, of the 9,200 aggregate mines, approximately 4,900 employ five or fewer miners, and approximately 8,100 employ fewer than 20 miners. Long-term data show that mines with fewer than six employees are three times as likely to experience fatalities as mines with 20 or more workers. Also, mines with between six and 19 employees are more than two times as likely to have fatal accidents as operations with larger workforces.

Several other reasons may contribute to the number of fatal accidents, including—

(1) An influx of new and less experienced miners and mine operators;

(2) Longer work hours to meet production demands; and

(3) Increased demand for contractors who may be less familiar with the dangers on mine property. All of these factors are also more likely to exist when production activity accelerates to meet increases in demand.

We believe that some of these fatalities may have been prevented if victims had received appropriate, basic miner safety training. Our fatal accident investigations show that the majority of miners involved in fatal accidents at mines affected by the rider had not received health and safety training that complied with the requirements of part 48. In 1997, for example, 80% of fatal accident victims at exempt mines had not received health and safety training in accordance with part 48.

Safety and health professionals from all sectors of industry recognize that training is a critical element of an effective safety and health program. Training of new employees, refresher training for experienced miners, and training for new tasks serve to inform workers of safety and health hazards inherent in the workplace and, just as important, to enable workers to identify and avoid those hazards. Congress clearly recognized these principles by specifically including training provisions in the 1977 Mine Act.

The legislative history to the 1999 Appropriations Act reveals congressional concern with our inability to enforce training requirements for the exempt industries. The Senate Report associated with the Senate appropriations bill for fiscal year 1999 states:

> The Committee has continued language carried in the bill since fiscal year 1980 prohibiting the use of funds to carry out the training provisions of the Mine Act with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine. The Committee recommends including this language for another year. However, the Committee finds the agency's data regarding the number of untrained workers in these industries who are exposed to the risks and hazards associated with the mining environment disturbing. Therefore, the Committee intends for fiscal year 1999 to be the last year this provision will be contained in the bill.

S. Rep. No. 105–300 for S. 2440, 105th Cong., 2d Sess., (1998).

In the Conference Report to the Omnibus Appropriations Act for 1999, Congress recognizes the high priority that employee safety and health training should have for the mining industry. However, Congress also notes that both we and the industries affected by the rider acknowledge that existing part 48 regulations do not address either the industries' or miners' needs in the most effective manner. In the Report, Congress reaffirms the priority to provide health and safety training for miners and directs us to expeditiously develop appropriate training regulations for miners working in these industries. The Conference Report also specifies that we must submit a progress report on the training regulations before appropriations hearings on our fiscal year 2000 budget and that we work cooperatively with labor and industry representatives to disseminate information on the revised training requirements in the period between the publication of the final rule and its effective date.

The Conference Report language specifically instructs us to:

> * * * work with the affected industries, mine operators, workers, labor organizations, and other affected and interested parties to promulgate final training regulations for the affected industries by September 30, 1999. It is understood that these regulations are to be based on a draft submitted to MSHA by the Coalition [for Effective Miner Training] no later than February 1, 1999.

H.R. Rep. No. 105–825 for H.R. 4328, 105th Cong., 2d Sess. (1998).

The Coalition for Effective Miner Training (Coalition) consists of associations that represent industries currently exempt from miner training requirements. Coalition members include:

American Portland Cement Alliance
China Clay Producers Association
Dry Branch Kaolin Company
Georgia Crushed Stone Association
Georgia Mining Association
Indiana Mineral Aggregates Association
National Aggregates Association
National Industrial Sand Association
National Lime Association
National Stone Association
North Carolina Aggregates Association
Arizona Rock Products Association
Construction Materials Association of California
Sorptive Minerals Institute
United Metro Materials
Virginia Aggregates Association

In 1998, the Coalition initiated a process to outline an alternative regulatory approach to part 48 for miner training in the exempt industries. This process included working with industry and labor organizations during the course of the development of its

proposal. On February 1, 1999, the congressionally established deadline, the Coalition presented us with a final joint industry/labor draft proposed rule.

To facilitate the broadest possible input from the regulated public, we held seven preproposal public meetings throughout the country in December 1998 and January 1999 to solicit comments on development of the miner training rule for exempt mines. We selected meeting locations in California, Colorado, Georgia, Illinois, New York, Oregon, and Texas to provide as many miners, miners' representatives, and mine operators, both large and small, with the opportunity to attend at least one of the meetings and present their views. The public was encouraged to comment on any issue related to miner safety and health training at exempt mines. The **Federal Register** notice announcing the schedule of public meetings (63 FR 59258, November 3, 1998) listed key issues on which we were specifically interested in receiving comments. The issues included:

- Should certain terms, including ''new miner'' and ''experienced miner'' be defined?
- Which subjects should be taught before a new miner is assigned work, even if the work is done under close supervision?
- Should training for inexperienced miners be given all at once, or over a period of time, such as several weeks or months?
- Should supervisors be subject to the same training requirements as miners?
- Should task training be required whenever a miner receives a work assignment that involves new and unfamiliar tasks?
- Should specific subject areas be covered during annual refresher training? If so, what subject areas should be included?
- Can the 8 hours of annual refresher training required by the Mine Act be completed in segments of training lasting less than 30 minutes?
- Should the records of training be kept by the mine operator at the mine site, or can they be kept at other locations?
- Should there be minimum qualifications for persons who conduct miner training? If so, what qualifications are appropriate?

More than 220 individuals, including representatives from the Coalition, labor, contractors, mining associations, State agencies, small and large operators, and trainers, attended the meetings. Many of the attendees made oral presentations at the meeting, offering their views on effective miner training. In addition, we have received a number of written comments on how to ensure effective miner safety and health training.

Speakers at the public meetings and other commenters generally emphasized the importance of developing a training rule that provides you with the flexibility to tailor your miner training programs to your particular operations and workforce. Several speakers underscored the need for practical and workable training requirements to meet the needs of the wide variety of mines that will be affected by the new training rule. Others commented on training for employees of independent contractors working on mine property, recordkeeping requirements, and appropriate qualifications for persons who will provide training. In addition, speakers at every meeting commented on the need for consistent implementation of the final training rule and the increased involvement of MSHA and the state grantees in providing training assistance and materials.

X. Discussion of the Proposed Rule

A. Statutory Requirements

Section 115(a) of the 1977 Act authorizes the Secretary of Labor to promulgate miner health and safety training regulations; section 115(a), (b), and (c) also include minimum requirements for miner training programs. The training regulations proposed here for miners working at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone operations are consistent with these minimum requirements, which provide among other things, that:

- Each operator must have a health and safety program approved by the Secretary of Labor;
- Each approved training program for new surface miners must provide for at least 24 hours of training in certain specific courses, including:
- The statutory rights of miners and their representatives under the Act;

Use of self-rescue and respiratory devices, where appropriate;

Hazard recognition;

Emergency procedures;

Electrical hazards;

First aid;

Walkaround training; and

The health and safety aspects of the task to which the miner will be assigned;

- Each approved training program must provide for at least eight hours of refresher training every 12 months for all miners;
- Miners reassigned to new tasks must receive task training prior to performing that task;
- New miner training and new task training must include a period of training as closely related as is practicable to the miner's work assignment;
- Training must be provided during normal working hours;
- During training, miners must be paid at their normal rate of compensation and reimbursed for any additional cost for attending training;
- Upon completion of each training program, each operator must certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan;
- A certificate for each miner must be maintained by the operator, and be available for inspection at the mine site;
- A copy of the certificate must be given to each miner at the completion of the training;
- When a miner leaves the operator's employ, the miner is entitled to a copy of his or her health and safety training certificates;
- False certification by an operator that training was given is punishable under section 110(a) and (f) of the 1977 Mine Act; and
- Each health and safety training certificate must indicate on its face, in bold letters, printed in a conspicuous manner, that such false certification is so punishable.

The proposed training rule takes a performance-oriented approach, where possible, to afford currently exempt operations, particularly small operations, the flexibility to tailor miner training to their particular needs and methods of operation. For example, the proposal would give you the latitude to choose many of the topics addressed in training and the amount of time to be spent on each topic. Also it would allow you to keep training records in a format of your choice, as long as the records include the minimum information specified in the rule.

B. Summary of Proposed Rule

We currently anticipate that the part 46 final rule will be consistent with existing part 48 training requirements, so that those of you who have implemented a safety and health training program that complies with part 48 would not have to alter your programs to comply with proposed part 46. However, we request comment on whether the final rule should specifically allow you the option of complying with the requirements of part 48, in lieu of part 46.

The proposed rule would require you to develop and implement a written training plan that includes programs for training new and experienced miners, training miners for new tasks, annual refresher training, and hazard training. Plans that include the minimum information specified in the proposal would be considered approved by us and would not be required to be submitted to us for formal review, unless you, the miners, or miners' representative requests it.

The proposal would require new miners to receive 24 hours of training within 60 days of employment. Instruction in four specific areas must be provided before the miner begins work—

(1) Introduction to the work environment;
(2) Recognition and avoidance of hazards at the mine;
(3) Escape and emergency evacuation plans in effect at the mine, and firewarning signals and firefighting procedures; and
(4) Health and safety aspects of the tasks to be assigned.

The remainder of new miner training would be required to be completed within 60 days, and would address, at a minimum, the subjects specified in section 115 of the Mine Act.

Under the proposal, newly-hired experienced miners would receive instruction, before beginning work, in the same four topics required to be covered for new miners before they begin work. Newly-hired experienced miners would receive annual refresher training within 90 days, including instruction on several specific topics.

Every 12 months, all miners would receive no less than eight hours of refresher training, which at a minimum would address major changes at the mine. Under the proposal, you would have the flexibility to determine the other subject areas to be covered in refresher training.

The proposal would require new task training for every miner before the miner is assigned to a task for which he or she has no previous experience or which has changed. Site-specific hazard training would be required for persons who do not fall within the definition of ''miner'' and who would therefore not be required to receive comprehensive training (i.e., new miner training or newly-hired experienced miner training, as appropriate). The proposal would also require site-specific hazard training for employees of independent contractors who have received comprehensive training but who need orientation in the hazards of the mine where they will be working.

You would be required to certify that a miner has received required training and retain a copy of each miner's certificate for the duration of the miner's employment and for 12 months after the employment ends. Under the proposal, you could use our existing form for the certification (MSHA Form 5000–23) or maintain the certificate in another format, so long as it contains the minimum information listed in the proposal. You would also be required to maintain a copy of the current training plan in effect at the mine. You would be allowed the flexibility of keeping training records at the mine site or at a different location, but would be required to provide copies of the records to us and to miners and their representatives upon request.

Unlike part 48, we would not approve training instructors under the proposal. Instead, training could be provided by a competent person—someone with sufficient ability, training, knowledge, or experience in a specific area, who would also be able to evaluate the effectiveness of the training provided.

The proposal would adopt the Mine Act requirement that miners be trained during normal work hours and compensated at normal rates of pay. Miners would also be reimbursed for incidental costs, such as mileage, meals, and lodging, if training is given at a location other than the normal place of work.

The proposal would allow you, where appropriate, to substitute equivalent training required by OSHA or other federal or state agencies to satisfy your training obligations under part 46.

Finally, the proposal would address responsibility for training and would vest primary responsibility for site-specific hazard training with the production-operator. Additionally, independent contractors who employ miners required to receive comprehensive training under the proposal would be primarily responsible for ensuring that their employees satisfy these requirements.

C. Section-by-Section Discussion

The following section-by-section portion of the preamble discusses each proposed provision. The text of the proposed rule is included at the end of the document.

Section 46.1 Scope

This section provides that the provisions of part 46 set forth mandatory requirements for the training and retraining of miners at all shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines.

Corresponding changes for part 48 have been included in this proposal and are intended to make clear to the mining community that part 46 training requirements will apply at those mines which have been subject to the congressional appropriations rider since fiscal year 1980. This section is consistent with a similar provision in the draft proposal of the Coalition for Effective Miner Training.

Commenters should be aware that the language of the rider describes the exempt operations in broad terms. It does not attempt to list each type of operation that is included within the category listed. For example, operations that produce marble, granite, sandstone, slate, shale, traprock, kaolin, cement, feldspar, and lime are also exempt from enforcement under the rider and would be affected by the requirements of this rule.

Several commenters were of the opinion that the new training regulations for mines that are currently exempt from enforcement should be incorporated into part 48. However, to avoid confusion, we have proposed these regulations under a separate part of Title 30 of the Code of Federal Regulations.

Although the requirements of this proposed part would amend the training requirements for surface miners in part 48, part 48 has not been enforced at exempt mines for almost 20 years. The proposed rule takes a more flexible and performance-oriented approach than similar provisions in part 48. For example, the proposed rule would not require our traditional approval of training plans; would give you greater latitude in determining what subjects should be included in your miner training programs and in recordkeeping; and would not mandate a formal instructor approval program.

We are mindful of our statutory obligation not to reduce the protections provided to miners under our existing standards. Under section 101(a)(9) of the 1977 Act, ''[n]o mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard.'' Although the proposal would allow greater flexibility to you in training plan content and implementation, protection to miners would not be reduced. Our approach in this proposal is to allow you, with the assistance of miners and their representatives, to tailor your miner training programs to the specific needs of your operations and workforce. In this way, training received by miners would be relevant to their workplace and would be effective in providing them with the information and instruction that will enhance their ability to work in a safe and healthful manner. Several commenters stated that the flexibility to design their training programs to address the most significant safety and health concerns at their mines would enhance the overall benefits of training for their miners.

It should be noted that this proposal does not affect those mines not subject to the rider, which would include all underground metal and nonmetal mines, all surface metal mines, all coal mines, and a few surface nonmetal mines, such as surface boron and talc mines. Operators at those mines will continue to be responsible for complying with the miner training provisions in part 48.

Section 46.2 Definitions

This section includes definitions for terms used in proposed part 46. These definitions are provided to assist the mining community in understanding the requirements of the proposed rule. We are interested in comments on whether the definitions, as proposed, are appropriate and clearly expressed. Commenters should also identify any other terms they believe should be defined in the final rule.

Act. All references to the ''Act'' in the proposal refer to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.*

Competent person. Under the proposal, training would be conducted by a ''competent person'' designated by you. ''Competent person'' is defined in the proposal as a person who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must be able to evaluate whether the training given to miners is effective.

This definition does not specify the type or extent of ability, training, knowledge, or experience needed for a person to be ''competent'' and, therefore, allowed to provide training under the rule. This is consistent with the performance-oriented approach taken in the proposal. As addressed in greater detail in the preamble under § 46.4, a number of commenters recommended that persons who provide training receive, at a minimum, some instruction to ensure that they are able to instruct miners effectively. The proposal does not adopt this recommendation. Instead, we leave it to your discretion to determine whether the person is competent to provide training to miners in one or more subjects.

We specifically solicit comments on the definition of ''competent person,'' whether the final rule should establish specific minimum qualifications for training instructors, and whether the final rule should require that training instructors be approved by us, similar to the approach taken in the part 48 regulations.

Experienced miner. A number of commenters addressed the definition of the term ''experienced miner.'' Several commenters suggested that part 46 should adopt the definition of ''experienced miner'' in the part 48 training regulations. Recent revisions to part 48 (63 FR 53750, October 6, 1998) define ''experienced miner'' as a person with at least 12 months of experience who has completed new miner training. Other commenters recommended that a miner be considered experienced if he or she either has received new miner training or has accumulated at least 12 months of mining experience or the equivalent. One commenter stated that the definition of experienced miner should allow miners with experience to return to mining after an extended absence or lay-off and still be considered experienced.

A miner would be ''experienced'' under the proposal if he or she satisfies one of three definitions. First, paragraph (c)(1)(i) provides that an experienced miner is a person employed as a miner on the date of publication of this proposal. Most regularly employed miners would be considered ''experienced'' under this definition, and therefore not subject to the rule's new miner training requirements. This is similar to the approach taken when part 48 first took effect in 1978, which provided that all persons employed as miners on the rule's effective date were experienced miners, regardless of the length of their mining experience or the extent of their safety and health training. Under the proposed definition, most miners working on the date of the proposed rule will have accrued several months of experience by the publication date of the final rule, and even more experience by the rule's effective date.

Under the proposed definition, however, a miner with many years of experience who happens to be out of work on the date of the proposed rule would not be an ''experienced miner''. We are uncertain as to whether this would have an adverse impact at some operations, particularly in light of the intermittent and seasonal nature of many operations that will be covered by the final rule. We are therefore interested in whether commenters believe that the rule should address this situation in some fashion and, if so, what specific provisions should be included in the final rule to deal with this issue.

A miner would also be experienced under paragraph (c)(1)(ii) if he or she begins employment at a mine after the date of publication of the proposal but before the effective date of the final rule, and has received new miner training consistent with the requirements proposed under § 46.5 or with existing requirements for surface miners at § 48.25. This would provide flexibility to those of you who are already providing training to your miners under part 48, or who wish to provide training under the more performance-oriented requirements of proposed part 46, before the final rule takes effect. This provision is not intended to require compliance with the proposed rule, but would be a voluntary option for those of you who want to get an early start on developing a training program and in complying with the rule.

Under paragraph (c)(1)(iii) a person who has completed 24 hours of new miner training under either § 46.5 or § 48.25 and who has at least 12 months of surface mining or equivalent experience would be an experienced miner. This definition is more stringent than the approach suggested by a number of commenters or in the Coalition draft, which would define ''experienced miner'' as a person who either has 12 months of experience or who has received the required 24 hours of new miner training, but not both. The definition in the proposed rule reflects our preliminary determination that an ''experienced miner'' should have both training and work experience. Additionally, we also recognize that it would be unduly burdensome and impractical to require all miners who are currently working at affected mines to receive new miner training. Many of these miners have extensive experience in the industry and should not be treated as new inexperienced miners. Consistent with this, under paragraphs (c)(1)(i) and (ii), the majority of miners who have been trained or who have relevant work experience would be considered experienced when the final rule goes into effect.

The proposal would allow a miner to accumulate the necessary 12 months of experience in non-consecutive months. This would respond to the concerns of several commenters that the intermittent and seasonal nature of many segments of the industry would make it difficult, if not impossible, for most miners to accrue the necessary experience in one continuous period.

The proposed definition would also allow equivalent experience to be counted towards the 12-month requirement. We intend that equivalent experience would include such things as work at a construction site or other types of jobs where the miner has job duties similar to the duties at the mine where he or she is employed. Commenters stated that similar work experience should be considered if the work performed is equivalent to the tasks that the person will perform at the mine. Commenters stated that many experienced construction workers have learned to work safely at construction sites that pose many of the same types of hazards that they could be exposed to at a mine site. Under the proposal, you would determine whether the miner's experience is equivalent and therefore whether the miner is ''experienced.'' We request comments on the acceptance of

equivalent experience under this paragraph in determining who is an ''experienced miner.''

Paragraph (c)(2) provides that an experienced miner will retain that status permanently under part 46. This responds to several commenters who indicated that it was not uncommon for miners to be away from the mining industry for extended periods of time, either because the miners took jobs in another industry, such as construction, or because the miners had been laid off. These commenters recommended that the rule make clear that an absence from work in the mining industry would not result in miners losing their status as experienced miners. This paragraph responds to these concerns and is also the approach taken in the recent revisions to part 48. Once a miner attains the status of an ''experienced miner,'' he or she would be considered experienced permanently. However, under proposed § 46.6, miners returning to mine work would be required to receive newly-hired experienced miner training and annual refresher training within 90 days of beginning work.

Extraction or production. The definition of the term ''miner'' includes persons engaged in ''extraction or production.'' ''Extraction or production'' is defined in this section as the mining, removal, milling, crushing, screening, or sizing of minerals at a mine. This definition also includes the associated haulage of these materials at the mine. We request comments on whether this definition adequately describes the activities that should be considered part of the extraction and production processes at a mine.

Hazard training. The proposed definition of ''hazard training'' is intended to provide examples of the type of instruction or information that you might address in providing this training to miners under proposed § 46.11. ''Hazard training'' is defined as information or instructions on the hazards a person will be exposed to while on mine property, as well as on applicable emergency procedures. These hazards and procedures may include site-specific risks such as unique geologic or environmental conditions, traffic patterns, and restricted areas, as well as warning and evacuation signals, emergency procedures, or other special safety procedures. The purpose of this training is to ensure that those persons who are unfamiliar with the mine and with the hazards of the operation have been provided with enough information to avoid exposure to these hazards.

Independent contractor. The proposal defines ''independent contractor'' as a person or entity that contracts to perform services at a mine under this part. This is consistent with the language of the Act, which includes independent contractors who perform services or construction at a mine within the definition of the term ''operator.''

Miner. The proposal would define ''miner'' for purposes of part 46 training more narrowly than the Mine Act, which defines ''miner'' in section 3(g) as any individual working at a mine. This allows the proposed rule to make a distinction between those ''miners'' who would be required to receive comprehensive training (that is, new miner training or newly-hired experienced miner training, as appropriate) and those persons who would be required to receive hazard training.

A person would be considered a ''miner'' under the proposal if he or she works at a mine under this part and is engaged in mining operations integral to extraction or production. We gave serious consideration to including as ''miners'' persons who are regularly exposed to mine hazards, or maintenance or service workers who work at the mine for frequent or extended periods, consistent with the definition in part 48. However, we are seeking to include a definition in the final rule that is clearer than the existing part 48 definition.

The definition of ''extraction or production'' includes the mining, milling, crushing, screening, or sizing of minerals, as well as the haulage of these materials. We intend that this definition include workers whose activities are integral to the extraction or production process, such as persons who are employed by the production-operator and who provide daily maintenance of mining equipment on the mine site. We do not intend to include workers who come onto mine property for short periods of time to perform services that are not integral to extraction or production, such as manufacturers' representatives who may be at the mine site infrequently to perform warranty service on mining equipment; this type of activity is usually conducted by a person whose presence at the mine site and exposure to typical mine hazards are limited. Although both types of workers perform maintenance on equipment, the extent of their exposure to mining operations and mine hazards is different, and the extent and type of training required would also be different under the proposal. We intend that the definition of ''miner'' include those workers whose activities are related to the day-to-day process of extraction or production. We have concluded that these are the types of workers who should receive comprehensive training.

We believe this is one of the more significant distinctions that should be made in this rule, and we solicit comment on this issue. We are particularly interested in recommendations for final rule language that would help to clarify the scope and application of this definition. Specifically, we would like comments on whether the final rule should include in the definition of ''miner'' persons whose exposure to mine hazards is frequent or regular, regardless of whether they are engaged in extraction or production, or who are employed by the production-operator, similar to the approach taken in part 48. Another possible approach would be to characterize a person's activities more specifically in terms of how integral or essential they are to extraction or production at the mine.

Under the proposal, mine operators and supervisors would also be considered miners if they are engaged in extraction or production and would be covered by the same training requirements. This is in response to the statements by a number of commenters that there is no reason why supervisors should not be subject to the same training requirements as miners. Several commenters also recommended that training for supervisors be tailored to address their supervisory responsibilities. Although we agree that it would be appropriate for you to develop special training programs for your supervisory personnel, the proposal would not require it.

Commenters should be aware that we intend that the requirements of this rule apply to construction workers who work at mines covered by the rule. Section 115(d) of the Act directs the Secretary of Labor to develop ''appropriate'' training regulations for construction workers. We have determined that this statutory provision does not prohibit the application of this part 46 standard to construction workers until we promulgate a separate training rule for those workers. Therefore, construction workers whose activities at the mine site are integral to extraction or production would be considered ''miners'' under this rule and must receive appropriate comprehensive training. For example, construction workers building a new crusher in an active quarry would be considered ''miners.'' All other construction workers at mine sites would be required to receive site-specific hazard training. We solicit comments on whether we should develop separate training standards specifically for construction workers

employed at mine sites, and if so, what type of training would be appropriate.

New miner. The proposal defines a new miner as a person who has been newly hired who does not satisfy the definition of ''experienced miner.'' The definition of experienced miner is discussed in detail earlier in this section.

Normal working hours. Under proposed § 46.10, training would be conducted during ''normal working hours,'' as required by the Act. ''Normal working hours'' is defined in this section as a period of time during which a miner is otherwise scheduled to work. This definition, adopted from part 48, also provides that the sixth or seventh working day may be used to conduct training, provided that the miner's work schedule has been established for a sufficient period of time to be accepted as a common practice. As discussed under § 46.10 of the preamble, we intend that the schedule must have been in place long enough to provide reasonable assurance that the schedule change was not motivated by the desire to train miners on what had traditionally been a non-work day.

We are interested in comments on whether these proposed provisions adequately address the issue of compensation and the scheduling of training.

Operator. The proposed definition is consistent with the definition of ''operator'' in section 3(d) of the Act, and would include both production-operators (defined in this section as owners, lessees, or other persons who operate or control a mine) and independent contractors who perform services at a mine. The term ''operator'' is used throughout the proposed rule to refer to the person or entities responsible for providing health and safety training under part 46. However, separate definitions are provided for ''production-operator'' and ''independent contractor'' in proposed § 46.2 to allow a distinction to be made in proposed § 46.12 between the two types of operators and to address production-operators' and independent contractors' responsibilities for training.

Production-operator. Production-operator is defined as any owner, lessee, or other person who operates, controls, or supervises a mine covered by this part. This would mean the person or entity that actually operates the mine as a whole, as opposed to an independent contractor who provides services. As noted earlier, both would be considered ''operators'' under the proposal.

Task. The proposal defines ''task'' as a component of a job that is performed on a regular basis and that requires job knowledge. This definition is intended to identify the type of job duties that would be subject to the new task training requirements proposed under § 46.7. Under that section, a miner must be provided with training in a task for which he or she has no previous experience, or which has been modified.

We and *us* refer to the Mine Safety and Health Administration (MSHA). We have written the proposal in the more personal style advocated by the President's executive order on ''plain language,'' which, among other things, encourages the use of personal pronouns.

You refers to production-operators and independent contractors, because they have primary responsibility for compliance with MSHA regulations.

Section 46.3 Training Plans

This section of the proposal requires you to develop and implement a training plan and also addresses our approval of training plans, how and where a copy of the training plan must be maintained, and who has access to the plan.

Section 115 of the Mine Act provides that mine operators shall have a health and safety training program that shall be ''approved by the Secretary [of Labor].'' A number of commenters and speakers at the public meetings supported flexible guidelines for plan content, emphasizing the wide variety in size and type of mining operations that will be covered by part 46 requirements. These speakers believed that the most effective training plans would be those that can be tailored to the particular operation, focusing, for example, on specific mine processes or hazards, or on the accident and injury experience at the mine. Other commenters stated that it had been their experience that the traditional approval process often did not enhance or ensure the quality of training plans. These commenters felt that resources saved by a less formal plan approval process could be directed elsewhere with greater benefits for miner safety and health.

A number of commenters who believed that traditional approval by us would not improve the development of your training plans advocated some form of ''automatic'' approval that would eliminate the need for submission of a plan to us, saving time and reducing paperwork for both you and us. These commenters suggested that the rule provide that if a plan meets or exceeds reasonable standards, it would be considered approved. Other commenters supporting this approach stated that emphasis should be placed on assisting you in developing effective training plans, rather than concentrating on unnecessary paperwork. Some commenters stated that they had no problem with submitting plans to us for initial approval, but were concerned about a requirement for submission of plans to us for approval of small, essentially nonsubstantive changes to the plan, such as the identity of the instructors providing the training or the locations where training takes place.

The draft proposal submitted to us by the Coalition would provide that any training plan that complies with the minimum requirements of section 115 of the Mine Act would be considered ''approved by the Secretary.'' Section 115 of the Act requires both that the plan be approved by us and that the plan comply with the minimum requirements in section 115. We have determined that in order for a plan to be considered approved by us, we must prescribe requirements in the proposal and the final rule beyond the minimum required in the Mine Act.

In response to these considerations, the proposal provides that a plan would be considered ''approved by MSHA'' if it includes the minimum information listed in paragraph (b). This is consistent with the approach recommended by several commenters. Under this approach, plans that include the information listed in this section would be considered ''approved'' and would not be required to be submitted to us for review. Inspectors and other MSHA personnel who review your plan at the mine site would simply determine—

(1) That you, in fact, have developed a written training plan;

(2) That the written plan contains the minimum information specified in paragraph (b) of proposed § 46.3; and

(3) That the plan is being implemented consistent with the plan specifications.

We have also included in the proposal an alternate process for plan approval, for those cases where a plan you developed does not include the minimum required information, where you may prefer to obtain traditional approval, or where the miners or miners' representative requests such approval.

Paragraph (a) provides that you must develop and implement a written plan, approved by us under either paragraph (b) or (c), that contains effective programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training. Although the language in section 115 of the Act does not explicitly state that a training plan must be in writing, we believe that it is inherently required by

the Act. We have included the term ''effective programs'' in the proposed rule to deal with instances where a training plan, as implemented, is inadequate or deficient. In such cases, we intend to determine how and why the training program falls short and assist you in revising your plan to address the deficiencies. We also intend that the plan be updated as needed, to reflect any changes in the mine's training program, such as changes in courses, teaching methods, instructors, methods of training evaluation, etc.

Paragraph (b) provides that a training plan is considered approved by us if it contains the minimum information listed in paragraphs (b)(1) through (b)(5). This information includes—

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person responsible for training at the mine, which may be the operator;

(3) A general description of the teaching methods and course materials to be used in the training, including the subject areas that will be covered and the approximate time that will be spent on each subject area;

(4) The persons who will provide training, and the subjects in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of the training.

Our intention is that the information required will be sufficient to allow us to make a preliminary determination of your compliance with training requirements, without imposing an unnecessary paperwork or recordkeeping burden. We are interested in comments on whether the proposed approach will facilitate the development of effective training plans.

The approach taken in the proposal for plan approval recognizes that, while our review of your written training plan could provide an initial check on the quality of the program, such review could not ensure that the program is successful in its implementation. Rather than expending our resources on the review and approval of training plans at all of the mines affected by this rule, we would instead direct those resources toward verification of the effectiveness of training plans in their execution, and in assisting you in developing and providing quality training to your employees. Similarly, you and training providers would be able to focus on the development and administration of training plans tailored specifically to your needs rather than on traditional procedures to gain our approval.

Under this approach, you would be free to make revisions to existing training plans without seeking our approval of those changes, so long as the plan continues to include the minimum information required. For example, you could change the identity of instructors, the subjects addressed as part of the training, or the scheduling of training, and you would not be required to submit these changes to us. This would address the statements of many commenters that requiring our approval of subsequent nonsubstantive plan changes was unduly burdensome and unnecessary.

We specifically solicit comments on whether we should require information in addition to that listed in paragraphs (b)(1) through (b)(5) before we consider a plan approved. We are also interested in comments on whether we should require less information than what is proposed. Several commenters stated that the rule should require only that the training plan specify subject matter and the timing of the training, and that other information is unnecessary. We also solicit comments on allowing you to develop plans that are considered approved by us without traditional approval. We are particularly interested in whether commenters believe that a traditional plan approval process, similar to the process in part 48, is necessary to ensure that training plans meet minimum standards of quality, and why this may be true.

Paragraph (c) provides that a plan that does not include the minimum information listed in paragraphs (b)(1) through (b)(5) must be approved by the Educational Field Services Division Regional Manager, or designee, for the region in which the mine is located. The term ''Regional Manager'' refers to the Regional Manager in the Educational Field Services Division (EFS) of the Directorate of Educational Policy and Development (EPD). We will be moving the responsibility for the approval of new and modified training plans from District Managers in Coal and Metal and Nonmetal Mine Safety and Health to the EFS Regional Managers or their designees. The EFS Division is divided into an Eastern and a Western region.

Under this paragraph, you may also voluntarily submit a plan for Regional Manager approval. We anticipate that the majority of plans developed under this part would satisfy the requirements of paragraph (b) and consequently would not be required to be submitted to us for traditional approval. However, we also recognize that some of you may develop effective training plans that do not fit squarely within the requirements of paragraph (b), and you may therefore need to submit your plans to us for approval. We also anticipate that some of you may prefer to obtain our traditional approval, to ensure that there is no question that your training plan satisfies minimum requirements. In response, the proposal does include a provision that would address these situations.

Paragraph (c) also allows miners and their representatives to request our traditional approval if they choose. We expect that in most cases miners and their representatives will bring any concerns they may have about the training plan to your attention, and resolve it in that manner. However, there may be a few instances where miners or their representatives believe that direct involvement by us may be needed to resolve issues or concerns, and the proposal would address those situations.

Paragraph (d) would require you to furnish the miners' representative, if any, with a copy of the training plan no later than two weeks before the plan is implemented or submitted to the Regional Manager. At mines where no miners' representative has been designated, a copy of the plan must either be posted at the mine or a copy provided to each miner at least two weeks before the plan is implemented or submitted to the Regional Manager for approval. This is intended to ensure that miners and their representatives are notified of the contents of your training plan before it goes into effect or is submitted to us for approval.

We recognize that at many mines, particularly small operations, there may be no mine office and no appropriate place for posting the plan. The proposal therefore would allow a copy of the plan to be provided to each miner in lieu of posting. We are assuming that this requirement would not place a large burden on you, because mines where posting would be difficult or impractical would typically have a very small number of miners. However, we are interested in whether this assumption is correct, and we are also specifically interested in comments on whether this paragraph provides a practical and workable approach to informing miners and their representatives of training plan content.

Although not explicitly stated in the proposal itself, we intend that you must provide miners or their representatives with copies of the training plan, and with the opportunity to submit comments or request approval by us, whenever major revisions are made to the plan. By ''major revisions'' we mean significant changes in course content or training methods, not minor alterations such as the identity of instructors or the duration of courses in certain subject areas. We request comment on whether the final rule should specifically require

notification of miners of plan revisions, and what type of revisions should require notification.

Under paragraph (e), miners and their representatives have two weeks after the posting or receipt of the training plan to submit comments on the plan to you, or to the Regional Manager if the plan is before the Manager for approval. This is intended to provide miners and their representatives with a means to provide input on the training plan, either to you, if traditional approval is not being sought, or to the Regional Manager who is reviewing and approving the plan.

Under paragraph (f), the Regional Manager must notify you and miners, or their representative in writing of the approval, or the status of the approval, of the training plan within 30 days after the date on which the training plan was submitted to us for approval.

We are interested in comments on this process, specifically on whether the proposal provides sufficient flexibility to you in developing your plans, while at the same time ensuring that miners and their representatives have been allowed meaningful participation in the process.

We considered adopting the traditional approval procedures already contained in part 48. We have instead proposed a more streamlined version of existing part 48 approval procedures. This approach reflects our expectation that the parties will be able to reach a satisfactory resolution of any concerns about the plan without the need for specific procedures. As indicated earlier, we anticipate that most of you will not seek our formal approval of your training plans, and that in most cases concerns of miners or their representatives will be resolved informally. In those limited cases where we become directly involved in plan approval, we intend for the Regional Manager to provide reasonable notice to you and miners or their representatives of the status of plan approval or perceived deficiencies in the plan and also to provide parties with a reasonable opportunity to express their views or offer solutions to the problem, without the need for detailed procedures.

Nonetheless, we solicit comments on whether a detailed plan approval process, such as in § 48.23, should be adopted in the final rule, to apply to those cases where traditional plan approval is sought.

Paragraph (g) provides you, miners, and miners' representatives the right to appeal a Regional Manager's decision on a training plan to the Director for Educational Policy and Development. Consistent with the shifting of plan approval responsibility from Metal and Nonmetal Mine Safety and Health to EFS, a Regional Manager's decision on a plan will be reviewed on appeal by the Director for EPD.

Under this paragraph, an appeal must be submitted in writing within 30 days after notification of the Regional Manager's decision on the training plan. The Director for EPD will issue a decision on the appeal within 30 days after receipt of the appeal. We anticipate that this provision will be rarely used and expect that when a disagreement arises between us, you, and miners and their representatives about plan design or content, it can be resolved without the need for intervention of the Director for EPD. However, in those rare cases where the parties are unable to come to terms on the content of a particular training plan, the proposed rule would provide parties the option of seeking review from the Director for EPD. As indicated, parties have 30 days in which to file a written appeal of the Regional Manager's decision on a plan, and the Director for EPD has 30 days from the date of appeal to reach a decision.

Paragraph (h) would require you to make available at the mine site a copy of the current training plan for inspection by us and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you must have the capability to provide the plan upon request to us, the miners, or their representatives. Under this paragraph, you would have the flexibility to maintain your training plan at a location other than the mine site, provided that you are able to produce a copy of the plan upon request to our inspectors or miners and their representatives. A number of speakers at the public meetings indicated that there was no need for plans or other training records to be kept at the mine site, given that modern communications technology, such as electronic mail and fax machines, allow virtually instantaneous transmission of documents from one location to another. The proposal does not specify a time within which a copy of the plan must be produced after a request is made by us or miners; the expectation is that if you choose to maintain the plan away from the mine site, you should have the capability of producing the plan within a reasonable period of time. If you do not have such capability, you must maintain the plan at the mine site. We have taken this approach in the proposal for several reasons. It has been our experience that we may complete an inspection at a surface mine in less than one day. Although we wish to give you flexibility in recordkeeping, we do not want this to result in an inspector having to delay his or her departure from a mine site waiting for you to obtain a copy of the training plan. Similarly, inspectors should not be put in the position of having to return to a mine site the next day simply to inspect a copy of the training plan that was unavailable during the course of the inspection the day before. Additionally, miners and their representatives should not be required to wait to inspect the training plan in effect at the mine. We are interested in comments on whether this is the most practical approach. One possible alternative would be to require the plan to be produced within a reasonable period of time after the request is made, but in no case longer than one business day.

A number of commenters focused on the type of assistance that we should provide to facilitate compliance with the final rule after it is published. Assistance, particularly for small operators, in developing training plans appropriate for their operations, was the subject of much comment. Several commenters suggested that we or other organizations implement a ''cafeteria-type'' approach for plan development, where you could choose among various training plan components to tailor a plan to your particular operation. For example, the plan options from which you might choose would include training components on subjects or curriculum that are suitable for a small sand and gravel operation, or for a typical limestone mine, or a shell dredging operation.

We appreciate the commenters who are already giving thought to the types of resources that would provide the greatest benefit to the mining community in complying with the final training rule. We acknowledge that compliance assistance for the mining community will be a key element in the successful implementation of the final rule. We intend to provide extensive compliance assistance to you, not only through our staff in Metal and Nonmetal Mine Safety and Health, but also through our newly formed Educational Field Services Division; we also expect state grantees to play a significant role in assisting you in developing effective training plans and, at the same time, in satisfying the requirements of the final rule.

To this end, we solicit comments on whether we should include examples of model training plans, appropriate for different types and sizes of mining operations, in a nonmandatory appendix to the final rule. We are also considering including such model plans in a compliance guide that we will be developing for the mining community

after publication of the final rule. We anticipate that other organizations, including state grantees and large operators, also may develop generic training plans and make them available to small operators to assist in training plan development. We are interested in commenters' suggestions for other types of compliance assistance that would be useful to the mining community.

Section 46.4 Training Program Instruction

This section of the proposal—(1) would require you to ensure that training given under this part is consistent with the written training plan required under § 46.3; (2) would require training to be presented by a competent person; and (3) would allow you to arrange for training to be provided by outside instructors. This section also responds to comments, including the draft of the Coalition, that the rule should allow the use of innovative training methods and should accept equivalent training, provided to satisfy the requirements of the Occupational Safety and Health Administration (OSHA) or other federal or state agencies, to satisfy part 46 requirements. Finally, this section would permit short safety and health talks and other informal instruction to satisfy training requirements under this part, in response to a number of comments.

Paragraph (a)(1) would clarify that training under part 46 must be conducted in accordance with your written training plan. This is intended to ensure that the training given under this part is consistent with the approach outlined in your plan, and is part of an organized scheme for comprehensive miner training.

Paragraph (a)(2) provides that the training must be presented by a competent person. ''Competent person'' is defined in proposed § 46.2 as a person designated by you who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must also be able to evaluate the effectiveness of the training.

We asked for specific comments during the public meetings on whether the rule should establish minimum qualifications for persons who conduct miner training, and if so, what those qualifications should be. Many commenters offered their views on this issue.

A number of commenters stated that the rule should impose no minimum qualifications for trainers. Some indicated that many supervisors and other employees at mining operations possess the experience and skills necessary to train others effectively, and that you should have broad latitude to use on-site trainers for some, or all, of your training needs. Other commenters believed that it is impossible to regulate the quality of instruction with minimum criteria such as academic training, mining experience, years of training experience, etc., and that an instructor certification program would not guarantee the quality of instruction. One commenter was concerned that restricting all training to a limited pool of certified instructors would deprive you of the flexibility needed to develop training plans responsive to the unique circumstances of each mining operation. Another commenter stated that if training instructors are required to be certified and to complete some type of formal training, you could have great difficulty in finding people who can actually deliver training in the necessary subject areas.

On the other hand, several commenters recommended that the approach taken in part 48, which requires our approval of instructors, be used as a guideline for addressing instructor qualifications under part 46. Under part 48, instructors may be approved in several ways. For example, instructors may take an instructor training course and complete a program of instruction approved by us in the subject to be taught; instructors may also obtain approval to provide training based on written evidence of their qualifications and teaching experience.

In contrast, several commenters stated that the instructor approval process under part 48 has had inconsistent results, at best. Another commenter suggested that instructors should be certified by a recognized professional organization in health and safety. Still others recommended that if we do not require instructors to be approved, the rule should require prospective trainers to go through a training course so that they will know how to present training materials correctly and effectively. Several commenters believed that instructors should also be able to evaluate the effectiveness of the training they are giving.

The proposal adopts the recommendations of many commenters that the rule not require a formal program for the approval or certification of instructors, or establish rigid minimum qualifications for instructors. We are persuaded at this stage that a formal instructor approval program would provide no real guarantee that training will be effective, and that the benefits realized from a formal program would not justify the additional administrative burden. We are also persuaded by commenters who stated that there are many experienced and knowledgeable people currently working in the industry who can provide effective training in a wide variety of subject areas.

Contrary to the recommendations of several commenters, we have not included a proposed requirement that trainers receive instruction in how to provide training before they serve as instructors. Instead, we would expect you to assess how well a person can communicate in determining whether he or she is capable of providing training for your miners. A person with extensive knowledge in a particular subject area may not be a good choice as an instructor if he or she is unable to convey the information to miners clearly and effectively.

The proposal would require that training be conducted by a ''competent person'' designated by you. The proposal would not establish minimum academic or professional qualifications for these persons. Instead, these persons would be required to have sufficient ability, knowledge, training, or experience to enable them to provide training to miners. They must also be able to evaluate in some fashion whether the training has been effective. The proposal does not specify how such an evaluation must be conducted, and we anticipate that the method of evaluation will depend to a large extent on the type of training being given. For example, a written test might be appropriate in a traditional classroom setting, while a miner receiving new task training may be asked to demonstrate to the trainer that he or she can perform the task safely. The proposed rule would allow a significant amount of discretion in this determination. In addition, we will be available to provide assistance to you in determining the appropriate training for your operation.

We are interested in comments on the approach taken in the proposal for training instructors, particularly on our preliminary decision on the merits of a formal instructor approval or certification program. For example, one commenter recommended that we should focus our attention on the evaluation of instructors who have not taken a course on presentation skills, also known as ''train-the-trainer'' courses. We are also interested in commenters'' views on whether the final rule should require some minimum amount of formal training for instructors, designed to ensure that the instructor has the communication skills needed to provide effective training.

Paragraph (b) provides that you may conduct your own training or may arrange for training to be conducted by federal or state agencies; associations of operators; miners' representatives; other operators; contractors, consultants, or manufacturers' representatives; private associations; educational institutions; or other competent training providers. This provision is similar to language in § 48.24 and in the Coalition draft proposal and would make clear that you may choose from a variety of training providers in satisfying your training responsibilities under part 46. We recognize that a wide variety of effective miner training is available from many types of organizations across the country. Under the proposal, you would be free to arrange with outside training providers in satisfying your training obligations. We expect that many small operators and independent contractors, who may not have the resources for a formal in-house training program, will elect to arrange with outside organizations to provide some part of their training.

Paragraph (c) would allow the acceptance of training required by OSHA or other federal and state agencies to satisfy the training requirements under part 46. Under the proposal, this training must be equivalent to what would be provided under part 46—that is, it must be safety and health training that is relevant to the mining environment.

Acceptance of OSHA training was raised by a number of speakers at the public meetings. Several speakers indicated that many operations regulated by us, such as sand and gravel or crushed stone sites, are also associated with an OSHA-regulated facility, such as a construction site. Employees may be shared across several operations under the same management. One speaker pointed out that in many cases the equipment at these operations is interchangeable, the tasks are interchangeable, and the workers are interchangeable. These employees may perform the same duties at both sites and have been trained to work around the same types of hazards. These speakers strongly urged us to accept the safety and health training provided to comply with OSHA regulations to satisfy training requirements under part 46. Several commenters also recommended that we accept training that is provided to satisfy the requirements of other regulatory agencies, and this recommendation is reflected in the proposal. It should be noted that this training would need to be documented under § 46.9 to be accepted, not only to establish the duration of the training but also the equivalency of the training. We are persuaded at this point that acceptance of this training is appropriate. However, we are interested in comments that both support or take issue with this determination. We are also interested in receiving comments on which federal and state agency training requirements may be used to satisfy the requirements of part 46.

Paragraphs (d) and (e) are intended to provide you with flexibility in satisfying your training obligations. Under paragraph (d), training under part 46 could consist of classroom instruction, instruction at the mine site, other innovative training methods (such as computer-based training), alternative training technologies, or any combination thereof. The recognizes that a combination of different training methods can be extremely effective, and makes clear that we encourage you to be creative in complying with your training responsibilities.

Several commenters recommended that the rule allow for training at the mine site, particularly initial training for new miners. Another commenter believed that training under the rule should not be limited to traditional classroom instruction, but that a mix of different approaches should be permitted. A number of commenters strongly recommended that the rule be sufficiently flexible to accommodate future technology and training advances. The proposal is responsive to these recommendations.

We intend that the proposed rule allow new training technologies developed in the future to be used to comply with part 46. We anticipate that many of you will use a combination of different approaches to provide training, including innovative technologies. On the other hand, the classroom may serve as the most appropriate forum for training on particular subjects.

Paragraph (e) would allow employee safety meetings, including informal safety and health talks and instruction, to be credited toward either new miner training, newly-hired experienced miner training, or annual refresher training requirements, provided that you document the training consistent with proposed § 46.9. We requested comment in the notice of meeting published in the **Federal Register** on whether informal instruction lasting less than 30 minutes should be allowed to satisfy training requirements under the rule. Part 48 currently requires a training session to last at least 30 minutes, and several commenters urged the inclusion in part 46 of this 30-minute restriction. One commenter believed that a 15-minute minimum was appropriate. Other commenters stated that some of the best training occurs in sessions of less than 15 minutes, and that the rule should not impose an arbitrary restriction on the length of training sessions. A number of commenters indicated that short training sessions provided throughout the year can be very effective.

We are persuaded by those commenters who advocate flexibility in the length of training sessions, and this determination is reflected in the proposal. However, we are interested in any rationale or evidence from commenters that would support imposing a minimum duration on training sessions.

Section 46.5 New Miner Training

This section includes minimum requirements for training new miners when they begin work at a mine. This section lists subject areas that training must cover, addresses which of those subjects must be taught before new miners begin their work duties at the mine, and specifies the minimum number of hours of instruction required by the Act for new miner training.

Section 115(a)(2) of the Mine Act requires mine operators to provide at least 24 hours of training to inexperienced surface miners. This training must include instruction on specific topics.

The **Federal Register** notice announcing the public meetings solicited comment on several issues related to new miner training. Specifically, comments were requested on—

(1) The subjects that should be taught before a new miner begins assigned duties;

(2) Whether training should be given all at once or over time, or whether you should make this determination; and

(3) The advantages and disadvantages of spreading training over an extended period.

While section 115 does not expressly require new miners to be trained before they begin work, part 48 currently requires that the full 24 hours of new miner training be given before miners are assigned work at the mine, unless specifically permitted to do otherwise by the District Manager. Even with District Manager approval, however, operators under part 48 must provide a minimum of eight hours of training to new miners before work duties begin.

Many speakers at the public meetings and many of those providing written comments addressed how much of the 24 hours of new miner training should be given before a miner is allowed to begin work. One commenter stated that all of the subjects listed in section 115

of the Mine Act should be taught before a new miner is assigned work, even if the work is done under close supervision. However, the majority of commenters indicated that they believe it would be appropriate to require at least eight hours of training before the miner begins work, which is also the minimum number of hours specified under the Coalition's proposal. Several commenters advocated a six-to eight-hour training minimum before a miner begins work, and one commenter took the approach that initial training could include two hours of instruction on hazard recognition, personal protective equipment, and the company's safety policy, followed by six hours of work closely supervised by an experienced miner. However, a number of commenters, including those who indicated approval of a minimum initial training requirement, also said that setting a minimum number of hours for training may be excessive for many mines. According to many commenters, effective initial training could be completed in less than a mandated minimum depending on the size of and conditions at the mine, tasks to be performed, and experience of the miner. The commenters claimed that the key issue is the quality and relevance of training and not the number of hours spent providing initial training for a new miner.

In response to commenters and the Coalition's proposal, we considered adopting an eight-hour minimum initial training requirement in the proposal and also gave serious consideration to several other approaches. These alternatives included a requirement that all 24 hours of training be completed prior to the miner commencing job duties, or that a minimum period of initial training be completed, such as two or four hours, before the miner begins work. We also considered a two-hour minimum period of initial training, which could be reduced, with our approval, based on the size of the operation, complexity of the mine site, and experience of the new hire. We also considered a requirement that you provide instruction to the miner on specific topics before beginning work, in lieu of a minimum time requirement for initial training.

We have made a preliminary determination that requiring a minimum number of hours to be spent on training before a miner begins work may be unduly burdensome and unnecessary for many mines, particularly small mines with few employees and limited equipment. Commenters indicated that at many small operations, a thorough workplace orientation on the mine and its hazards would not even require two hours. These commenters recommended flexibility be given to you in determining the amount of initial training that should be provided. We believe you are in the best position to determine the amount of training that is needed for new miners, depending on your particular operation.

We have determined that it is appropriate to require that new miners be given instruction on certain subject areas prior to beginning work, rather than to establish a minimum number of hours that must be devoted to this training. The proposal would require training on four specific topics for each new miner before he or she begins work at the mine, with the balance of the 24 hours of training to be provided within 60 days. By not requiring a minimum number of hours of initial training for new miners, the proposal would provide flexibility to you to tailor your training plans to focus on the unique needs of your operations and workforce and to provide the most effective and relevant training for the new miners at your mines. At the same time, by requiring that specific subject areas be covered before new miners begin work, the miners would receive training on relevant topics to ensure that they are familiar with the operations and environment at the mine, their job duties, and the hazards they may encounter at the mine site.

We are interested in whether commenters agree with this approach, or whether the final rule should establish a minimum number of hours of training that new miners must receive before beginning work. One possible approach would be to specify a minimum number of hours of initial training that must be provided to miners based on mine size or complexity of operation. For example, a large operation may be required to provide eight hours of training, while a very small operation would be required to provide one hour of training. We are interested in comments on this alternative, particularly on the criteria that might be used in determining how much initial new miner training must be given, such as employment, type of operation, type and amount of equipment, etc. Commenters who believe that a minimum number of hours of training should be required should also specify what the minimum number of hours should be.

Many speakers and commenters addressed how long the rule should allow the balance of the 24-hour new miner training to be given. The draft Coalition proposal would require that new miner training be completed within 60 working days of the miner reporting to work at the mine site. Most commenters favored a 60-day deadline for completion of new miner training, but did not indicate whether the deadline should be 60 working days or 60 calendar days. One commenter expressed a preference for spreading out the remaining training over a 90-day period.

Some commenters pointed out that new miners can be overwhelmed with too much information when they first come to work at a mine. These commenters were opposed to providing training all at once. A few commenters maintained that providing new miner training over an extended period of time, with practical work experience between training periods, improves and encourages miners' retention of important training material.

Citing the rapid turnover of workers in the industry, other commenters who favored training over an extended period of time were concerned that operators would not recoup the substantial up-front investment incurred for training if it were required to be given all at once. This was offered as one reason to allow training to be given over a longer period, up to 90 days or even six months; additionally, some commenters maintained that it would be less burdensome in the long run since they would not have to provide the balance of training to miners whose employment at the mine lasted less than three months. Another commenter believed that a six-month period would also be less disruptive to the mining process since it would give you more flexibility to schedule training during periods when operations would be slowed or idle.

In contrast, there were a few commenters who pointed out several disadvantages of spreading new miner training over a period of time. The drawbacks mentioned were that the new miner may not receive a timely general overview of all potential safety and health hazards, which could result in a greater risk of injury. These commenters also stated that training over a longer period of time could increase recordkeeping and paperwork burdens and create scheduling problems.

After considering the comments received, we believe that there are advantages to training new miners over an extended period of time, including better retention of information by miners, and flexibility in providing the training. We are sensitive to the economic hardships that many smaller operators may experience due to their inability to hire or spare employees for training purposes. In addition, training

may be more meaningful after a worker accrues some work experience at the mine.

On the other hand, inexperienced or untrained miners should not be permitted to work for long periods without being fully trained. Therefore, we are proposing in paragraph (d) that you must provide the balance of the 24 hours of new miner training within 60 days after the new miner begins work at the mine. Under the proposal, the 60 days would be calendar days, not working days as recommended by the Coalition. We believe that a deadline measured in working days would be impractical, particularly given the intermittent and seasonal work schedules of many operations. It would not only present an administrative burden to you, both for paperwork and for class scheduling, but would also make enforcement extremely difficult. However, we solicit comment on the 60-day deadline for the completion of new miner training and are interested in suggestions for alternate approaches.

Section 115(a)(2) of the Act requires new miner instruction on the following topics:

> * * * statutory rights of miners and their representatives under the Act, use of the self-rescue and respiratory devices where appropriate, hazard recognition, emergency procedures, electrical hazards, first aid, walk around training, and the health and safety aspects of the task to which the miner will be assigned.

A number of commenters and speakers at the public meetings addressed the subjects that should be taught to new miners, without indicating whether the courses should be taught before or after a new miner begins work. The comments varied greatly. One commenter advocated the elimination of required training subjects altogether and urged the use of task training in lieu of new miner training. Several commenters approved of providing training on the eight general subject areas listed in section 115(a)(2) of the Act but did not endorse describing the specific contents of courses to be taught, as is presently done in part 48. Other commenters favored new miner training subjects as they are presented in part 48, but believed that first aid training, in particular, needs to be addressed in a different forum, citing the significant amount of instruction needed to adequately cover the topic. One commenter questioned the appropriateness of including training on self-rescue devices for surface miners.

Several commenters recommended that the final rule list as required topics the more general subjects found in section 115, rather than the more detailed approach taken in existing part 48. They maintained that a longer list of subjects with detailed course content would limit your ability to provide meaningful training at the varied operations at mines affected by the rider. Others suggested that criteria or guidelines be provided to you to assist you in selecting new miner training topics and in determining the time that should be devoted to specific subjects. Suggested criteria included the size of the mine, the history of accidents, injuries, and fatalities at the mine, national trends in accidents and fatalities, and the experience and knowledge of individual miners.

A number of commenters addressed the subjects that should be taught before a new miner begins assigned work duties. The majority of commenters and speakers agreed that some general orientation as well as site- and task-specific training must take place before a miner begins work at the mine. At the same time, many commenters maintained that you need flexibility to tailor the training to the specific safety and health needs of your miners and the unique conditions at your mines. The Coalition's draft proposal would require eight hours of instruction in the following subjects before a new miner could begin work: walkaround training; hazard recognition; and the health and safety aspects of tasks to which the new miner will be assigned. Commenters most frequently mentioned the courses listed above. In addition, some commenters recommended that training on escapeway and emergency procedures be included in pre-work training.

In response to these comments, proposed paragraph (b) would require that you train new miners in four areas before they begin work—

> (1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be observed and explained;
>
> (2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;
>
> (3) A review of the escape and emergency evacuation procedures in effect at the mine and instruction on the firewarning signals and firefighting procedures; and
>
> (4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

Instruction of new miners in these four areas is intended to ensure that miners are sufficiently familiar with the hazards at the mine, that they can avoid exposing themselves and others to unnecessary risks and can perform their job assignments safely, and that they are able to respond to mine emergencies. We are requesting comment on whether the subject areas required are appropriate, especially in light of the fact that the proposal does not establish a minimum number of hours for pre-work training.

Paragraph (c) of the proposal would allow new miners to practice under the close supervision of a competent person to satisfy the requirement for training on the health and safety aspects of an assigned task. This provision is consistent with our current policy under part 48, and is also included in the Coalition's draft proposal. Our existing policy under part 48 allows a miner to perform an actual task assignment at the mine site as long as there is continuous supervision by an approved instructor, and training, not production, is the primary goal. ''Close supervision'' would mean that the competent person is in the immediate vicinity of the miner and is focusing his or her complete attention on the actions of the miner being trained. A miner would not be considered under ''close supervision'' if the competent person is occupied with any other task or is not in close proximity to the miner. Although the proposal would not require training instructors to be approved by us, we believe that practice of a task by a new miner under the close, individualized, supervision of a ''competent person,'' as that term is defined in proposed § 46.2, can be an effective training method and can be accomplished safely. We gave consideration to allowing practice to be supervised by an experienced miner rather than a competent person, but have determined that the person supervising new miners and instructing them on the health and safety aspects of their jobs must be qualified in the particular subject matter, possessing the skills to teach that subject and to evaluate whether the recipient of the instruction has understood it. We solicit comments on whether it is reasonable to allow a new miner to practice a task under the supervision of a ''competent person'' to satisfy this pre-work training requirement.

Similarly, under paragraph (a), until the full 24 hours of new miner training is received, a new miner must work under the close supervision of an experienced miner. This is modeled after a similar provision in § 48.25(a), and is intended to ensure that the health and safety of a new untrained miner are protected until new miner training is completed. We are interested in comments on whether this provision is

realistic, workable, and in the best interests of the miner.

Proposed paragraph (d) lists the remaining subject areas that must be covered in new miner training within 60 days after the miner begins work, and is derived from section 115 of the Mine Act and recommendations from commenters and the Coalition's draft proposal. These subjects include—

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to the mine's rules and procedures for reporting hazards;

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine; and

(5) A review of first aid methods.

The proposed rule provides some specification of the content of the training on each subject area, beyond what is included in the Mine Act. This detail is provided in the proposal to assist you and miners in developing training plans. We are interested in comments on whether the courses being proposed are sufficient, whether including specification of the content of subject areas is helpful, or whether it decreases your flexibility in developing training materials that best meet your needs.

We would note that the requirement for first-aid instruction under paragraph (d) would not require you to hire an approved first-aid instructor or obtain first-aid teaching equipment to train new miners. We understand that some miners and designated supervisors will receive first-aid training under the requirements of 30 CFR parts 56, 57, 75, and 77, and that an in-depth first-aid course for new miners may be impracticable in many cases. However, first-aid instruction should include a review of basic first-aid measures, such as contacting emergency medical personnel, application of bandages, or the circumstances where injured persons should not be moved.

A few commenters were concerned that miners who had completed new miner training but did not have sufficient work experience for status as an experienced miner would be required to repeat new miner training. To minimize the likelihood that miners would have to repeat new miner training unnecessarily, proposed paragraphs (e) and (f) would make certain allowances for new miners who have not attained experienced miner status for training purposes but who have completed new miner training under part 46 or part 48. Under paragraph (e), miners who have completed new miner training within the previous 36 months but who do not have the 12 months of experience for experienced miner status would not have to repeat new miner training if they begin work at a new mine. This is similar to a recently revised provision in § 48.25(d). We have determined that it would be illogical and unnecessary to require these miners to repeat 24 hours of new miner training each time they begin work at a new mine covered by part 46, until they have accrued the requisite 12 months of experience. However, miners would be required to receive pre-work training under paragraph (b) on the same four subjects that are required for both new miners and newly-hired experienced miners, to ensure that they are familiar with the mine's operations and practices before starting work.

We also recognize that, although a miner may not have completed new miner training under part 46 or § 48.25, he or she may have completed training in particular subject areas as an underground miner under § 48.5, or as a surface miner under § 48.25. In some cases, the subject areas covered may be relevant to courses required for new miners under part 46. Paragraph (f) would allow this training to be credited toward new miner training. For instance, a miner may have received new miner instruction at an underground mine on the statutory rights of miners and their representatives; the use, care, and maintenance of self-rescuers or respiratory devices; or on first aid methods. In those cases, under proposed paragraph (f), it would be acceptable to give credit for relevant training courses already taken by the miner, provided that the courses were completed within the previous 36-month period.

Although the proposal would allow credit for training in any subject area, we request comment on whether credit for training given at other mines should be limited to training in subject areas listed under proposed paragraph (d), and not be given for subject areas listed under paragraph (b), which have a very mine-specific orientation. For example, it may be inadvisable to allow credit for hazard recognition training or a review of the escape and emergency procedures given at another mine, because this training may have very limited value or application at the mine. On the other hand, a miner returning to the same mine could be given credit for all training completed at that mine within the previous 36-month period.

We encourage commenters to address whether the final rule should allow such crediting and how it should be handled. Our intention in paragraphs (e) and (f) of § 46.5 is to—

(1) Be practical;

(2) Reduce the compliance burden and expense of redundant training for you; and

(3) Still ensure that miners receive effective training.

Section 46.6 Newly-Hired Experienced Miner Training

This section of the proposed rule would address training requirements for newly-hired ''experienced miners,'' as that term is defined in § 46.2. This section lists the subject areas that must be addressed in training newly-hired experienced miners, before they begin work at the mine, and requires that the miners receive annual refresher training within a 90-day period after they begin work. This section also includes separate training requirements for experienced miners who are returning to the same mine after an absence of 12 months or less, and for experienced miners who are employees of independent contractors and who are on mine property for short durations.

Section 115 of the Mine Act does not expressly direct the Secretary to promulgate training requirements for newly-hired experienced miners. However, experienced miners should be thoroughly familiar with the particular environment and hazards present at their mine before they start work. The regulations in part 48 provide separate training requirements for newly-hired experienced miners.

The draft proposal of the Coalition would require newly-hired experienced miners to receive only site-specific hazard recognition training before being assigned work duties, and annual refresher training within 90 days of employment. The Coalition draft provides that if a miner had received refresher training ''commensurate with the hazards of the new job from a previous employer within the last year,'' the miner would be required to receive hazard recognition training.

Only a few commenters addressed newly-hired experienced miner training. One commenter stated that experienced miners need the same level of training as new miners so that poor safety habits can be corrected. One commenter maintained that before work begins, a newly-hired experienced miner should receive a safety orientation that addresses both task- and site-specific subjects. Another commenter maintained that appropriate task training should be provided before the newly-hired experienced miner begins

work, and supported the requirement that refresher training be given to newly-hired experienced miners within 30 days of employment if they are not current with their refresher training. Several commenters addressed situations where an experienced miner returns to mining after an absence. One commenter stated that such a miner must be made aware of improvements in the trade since the miner's absence. Another commenter, referring to training requirements for newly-hired experienced miners in part 48 and to an earlier draft proposal from the Coalition, questioned the appropriateness of requiring only eight hours of training for a person returning to mining work after an absence of five years or more.

Paragraph (a) would require you to train newly-hired experienced miners in four subject areas before they begin work. These required subjects would include—

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be observed and explained;

(2) The recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) The escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) The health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

The requirements of proposed paragraph (a) are identical to the requirements proposed in § 46.5(b) for training for new miners before they begin work and would include both task- and site-specific instruction. For the same reasons discussed in the preamble for § 46.5, the proposal specifies subjects and course materials that are intended to ensure that a newly-hired miner is familiar with the mine environment, operations, equipment, potential hazards, and emergency procedures. These requirements are also intended to ensure that newly-hired miners have sufficient instruction to perform work assignments safely. We are interested in whether the subject areas that would be required to be addressed for newly-hired experienced miners before they begin work are appropriate or whether different subject areas would be more relevant for experienced miners. Commenters should note that proposed § 46.6 would not specifically provide, as do the requirements for new miner training, that a newly-hired experienced miner could perform actual task assignments as ''practice'' to fulfill the requirement for training on the health and safety aspects of an assigned task. However, we are interested in whether this issue should be addressed in the final rule.

Paragraph (b) directs you to provide annual refresher training to newly-hired experienced miners within 90 days after their employment. The proposal specifies that, at a minimum, the refresher training must include—

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards; and

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine.

The requirements of this paragraph are identical to those proposed for new miners under § 46.5(d), except that a review of first aid methods would not be required for experienced miners. The proposal would not require first aid instruction for newly-hired experienced miners because it would be covered in new miner training and may be reviewed during annual refresher training. This would not prevent you from including first aid training for newly-hired experienced miners if you choose. Again, we request comments on the suitability of the listed subjects and whether the detailed description of the subject areas would limit your flexibility in tailoring course materials to meet the needs of newly-hired experienced miners. We are also interested in whether the 90-day deadline to provide annual refresher training on the required subjects is reasonable. We request that commenters explain the reasoning behind their recommendations.

The proposal would not require a minimum number of hours for newly-hired experienced miner training, in recognition of the wide range of experience and skill among experienced miners. The approach taken in the proposal is intended to allow you to determine the amount of training that is appropriate for each newly-hired experienced miner, based on your assessment of the miner's needs. The proposal would require all newly-hired experienced miners to receive at least some training in all of the required subject areas. However, a miner transferring from one mine to another where the operations and equipment in use are very similar may not need as much training in some areas as another experienced miner whose previous experience has been less relevant. We are interested in whether commenters advocate setting a minimum number of hours for newly-hired experienced miner training, or support training of a specified duration based on discrete criteria such as mine size, mining methods, type of operations or equipment, etc.

Paragraph (c) of proposed § 46.6 would address training for a newly-hired experienced miner returning to the same mine after an absence of 12 months or less. This provision has been adopted from recently revised provisions in § 48.26. Under this paragraph, you would not be required to provide such a miner with the training required by paragraphs (a) and (b); instead, you would simply be required to inform the miner, before the miner begins work, of changes at the mine that occurred during the miner's absence that could endanger his or her safety or health. You would also be required to provide the miner with any annual refresher training that the miner may have missed during his or her absence, within 90 days after the miner starts work.

Under paragraph (d), employees of independent contractors who are ''miners'' under the proposed definition and who work at the mine on a short-term basis would be required to receive either newly-hired experienced miner training under paragraphs (a) or (b) or site-specific hazard training under § 46.11. This is based on a similar provision in the definition of ''miner'' in existing § 48.22(a)(1). The language of the proposed rule itself reflects our assumption that this provision would be applicable primarily to drillers and blasters who, because of the nature of their work, are at a mine for a short period of time before moving on to another job at another mine. We do not believe that it makes practical sense to require miners who regularly move from one mine to another to be treated the same as newly-hired miners who remain at one mine site. Therefore, the proposal would not require them to receive newly-hired experienced miner training whenever they begin work at a new mine. However, we are interested in comments on whether these are appropriate exceptions from the newly-hired experienced miner training requirements.

Section 46.7 New Task Training

Section 115(a)(4) of the Mine Act provides that:

* * * any miner who is reassigned to a new task in which he has had no previous

work experience shall receive training in accordance with a training plan approved by the Secretary * * * in the safety and health aspects specific to that task prior to performing that task.

This section of the proposed rule would implement this statutory provision by requiring you to provide miners with training for new tasks and for regularly assigned tasks that have changed, before the miners perform the tasks.

Commenters strongly supported a requirement for task training, stating that employees need to be aware of the hazards and the risks associated with the jobs or tasks that they are asked to perform and be familiar with the systems, tools, equipment, and procedures required to control these hazards. The proposed task training requirements are intended to reduce the likelihood of accidents resulting from lack of knowledge about the elements and the hazards of the task. This training should ensure that miners receive necessary information before performing the tasks that they are assigned, so that they can avoid endangering themselves or other miners at the mine site.

Some commenters recommended that new task training requirements be patterned after the requirements for task training in part 48. Under part 48, for example, a program for new task training must include instruction, in an on-the-job environment, in the health and safety aspects and safe operating procedures of the task; supervised practice during nonproduction times is also required.

Paragraph (a) of proposed § 46.7 provides that, before a miner performs a task for which he or she has no previous experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. Additionally, if changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes.

Unlike part 48, the proposal does not include detailed requirements for task training. This is intended to allow you to design task training programs that are suitable for your workforce and your operation. We expect that effective new task training will include, at a minimum, instruction in the elements of the task, including hands-on training, and an explanation of the potential health or safety hazards associated with the task and ways of minimizing or avoiding exposure to these hazards. However, we are interested in comments on whether the final rule should include more detail and guidance for you on the elements of an effective new task training program, and what areas should be addressed. We also solicit comments on whether new task training requirements under the final rule should be modeled after the requirements in part 48, as recommended by some commenters.

Several commenters stated that very effective and safe training in a new task can include the miner practicing the task while under the close supervision of a competent person, who instructs the individual in how to perform the task in a safe manner. We believe that supervised practice can allow the miner to gain experience at the new task and to learn how to avoid the hazards presented by the performance of the task. Consistent with this determination, paragraph (b) specifically provides that practice under the close supervision of a competent person may be used to satisfy new task training requirements. ''Close supervision,'' as discussed in the preamble for new miner training under proposed § 46.5, would mean that the competent person is in the immediate vicinity of the miner and is focusing his or her complete attention on the actions of the miner being trained. A miner would not be considered under ''close supervision'' if the competent person is occupied with any other task or is not in close proximity to the miner.

We intend that task training would not be required for miners who have performed the task before and who are able to safely perform the task. However, you must first determine that task training is not necessary, typically by having the miner demonstrate that he or she is able to perform the task safely.

Several commenters recommended that the rule allow task training to be credited toward new miner training requirements. We recognize that new task training will be a fundamental and essential part of the training for most new miners, who must be trained in the health and safety aspects of the tasks they will be assigned. Allowing task training to be used to satisfy new miner training requirements would be consistent with this requirement. Paragraph (c) would therefore specifically provide that new task training may be used to satisfy new miner training requirements, as appropriate. Additionally, although speakers at the public meetings did not specifically raise the issue, we are interested in whether commenters support allowing new task training to satisfy some portion of annual refresher training requirements.

Section 46.8 Annual Refresher Training

Section 115(a)(3) of the Act requires all miners to receive at least eight hours of refresher training no less frequently than once every 12 months, but does not require that specific subjects be covered as part of this training. In the **Federal Register** notice announcing the public meetings, we requested comment on whether specific subject areas should be covered during annual refresher training, and if so, what subjects should be included.

Commenters strongly supported the concept of annual refresher training. However, most commenters believed that the subjects covered in refresher training should not be fixed, but instead should be tailored to the safety needs of the miners at the particular operation. Many commenters indicated that training topics should vary from year to year.

Several commenters stated that although general guidelines addressing possible training topics was a good idea, the final rule should allow flexibility in choosing topics. One commenter stated that refresher training should cover subject areas relevant to the biggest safety problems at the mine over the preceding year. Another commenter indicated that his operation took that approach and analyzed accidents that occurred at the mine over the past year, basing its training program on that analysis. One commenter stated that the idea that annual refresher training is just boring, routine, and repetitious of the same topics every year is dangerous, and that lifesaving critical skills that are non- routine need to be refreshed because people forget.

We are persuaded by commenters' recommendations that you have flexibility in selecting topics for refresher training and have made a preliminary determination that refresher training that addresses topics relevant to the mine's methods of operation, equipment, accident and illness history, etc., can be extremely effective. The proposal reflects this determination.

Paragraphs (a) and (b) of proposed § 46.8 provide that you must provide each miner with no less than eight hours of refresher training once every 12 months. The refresher training must include, at a minimum, instruction on changes at the mine that could adversely affect the miner's health or safety. We expect that these changes would include such things as a modification in mine traffic patterns, new or retrofitted equipment, a new blasting schedule, etc.

Paragraph (b) also includes a list of topics that may be covered as part of the refresher training, but none of these topics would be mandatory. The list of topics has been taken from part 48, and includes, among others, transportation controls and communication systems; ground control; water hazards, pits, and spoil banks; illumination and night work; and explosives. We expect that you will carefully select the areas that will be covered in the refresher training at your mine, to ensure that your miners will receive practical and useful instruction designed to effectively address the safety and health conditions at your mine. However, we are interested in comments on whether the final rule should include more detailed requirements or guidance for refresher training programs. We are specifically interested in whether the final rule should require instruction on particular topics, similar to part 48, and if so, which subjects should be included.

Some commenters recommended that the 12-month interval for training should be calculated based on the months that a miner actually works as a miner rather than on 12 calendar months. These commenters reasoned that many miners only work at the mine site two or three months out of the year, and that these miners should not have to receive the same amount of training as miners who are continuously employed at a mine. The proposal does not adopt this suggestion. The rationale for a refresher training requirement is that the passage of time results in the loss of important information. Congress determined that miners should be retrained at a specified interval—no less frequently than every 12 months'and there is nothing in the Act's legislative history that suggests that Congress intended that refresher training be given every 12 working months rather than calendar months. In extreme cases, this interpretation might mean that some miners would receive refresher training every two or three years, rather than once every year as provided in the Act.

Section 46.9 Records of Training

This section of the proposal includes requirements for you to record and certify that miners have received health and safety training under this part.

Section 115(c) of the Mine Act provides that, upon completion of each training program, each operator shall certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan. The Mine Act also provides that a certificate for each miner shall be maintained by the operator and shall be available for inspection at the mine site; and that a miner is entitled to a copy of his or her training certificate when he or she leaves the operator's employ. Finally, the Mine Act requires that each training certificate indicate on its face in bold letters that false certification by an operator is punishable under section 110(a) and (f) of the Act.

Recordkeeping was one of the issues identified by us in the **Federal Register** notice announcing the public meetings. We specifically asked for comments on whether records of training should be kept at the mine site, or whether you should be allowed to keep these records at other locations.

A number of speakers at the public meetings addressed the issue of recordkeeping. Several speakers at the public meetings supported flexibility in all aspects of record maintenance, stating that you should be able to choose the record storage option that best suits your operation. One commenter stated that paperwork should be kept at a minimum, because if supervisors must spend too much time on paperwork, they will not have enough time to address mine hazards or ensure that miners are working safely. A number of commenters stated that you should have the option of keeping records at a location other than the mine site. These commenters believed that this would allow you to keep records in computer format or at a central location, and pointed out that the prevalence of electronic mail, computer networks, and fax machines would permit those of you with records maintained away from the mine site to provide copies of any record essentially instantaneously, such as to an MSHA inspector during a regular inspection.

One commenter stated that centralized record management was likely to be more reliable and more cost-effective for many of you than a less automated system. Other commenters stated that at many mine sites the only place where records could be kept would be in a pickup truck, because there was nothing that resembled a mine office on the sites. Another commenter indicated that many of you have multiple mine sites, and that often the smaller sites are not well-suited for record maintenance, particularly if the records are computerized. Several commenters, however, believed that training certificates belonged at the mine site, and that such a requirement would not be particularly burdensome.

The draft submitted by the Coalition would require that you certify that required training has been provided, provide certificates of training to miners, and maintain a copy of the training records during employment and for a period of 12 months following termination of employment. The Coalition draft also would provide that a miner who leaves your employ would be entitled, upon request, to a copy of his or her health and safety certificates.

Proposed paragraph (a) would provide that, upon a miner's completion of each training program, you must record and certify that the miner has received the training. Consistent with the Mine Act requirement that certifications be kept on a form approved by the Secretary of Labor, the proposal would allow training certifications to be kept on MSHA Form 5000–23, which is the approved form used by operators under part 48 regulations to certify that training has been completed. However, this paragraph also would provide that you may use any other form that contains the minimum information listed in paragraph (b) in this section, and adopts the Mine Act provision that false certification by an operator that training was given is punishable under section 110(a) and (f) of the Act.

The requirements of this paragraph are intended to allow those of you who may already be using MSHA Form 5000–23 for training certifications to continue to use this form under the new rule. However, in response to commenters requesting flexibility in complying with recordkeeping requirements, the proposal would allow the use of other forms that contain the minimum information specified in proposed paragraph (b). Under this paragraph a form would be considered approved by us if it contains the information listed in paragraphs (b)(1) through (b)(5). Information required would include—

(1) The printed full name of the person who received the training;

(2) The type of training that was received, the duration of the training, the date the training was received, and the name of the person who provided the training; and

(3) The mine name, MSHA mine identification number, and the location where the training was given.

We took this approach in response to comments that supported the elimination of some of the recordkeeping requirements under part 48. This approach is similar to the approach taken for approved training plans in proposed § 46.3—formal approval of your recordkeeping format would not be required so long as the record includes the minimum information listed in the proposal. This is intended to provide you with the flexibility to tailor your method of recordkeeping to the particular

operation. We expect that in many cases the recordkeeping system will be computer-based; others may choose to keep certifications on MSHA Form 5000–23. Still others whose records are not computerized may choose to use another paper-based form.

It should be noted that the information required under the proposal is less inclusive than the information called for on MSHA Form 5000–23. We believe that the information listed in the proposal would be sufficient to allow us to determine compliance with the training requirements. The information should also enable miners and their representatives to determine that necessary training has been provided for every miner, without placing an unnecessary recordkeeping burden on you. However, we specifically invite comment on whether information is needed beyond what is included in paragraph (b) to determine compliance with training requirements, and why that additional information is necessary. Similarly, we are also interested in whether any items of information listed in paragraphs (b)(1) through (b)(5) are unnecessary, and why. We also invite comments on whether the final rule should require the exclusive use of MSHA Form 5000–23 for training certifications or of a similar form that has been formally approved by us, and why commenters believe such an approach is advisable or necessary.

Paragraph (b)(4) incorporates the requirement in section 115(c) of the Mine Act that each health and safety training certificate indicate on its face that false certification that training was conducted is punishable under § 110(a) and (f) of the Mine Act. Section 110(a) of the Act provides that an operator who violates a mandatory standard or any other provision of the Act shall be assessed a civil penalty of up to $50,000. Section 110(f) of the Act provides that a person who makes a false statement, representation, or certification in records or other documents filed or maintained under the Act may be subject to criminal prosecution and fined up to $10,000 and imprisoned for up to 5 years. Paragraph (b)(4) has been included in the proposal to ensure that everyone who will be affected by the final rule or who will be responsible for compliance is aware of the civil and criminal penalties under the Mine Act for false training certification.

Finally, paragraph (b)(5) requires that the training certificate also include a statement signed by the person responsible for training that ''I certify that the above training has been completed.'' The proposal would require the statement to be signed by the person who is identified in the training plan, under proposed § 46.3(b)(2), as responsible for health and safety training at the mine. The proposal would not require miners who have received training to initial or sign the form; the proposal would also not require the signature of the person who actually conducts the training, unless that person is designated in the plan as responsible for health and safety training at the mine.

This approach is taken in response to a number of commenters who supported reduced recordkeeping requirements. The proposal reflects our preliminary determination that a miner's initials or signature do not enhance the likelihood that training requirements will be fulfilled. However, we request comments on whether miners should be required to sign their training certificates. We also request comment on whether other persons besides the person responsible for training at the mine should be allowed to sign the certificates.

Paragraph (c) adopts the requirement of section 115(c) of the Mine Act that operators give miners copies of their training certificates at the completion of each training program. We intend that miners receive copies of their certifications after they have completed the required 24 hours of new miner training, eight hours of annual refresher training, newly-hired experienced miner training, or new task training. This would not prevent you from providing certificates to miners as partial installments of required training are completed, particularly when training is spread out over some period of time. We are interested in whether the requirements of this paragraph will ensure that miners will receive training certificates in a timely manner.

Under paragraph (c), you would also be required to give a miner a copy of his or her training certificates when the miner leaves your employ, upon the miner's request. This adopts the provision in section 115(c) of the Mine Act that miners are ''entitled'' to a copy of their certificates when they terminate their employment with an operator. The proposal interprets the statutory language to mean that a miner must be provided a copy if he or she requests it, but that you do not have to provide copies to miners who do not make such a request.

We anticipate that miners who are leaving for another job in the mining industry or who intend to return to the mining industry at some point in the future will request copies of their training records. This will enable miners to document their training status under our regulations at other mining operations. However, we also anticipate that some miners will terminate their employment because they are retiring or with no expectation of returning to mining. Because of this, the proposal would not require that you provide these records to the miner automatically. We do not believe that this provision is unduly burdensome for the miner. However, we invite comment on whether you should be required to provide such records automatically upon the miner's termination of employment, or whether you should be required to offer such records to the miner.

Paragraph (d) provides that you must make available at the mine site a copy of each miner's training certificate for inspection by us and for examination by miners and their representatives. This paragraph also states that if training certificates are not maintained at the mine site, you must have the capability to provide the certificates upon request by us, miners, or their representatives. This is the same approach taken for training plans under proposed § 46.3. As explained in the preamble discussion for that section, no time is specified within which a copy of the records must be produced after a request is made by us or by miners. If you elect to keep training certificates away from the mine site, you must be able to produce copies of the training certificates within a reasonable period of time. In most cases, we would expect that the records could be produced in a relatively short period of time, particularly if they are to be faxed or e-mailed to the mine site. In those cases where a mine may not have a formal office, a longer period of time to produce the records may be allowed depending upon the individual circumstances.

Comments are invited on whether the final rule should require that you maintain training certificates at the mine site. We also invite comment on the suggestion that the most recent training certificates be required to be kept at the mine site, allowing you to maintain other certificates at another location. We are also interested in whether commenters believe that the final rule should establish a deadline for you to produce records that are maintained away from the mine site, or whether the language in the proposal is adequate. One possible alternative would be require the records to be produced within a reasonable period of time, but in no case longer than one business day.

Paragraph (e) would require that you maintain copies of training certificates

and training records for each currently employed miner during his or her employment, and for at least 12 months after a miner terminates employment. This provision is adopted from the draft of the Coalition. Under this provision, you would be required to retain a miner's training certificates while the miner continues to be employed by you. At the termination of a miner's employment, you would be required to maintain the miner's certificates for at least 12 months after that employment has ended. This approach would allow us to determine compliance with the training requirements in this part for both current and recently departed miners. However, we request comment on whether a shorter or longer period for record retention is appropriate, and whether different record retention periods make sense for current and former miners. For example, part 48 requires that training certificates of currently employed miners be retained for at least 2 years, or for 60 days after termination of a miner's employment. Some commenters advocated adoption of the part 48 time frames.

Section 46.10 Compensation for Training

This section of the proposal addresses when training under this part must be conducted and the compensation that miners must receive when they are undergoing training. This section adopts the provisions of section 115 of the Mine Act that address compensation for miners who attend required training.

The issue of normal working hours and compensation for training was the subject of only one comment. A speaker at one of the public meetings stated that the rule should include a specific provision that adopted the statutory requirements in this area, to ensure that there was no confusion or uncertainty about the requirements of the Act.

Section 115(b) of the Mine Act provides that health and safety training shall be provided during normal working hours and that miners shall be paid at their normal rate of compensation when they take such training. Section 115(b) also requires that if training is given at a location other than the normal place of work, miners shall be compensated for the additional costs incurred in attending such training.

Paragraph (a) of proposed § 46.10 incorporates this statutory requirement and would provide that health and safety training must be conducted during normal working hours. As discussed earlier in this preamble, the part 48 definition of ''normal working hours'' has been included in the proposal in § 46.2 and provides that normal working hours means ''* * * a period of time during which a miner is otherwise scheduled to work.'' The definition also indicates that training may be conducted on the sixth or seventh working day provided that such work schedule has been established for a sufficient period of time to be accepted as the common practice. The proposed rule does not define the term ''sufficient period of time.'' However, as discussed under the preamble for § 46.2, we intend that the schedule must have been in place long enough to provide reasonable assurance that the schedule change was not motivated by the desire to train miners on what had traditionally been a non-work day.

Paragraph (a) would also provide that persons attending such training must be paid at a rate of pay that corresponds to the rate of pay they would have received had they been performing their normal work tasks. This provision has been adopted from part 48.

Paragraph (b) would require that if training is given at a location other than the normal place of work, miners must be compensated for the additional costs, such as mileage, meals, and lodging they may incur in attending such training sessions. Although we anticipate that much of the training provided under this part will be given at or near miners' normal workplaces, in those cases where miners must travel to receive required training, they are to be fully compensated for their expenses of travel.

This section has been included in the proposal to ensure that you and miners and their representatives are aware of the statutory requirements concerning compensation. We are interested in comments on whether these proposed provisions adequately address the issue of compensation and the scheduling of training.

Section 46.11 Hazard Training

Under the proposal, persons who are not engaged in mining operations integral to extraction or production, and who therefore do not fall within the definition of ''miner'' under proposed § 46.2, would not be required to receive comprehensive training. Instead, these persons would be required to receive site-specific hazard training. As discussed earlier, proposed § 46.2 defines ''hazard training'' as information or instructions on the hazards a person could be exposed to while on mine property, as well as applicable emergency procedures. These may include site-specific risks such as unique geologic or environmental conditions, traffic patterns, and restricted areas; and warning and evacuation signals, emergency procedures, or other special safety procedures.

As a practical matter, ''miners'' who are employees of a production-operator would receive orientation at the mine site and instruction in site-specific hazards and emergency procedures as part of their comprehensive training. ''Miners'' who are employees of independent contractors must also receive, in addition to comprehensive training, site-specific hazard training at the mine sites where they work. Under the proposal, hazard training must be given before persons begin their work duties.

As indicated earlier in the discussion of the definition of ''miner'' in proposed § 46.2, a number of commenters raised the issue of workers whose presence at the mine site is infrequent or whose activities at the mine site do not expose them to significant mining hazards. These commenters strongly recommended that the proposed rule not require these workers to receive comprehensive training. Instead, they suggested that these workers be trained in the hazards that exist at the mine site where they are working. Several commenters stated that a distinction must be made between workers such as independent haulers who come on to the mine site only to pick up a load of material and then leave, and truck drivers who are working within the mine site and who haul from the pit to the crushers.

Some commenters stated that whether or not a worker is employed by a mining company or by an independent contractor should be irrelevant in determining what type of training is appropriate. Several commenters acknowledged that some contractor employees at their operations were directly involved in the extraction or production process, and that it would be appropriate to treat these employees as miners for purposes of training. A number of commenters agreed that contractor employees who are engaged in activities such as milling, extraction, or blasting should be considered miners and should receive comprehensive training, which would include, as appropriate, new miner training or newly-hired experienced miner training.

Other commenters supporting this view stated that persons such as clerical staff who do not go into the plant or quarry do not need extensive safety and health training, and should therefore be excluded from the rule's definition of ''miner.'' Another commenter indicated that the rule must clarify what type of training must be given to service

personnel, delivery people, and occasional mine visitors.

Commenters generally supported a requirement for site-specific hazard training for those workers on mine property who did not receive comprehensive training because their involvement in mining operations and exposure to mine hazards is limited. Commenters also generally supported a requirement for site-specific hazard training for contractor employees who also receive comprehensive training because of the nature of their activities at mine sites, but who move from job to job and mine site to mine site and need initial orientation at every new site before they begin work.

The draft proposal of the Coalition would require site-specific hazard training for specific categories of persons, commensurate with the associated risks, when the individuals are assigned work on mine property. Hazard training would be required for construction workers; individuals who enter mine property to service, maintain, assemble, or disassemble mine extraction or production machinery; delivery, office or scientific workers; customer truck drivers; staff or administrative personnel; or others not engaged in extraction or production activities as related to mining and milling. The Coalition draft would also specifically exempt the listed persons from comprehensive training requirements.

The Coalition draft would not require hazard training for outside vendors, visitors, or office or staff personnel who do not work at the plant location on a continuing basis and do not have access to the mine site, or who are accompanied by someone familiar with hazards specific to the mine site.

Consistent with the Coalition draft and with recommendations from other commenters, the proposal would base training requirements on the worker's activities at the mine. Under paragraph (a), persons who are present at the mine site but who do not fall within the definition of ''miner'' in proposed § 46.2 would be required to receive only site-specific hazard training.

Paragraphs (a)(1) through (a)(4) list examples of persons who would be required to receive hazard training, including scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis. This list is intended to provide examples of individuals who fall within this category, but is not meant to be all-inclusive. Our intention is that whether a person is a ''miner'' and required to receive comprehensive training is determined by the person's activities and exposure to mine hazards, not the person's job title. For example, construction workers would be exempt from comprehensive training requirements under the Coalition draft proposal. However, under our proposed rule, whether a construction worker must receive comprehensive training or site-specific hazard training would depend on what activities the worker is engaged in at the mine site. As discussed in greater detail below, hazard training would not be required if a person is accompanied at all times by an experienced miner.

The proposed rule, unlike the Coalition draft, would require hazard training for outside vendors and visitors. We believe that a vendor or visitor who will be in the vicinity of mine hazards, even for a limited period of time, should receive hazard training unless accompanied by a knowledgeable individual while at the mine site. However, commenters should be aware that we do not intend that hazard training be required for individuals who may come onto property owned by the mining operation but who never travel in the vicinity of the mine site. For example, the mine site would include areas where extraction or production take place, such as the pit, quarry, stockpiles, mine haul roads, or areas where customers travel or haul material. A soft drink deliveryman who goes no farther than an office on mine property would not be required to have hazard training. Similarly, we do not intend that hazard training be required for office or staff personnel whose offices are located some distance from the mine site and whose duties never require their presence at the mine site. This is consistent with commenters who stated that you should not be required to train persons who will not be exposed to traditional mine or plant hazards. We solicit comments on whether this approach is appropriate, and also whether the language of the proposed rule adequately addresses this issue.

Paragraph (b) would require that you also provide site-specific hazard training to each person who is an employee of an independent contractor, and who is working at the mine as a ''miner'' as defined in proposed § 46.2. Although these employees would receive comprehensive training, they should also receive some form of site-specific hazard training, as recommended by a number of commenters. One commenter specifically stated that the rule should require hazard training to familiarize contractors with hazards specific to mining and an overview of company safety rules and the applicable regulations. As a practical matter, we expect that many, if not most, independent contractor employees will be required to receive hazard training under paragraph (a), because they do not meet the definition of ''miner'' under proposed § 46.2. However, employees of independent contractor employees who do fall within the definition of ''miner'' also need effective orientation to their new work environment before they begin their job duties. Paragraph (b) would ensure that such training is provided. Paragraph (b) would also provide that if these miners have received newly-hired experienced miner training at the mine, and have therefore been instructed in the hazards and conditions specific to the mine, hazard training under proposed § 46.11 would not be required.

Paragraph (c) would require you to provide hazard training before the affected person is exposed to mine hazards. This is intended to ensure that persons coming onto mine property will be provided with the necessary information about the mine hazards they may encounter at the mine site before they are exposed to them. We believe there is no reason to allow any delay in providing hazard training; allowing persons to be exposed to mine hazards before they receive hazard training would defeat the purpose of the training. We expect that hazard training will not be overly burdensome and can be effectively provided to affected persons before they enter the mine site.

Under paragraph (d), you may provide hazard training through the use of—

(1) Written hazard warnings;
(2) Oral instruction;
(3) Signs and posted warnings;
(4) Walkaround training; or
(5) Other appropriate means.

Commenters had varying opinions on how long hazard training should last and what form it should take. One commenter stated that this hazard training could last about 15 minutes and would cover the conditions and hazards that the person would encounter at the job site. Another commenter stated that it might take one or two hours to alert the persons receiving the training of the site-specific hazards they might encounter at the mine site, such as conditions or equipment in the area that could cause an injury. One commenter from a large facility stated that any contractor that comes onto the mine site receives a one-hour safety rules and awareness orientation to familiarize the

contractor with the company rules and regulations that apply at the property. Finally, several commenters stated that adequately marked roads and effective warning and directional signs may be sufficient hazard training for some types of workers who are not involved with mining or extraction or the milling process, such as truck drivers who come onto the mine site only to pick up a load of material.

We intend that the proposed rule allow you the flexibility to tailor hazard training to the specific operations and conditions at your mines. Depending on the circumstances, you may provide hazard training through informal but informative conversations; in other cases, you may choose to provide some form of walkaround training by guiding the person receiving training around the mine site, pointing out particular hazards or indicating those areas where the person should not go, or some combination of these methods.

We also intend that hazard training be appropriate for the individual who is receiving it, and that the breadth and depth of training may vary depending on the skills, background, and job duties of the recipient. For example, it may be acceptable for you to provide hazard training to customer truck drivers by handing out a card to the drivers alerting them to the mine hazards or directing them away from certain areas of the mine site. In other cases, adequate warning signs on mine property may be sufficient to direct persons away from hazardous areas. However, we expect that in a number of cases site-specific hazard training should be more extensive, such as for contractor employees who fit the definition of ''miner,'' and who have received comprehensive training, but who need orientation to the mine site and information on the mining operations and mine hazards. Additionally, more extensive hazard training would be appropriate where an equipment manufacturer's representative comes onto mine property for a short period of time to service or inspect a piece of mining equipment. Although this individual may not be on mine property for a prolonged period, the person's exposure to mine hazards may warrant training of a longer duration.

We seek specific comment on whether the flexibility that would be allowed under paragraph (d) in providing hazard training is appropriate and whether the language of the proposed rule is sufficiently descriptive. We are also interested in whether there may be other methods of providing hazard training that should be specifically included as examples in the final rule.

Proposed paragraph (e) would provide that hazard training is not required for any person who is accompanied at all times by an experienced miner who is familiar with the hazards specific to the mine site. The experienced miner referred to in paragraph (e) would not be required to be the ''competent person'' defined in proposed § 46.2 but should be sufficiently familiar with the mine's operations and its hazards to ensure that the person accompanied is protected from danger while at the mine site. This provision is intended to give you the option to forego site-specific hazard training, most likely for one-time visitors, and instead provide the person with a knowledgeable escort. We expect that in many situations it may be easier or more expedient for the person to be accompanied, such as a visitor who is being taken on a mine tour and would already be escorted by knowledgeable mine personnel. However, under the proposal, you may choose to accompany any category of person in lieu of providing hazard training.

Commenters should note that proposed § 46.9 would only require you to certify training for ''miners.'' As a result, the proposal would not require you to make or maintain records of site-specific hazard training for persons who do not fit within the definition of ''miner.'' We believe that a requirement for recordkeeping of this training, particularly given the many operations that accommodate outside customers on a regular basis, would be unnecessarily burdensome. However, we expect that you will be able to demonstrate to inspectors that you are in compliance with site-specific hazard training requirements. For example, you could show the inspector the hazard training materials that are used; copies of the flyers or handouts containing hazard information that you distribute to persons on arrival at the mine site; or visitor log books with a checklist that indicates that hazard training was given to the visitors. Additionally, you could point out the signs on mine property that warn of hazards or direct persons away from dangerous areas. We are interested in comments as to whether this approach is appropriate, or whether the final rule should require some form of recordkeeping for the hazard training received by all persons, not just miners.

Section 46.12 Responsibility for Training

This section of the proposed rule addresses the allocation of responsibility for training between production-operators and the independent contractors employing persons who work at the production-operators' mine sites. The provisions of this section respond to the concerns expressed by a number of speakers at the public meetings on responsibility for ensuring that workers receive required training, and are based in part on language in the draft proposal of the Coalition.

A number of commenters stated that the rule should make clear that primary responsibility for training employees of independent contractors is on the contractor. These commenters felt that the contractor, not the production-operator, would be in the best position to train his or her employees in the health and safety aspects of their particular tasks. One commenter stated that the main reason a production-operator hires an independent contractor is because the production-operator does not have the expertise or equipment to do the job safely, and that production-operators should not be compelled to provide training for independent contractor employees beyond what is necessary to address mine-specific hazards. Commenters were concerned about situations where independent contractor employees should receive comprehensive training, because they are engaged in extraction or production or exposed to significant mine hazards. Commenters stated that contractor employees frequently are not adequately trained, but that it should not be the production-operator's responsibility to provide this training. Commenters recommended that the rule specifically require contractors to ensure that their employees have the necessary training.

Commenters did agree that contractors need to be aware of the site-specific hazards at the mine site and supported a requirement for production-operators to provide site-specific hazard training to contractor employees who come onto mine sites to perform services. This section would address these concerns.

Because the part 46 definition of ''operator'' includes independent contractors, the term ''production-operator'' is used in this section and is defined in proposed § 46.2 as ''any owner, lessee, or other person who operates, controls, or supervises a mine.'' This is intended to refer to the person or company who actually operates the mine as a whole, as opposed to the independent contractor who performs services there. Paragraph (a) provides that each production-operator is primarily responsible for providing site-specific hazard training to employees of independent contractors; paragraph (b) provides that independent contractors who employ

''miners'' are primarily responsible for providing comprehensive training to their employees. This would not prevent a production-operator from arranging for the independent contractor to provide site-specific training to the contractor's employees; some independent contractors may also choose to arrange for the production-operator to provide comprehensive training for the contractors' employees. However, the primary responsibility for site-specific hazard training would continue to rest on the production-operator, while primary responsibility for comprehensive training of contractor employees would continue to rest on the independent contractor.

Production-operators would also be required under paragraph (a) to inform independent contractors of site-specific hazards associated with the mine site and the obligation of the contractor to comply with our regulations, including part 46. Independent contractors would be responsible under paragraph (b) for informing the production-operator of any hazards of which the contractor is aware that may be created by the performance of the contractor's work at the mine. These provisions are intended to ensure that production-operators and independent contractors share information about hazards at the mine, so that their employees may work safely.

The requirements of this section are consistent with our current policy on independent contractors. Under that policy, independent contractors are responsible for compliance with the Act and regulations with respect to their activities at a particular mine. We also cite independent contractors for violations committed by them and their employees. However, neither this policy nor the provisions in this section change production-operators' basic compliance responsibilities. Production-operators are subject to all provisions of the Act and to all standards and regulations applicable to their mining operations. This overall compliance responsibility includes ensuring compliance by independent contractors with the Act and regulations. One way for production-operators to address this responsibility is to confirm when contracting with independent contractors that the contractors' employees will receive safety and health training, and to include this as a provision in the contract.

We solicit comments on the allocation of training responsibility between production-operators and independent contractors who employ workers at mine sites.

Effective Date and Compliance Deadlines

We questioned a number of speakers at the public meetings on how much time should be allowed for the mining community to come into compliance with the final rule. Several speakers recommended that a year after the date of publication of the final rule would provide a sufficient period of time for affected operations to come into compliance. Several other speakers indicated that six months past the publication date would be adequate.

One possible approach would be phased-in compliance deadlines, where certain of the rule's requirements would go into effect at different stages. For example, the requirement that you develop and implement a training plan might become effective six months after the final rule is published, while the requirements for the various types of miner training would take effect one year after publication.

We are seeking comments on how to approach this issue, specifically on whether phased-in deadlines would be useful in facilitating compliance, and what period of time will be needed for full compliance. We have not yet determined what an appropriate effective date would be. We understand that there will be a very large number of operations coming into compliance simultaneously and wish to allow a reasonable amount of time for the transition.

XI. References

Federal Metal and Nonmetallic Mine Safety Act, September 16, 1966.

Federal Coal Mine Health and Safety Act, December 30, 1969.

Federal Mine Safety and Health Act, November 9, 1977.

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Joint Industry and Labor draft proposed rule for Training and Retraining miners engaged in Shell Dredging or employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines, February 1, 1999.

MSHA, Health and Safety Training and Retraining of Miners, Final Rule, October 13, 1978 [43 FR 47454–47468].

MSHA, Notice of Public Meetings, November 3, 1998 [63 FR 59258].

MSHA, Experienced Miner and Supervisor training, Final Rule, October 6, 1998 [63 FR 53750].

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List of Subjects

30 CFR Part 46

Mine safety and health, Reporting and recordkeeping requirements, Surface mining, Training programs.

30 CFR Part 48

Mine safety and health, Reporting and recordkeeping requirements, Training programs.

Dated: April 6, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 48—[AMENDED]

1. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

2. Section 48.21 is amended by adding a new sentence to the end of the section to read as follows:

§ 48.21 Scope.

* * * This part does not apply to training and retraining of miners at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines, which are covered under 30 CFR part 46.

3. A new part 46 is added to subchapter H of Title 30 of the Code of Federal Regulations to read as follows:

PART 46—TRAINING AND RETRAINING OF MINERS ENGAGED IN SHELL DREDGING OR EMPLOYED AT SAND, GRAVEL, SURFACE STONE, SURFACE CLAY, COLLOIDAL PHOSPHATE, OR SURFACE LIMESTONE MINES

Sec.
46.1 Scope.
46.2 Definitions.
46.3 Training plans.
46.4 Training program instruction.
46.5 New miner training.
46.6 Newly-hired experienced miner training.
46.7 New task training.
46.8 Annual refresher training.
46.9 Records of training.
46.10 Compensation for training.
46.11 Hazard training.
46.12 Responsibility for training.

Authority: 30 U.S.C. 811, 825.

§ 46.1 Scope.

The provisions of this part set forth the mandatory requirements for training and retraining miners working at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines.

§ 46.2 Definitions.

The following definitions apply in this part:

(a) *Act* is the Federal Mine Safety and Health Act of 1977.

(b) *Competent person* is a person designated by the operator who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. The competent person must also be able to evaluate whether the training given to miners is effective.

(c)(1) *Experienced miner* is:

(i) A person who is employed as a miner on April 14, 1999;

(ii) A person who began employment as a miner after April 14, 1999 but before the effective date of the final rule and who has received new miner training under § 48.25 of this title or under proposed requirements published April 14, 1999 which are available from the Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington VA 22203; or

(iii) A miner who has completed 24 hours of new miner training under § 46.5 of this part or under § 48.25 of this title and who has had at least 12 months of surface mining or equivalent experience.

(2) Once a miner is an experienced miner under this section, the miner will retain that status permanently.

(d) *Extraction or production* is the mining, removal, milling, crushing, screening, or sizing of minerals at a mine under this part. Extraction or production also includes the associated haulage of these materials at the mine.

(e) *Hazard training* is information or instructions on the hazards a person could be exposed to while on mine property, as well as applicable emergency procedures. These may include site-specific risks, such as unique geologic or environmental conditions, traffic patterns, and restricted areas; and warning and evacuation signals, emergency procedures, or other special safety procedures.

(f) *Independent contractor* is any person, partnership, corporation, subsidiary of a corporation, firm, association, or other organization that contracts to perform services at a mine under this part.

(g) *Miner* is any person, including operators and supervisors, who works at a mine under this part and who is engaged in mining operations integral to extraction or production.

(h) *New miner* is a newly-hired miner who is not an experienced miner.

(i) *Normal working hours* is a period of time during which a miner is otherwise scheduled to work, including the sixth or seventh working day if such a work schedule has been established for a sufficient period of time to be accepted as the operator's common practice.

(j) *Operator* is:

(1) Any production-operator; or

(2) Any independent contractor whose employees perform services at a mine.

(k) *Production-operator* is any owner, lessee, or other person who operates, controls, or supervises a mine under this part.

(l) *Task* is a component of a job that is performed on a regular basis and that requires job knowledge.

(m) *We* or *us* is the Mine Safety and Health Administration (MSHA).

(n) *You* is production-operators and independent contractors.

§ 46.3 Training plans.

(a) You must develop and implement a written plan, approved by us under either paragraph (b) or (c) of this section, that contains effective programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training.

(b) A training plan is considered approved by us if it contains, at a minimum, the following information:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by you who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

(c) A plan that does not include the minimum information specified in paragraphs (b)(1) through (b)(5) of this section must be approved by the Regional Manager, Educational Field Services Division, or designee, for the region where the mine is located. You also may voluntarily submit a plan for Regional Manager approval. Miners and their representatives may also request review and approval of the plan by the Regional Manager.

(d) You must provide the miners' representative, if any, with a copy of the plan at least 2 weeks before the plan is implemented or submitted to the Regional Manager for approval. At mines where no miners' representative has been designated, you must post a copy of the plan at the mine or provide a copy to each of the miners at least 2 weeks before you implement the plan or submit it to the Regional Manager for approval.

(e) Within 2 weeks following the receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to you, or to the Regional Manager, as appropriate.

(f) The Regional Manager must notify you and miners or their representatives in writing of the approval, or status of the approval, of the training plan within 30 days after the date on which you submitted the training plan to us for approval.

(g) If you, miners, or miners' representatives wish to appeal a decision of the Regional Manager, you must send the appeal, in writing, to the Director for Educational Policy and Development, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days after notification of the Regional Manager's decision. The Director will issue a decision within 30 days after receipt of the appeal.

(h) You must make available at the mine site a copy of the current training plan for inspection by us and for examination by miners and their representatives. If the training plan is not maintained at the mine site, you

must have the capability to provide the plan upon request by us, miners, or their representatives.

§ 46.4 Training program instruction.

(a) You must ensure that each program, course of instruction, or training session is:

(1) Conducted in accordance with the written training plan; and

(2) Presented by a competent person.

(b) You may conduct your own training programs or may arrange for training to be conducted by: us, state, or other federal agencies; associations of operators; miners' representatives; other operators; contractors, consultants, manufacturers' representatives; private associations; educational institutions; or other training providers.

(c) You may substitute equivalent training required by the Occupational Safety and Health Administration (OSHA), or other federal or state agencies, to meet requirements under this part, where appropriate.

(d) Training may consist of classroom instruction, instruction at the mine site, other innovative training methods, alternative training technologies, or any combination.

(e) Employee safety meetings, including informal safety and health talks and instruction, may be credited under this part toward either new miner training, newly-hired experienced miner training, or annual refresher training requirements, as appropriate, provided that you document each training session in accordance with § 46.9 of this part.

§ 46.5 New miner training.

(a) Except as provided in paragraphs (e) and (f) of this section, you must provide each new miner with no less than 24 hours of training as prescribed by paragraphs (b) and (d) of this section. Miners who have not received the full 24 hours of new miner training must work under the close supervision of an experienced miner.

(b) You must provide each new miner with the following training before the miner begins work:

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be explained;

(2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) A review of the escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

(c) Practice under the close supervision of a competent person may be used to fulfill the requirement for training on the health and safety aspects of an assigned task in paragraph (b)(4) of this section, if hazard recognition training specific to the assigned task is given before the miner performs the task.

(d) Within 60 days after each new miner begins work, you must provide the miner with the balance of the 24 hours of training, including training in the following subjects:

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards;

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine; and

(5) A review of first aid methods.

(e) A new miner who has less than 12 months of surface mining or equivalent experience and has completed new miner training under this section or under § 48.25 of this title within 36 months before beginning work at the mine does not have to repeat new miner training. However, you must provide the miner with training specified in paragraph (b) of this section before the miner begins work.

(f) New miner training courses completed under § 48.5 or § 48.25 of this title may be used to satisfy the requirements of paragraphs (a), (b), and (d) of this section, if:

(1) The courses were completed by the miner within 36 months before beginning work at the mine; and

(2) The courses are relevant to the subjects specified in paragraphs (b) and (d) of this section.

§ 46.6 Newly-hired experienced miner training.

(a) Except as provided in paragraphs (c) and (d) of this section, you must provide each newly-hired experienced miner with the following training before the miner begins work:

(1) An introduction to the work environment, including a visit and tour of the mine, or portions of the mine that are representative of the entire mine. The method of mining or operation utilized must be explained;

(2) Instruction on the recognition and avoidance of hazards, including electrical hazards, at the mine;

(3) A review of the escape and emergency evacuation plans in effect at the mine and instruction on the firewarning signals and firefighting procedures; and

(4) Instruction on the health and safety aspects of the tasks to be assigned, including the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

(b) Except as provided in paragraphs (c) and (d) of this section, within 90 days after each newly-hired experienced miner begins work, you must provide the miner with annual refresher training under § 46.8 of this part, which must include:

(1) Instruction on the statutory rights of miners and their representatives under the Act;

(2) A review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives;

(3) An introduction to your rules and procedures for reporting hazards; and

(4) Instruction and demonstration on the use, care, and maintenance of self-rescue and respiratory devices, if used at the mine.

(c) You must provide an experienced miner who returns to the same mine, following an absence of 12 months or less, with training on any changes at the mine that have occurred during the miner's absence that could adversely affect the miner's health or safety. This training must be given before the miner begins work. If the miner missed any part of annual refresher training under § 46.8 of this part during the absence, you must provide the miner with the missed training within 90 days after the miner begins work.

(d) Miners who are employees of independent contractors and who work at the mine on a short-term basis, such as drillers or blasters, may receive either newly-hired experienced miner training at the mine under paragraphs (b) and (c) of this section, or site-specific hazard training at the mine under § 46.11 of this part.

§ 46.7 New task training.

(a) Before a miner performs a task for which he or she has no previous experience, you must train the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, you must provide the miner with training that addresses the changes.

(b) Practice under the close supervision of a competent person may be used to fulfill the requirement for task training under this section.

(c) Task training provided under this section may be credited toward new miner training, as appropriate.

§ 46.8 Annual refresher training.

(a) At least once every 12 months, you must provide each miner with no less than 8 hours of refresher training.

(b) The refresher training must include instruction on changes at the mine that could adversely affect the miner's health or safety, and may include instruction on such subjects as: applicable health and safety requirements, including mandatory health and safety standards; transportation controls and communication systems; escape and emergency evacuation plans, firewarning and firefighting; ground control; working in areas of highwalls, water hazards, pits, and spoil banks; illumination and night work; first aid; electrical hazards; prevention of accidents; health; explosives; and respiratory devices.

§ 46.9 Records of training.

(a) Upon a miner's completion of each training program, you must record and certify on MSHA Form 5000–23, or on a form that contains the information listed in paragraph (b) of this section, that the miner has completed the training. False certification that training was completed is punishable under section 110(a) and (f) of the Act.

(b) The form must include:

(1) The printed full name of the person trained (first, middle, last names);

(2) The type of training completed, the duration of the training, the date the training was received, and the name of the competent person who provided the training;

(3) The mine name, MSHA mine identification number, and location of training (if an institution, the name and address of the institution).

(4) The statement, ''False certification is punishable under section 110(a) and (f) of the Federal Mine Safety and Health Act,'' printed in bold letters and in a conspicuous manner; and

(5) A statement signed by the person designated as responsible for health and safety training in the MSHA-approved training plan for the mine that states, ''I certify that the above training has been completed.''

(c) You must provide a copy of the training certificate to each miner at the completion of each training program. When a miner leaves your employ, you must provide each miner with a copy of his or her training certificates upon request.

(d) You must make available at the mine site a copy of each miner's training certificates for inspection by us and for examination by miners and their representatives. If training certificates are not maintained at the mine site, you must have the capability to provide the certificates upon request by us, miners, or their representatives.

(e) You must maintain copies of training certificates and training records for each currently employed miner during his or her employment and for at least 12 months after a miner terminates employment.

§ 46.10 Compensation for training.

(a) Training must be conducted during normal working hours; persons required to receive such training must be paid at a rate of pay that corresponds to the rate of pay they would have received had they been performing their normal work tasks.

(b) If training is given at a location other than the normal place of work, persons required to receive such training must be compensated for the additional costs, including mileage, meals, and lodging, they may incur in attending such training sessions.

§ 46.11 Hazard training.

(a) You must provide site-specific hazard training to any person who is not a miner as defined under § 46.2 of this part but is present at a mine site under this part, including:

(1) Scientific workers;

(2) Delivery workers and customers;

(3) Occasional, short-term maintenance or service workers, or manufacturers' representatives; and

(4) Outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

(b) You must provide site-specific hazard training to each person who is an employee of an independent contractor and who is working at the mine as a miner, as defined in § 46.2 of this part, unless the miner receives newly-hired experienced miner training at the mine under § 46.6.

(c) You must provide hazard training under this section before the affected person is exposed to mine hazards.

(d) You may provide hazard training through the use of written hazard warnings, oral instruction, signs and posted warnings, walkaround training, or other appropriate means.

(e) Hazard training under this section is not required for any person who is accompanied at all times by an experienced miner who is familiar with hazards specific to the mine site.

§ 46.12 Responsibility for training.

(a) Each production-operator has primary responsibility for providing site-specific hazard training to employees of independent contractors who are required to receive hazard training under § 46.11 of this part. Further, the production-operator must provide information to each independent contractor who employs a person at the mine on site-specific hazards associated with the mine site and the obligation of the contractor to comply with our regulations, including the requirements of this part.

(b) Each independent contractor who employs a miner, as defined in § 46.2, at the mine has primary responsibility for complying with §§ 46.3 through 46.10 of this part, including providing new miner and newly-hired experienced miner training, new task training, and annual refresher training. Further, the independent contractor must inform the production-operator of any hazards of which the contractor is aware that may be created by the performance of the contractor's work at the mine.

[FR Doc. 99–8894 Filed 4–8–99; 9:52 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 46

RIN 1219–AB17

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule, notice of public hearings.

SUMMARY: We (MSHA) are announcing public hearings on our proposed rule on the training and retraining of miners engaged in shall dredging or employed at sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines. The proposed rule appears elsewhere in this issue of the **Federal Register**.

DATES: See **SUPPLEMENTARY INFORMATION** section for hearing dates. The record will remain open after the hearings until June 16, 1999.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for hearing locations.

Send requests to make oral presentations—

(1) By telephone to MSHA, Office of Standards, Regulations, and Variances at 703–235–1910;

(2) By mail to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984;

(3) By facsimile to MSHA, Office of Standards, Regulations, and Variances at 703–235–5551; or

(4) By electronic mail to comments@msha.gov.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984. She can be reached at cjones@msha.gov (Internet E-mail); 703–235–1910 (Voice); or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION: We published a proposed rule elsewhere in this issue of the **Federal Register** addressing training and retraining of miners of mines where Congress has prohibited us from expending funds to enforce training requirements since fiscal year 1980. The proposed rule would implement the training requirements of § 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act) and provide for effective miner training at the affected mines.

I. Hearing Dates and Locations

We will conduct four public hearings to receive comments from interested parties on the proposed rule. All four hearings are scheduled to run from 8:00 a.m. to 5:00 p.m., but will continue into the evening if necessary to accommodate as many participants as is reasonably possible. We will hold the hearings on the following dates at the following locations:

1. May 18, 1999, Holiday Inn & Suites, 5905 Kirkman Road, Orlando, Florida 32819, Tel. No. (407) 351–3333.

2. May 20, 1999, Sacramento Convention Center, 1400 J Street, Sacramento, California 95814, Tel. No. (916) 264–5291.

3. May 25, 1999, Marriott Pittsburgh Airport, 100 Aten Road, Pittsburgh, Pennsylvania 15108, Tel. No. (412) 788–8800.

4. May 27, 1999, Department of Labor, Frances Perkins Building, Auditorium, 200 Constitution Avenue, NW., Washington, DC 20210, Tel. No. (202) 219–7816.

II. Issues

Speakers may raise or address any issues relevant to the rulemaking. However, we are specifically interested in comments on certain issues. A short discussion of these issues follows.

Definition of ''Miner''

We are interested in whether the proposed definition of ''miner'' is appropriate. Workers who fit the definition of ''miner'' under the proposal would be required to receive comprehensive training, including new miner training or newly-hired experienced miner training, as appropriate. Persons who fall outside this definition would be required to receive site-specific hazard training.

Under the proposal, a person engaged in mining operations integral to extraction or production would be considered a ''miner.'' We intend that the definition of ''miner'' include those workers whose activities are related to the day-to-day process of extraction or production.

We are particularly interested in recommendations for final rule language that would help to clarify the scope and application of this definition. Specifically, we would like comments on whether the final rule's definition of ''miner'' should include persons whose exposure to mine hazards is frequent or regular, regardless of whether they are engaged in extraction or production, or who are employed by the production-operator, similar to the approach taken in our training regulations in part 48. Another possible approach would be to characterize a person's activities more specifically in terms of how integral or essential they are to extraction or production at the time.

Plan Approval Process

The proposal would require each operator to develop and implement a written training plan that includes programs for training new miners and newly-hired experienced miners, training miners for new tasks, annual refresher training, and hazard training. Plans that include the minimum information specified in the proposal would be considered approved and would not be required to be submitted to us for formal review, unless the operator, a miner or a miners' representative request it. Miners and their representatives would also be given the opportunity to comment on the plan before it is implemented.

The approach taken in the proposal for plan approval recognizes that,while our review of written training plans could provide an initial check on the quality of the program, such review could not ensure that the program is successful in its implementation. Rather than expending our resources on the review and approval of training plans at all of the mines affected by this rule, we would instead direct those resources toward verification of the effectiveness of training plans in their execution, and in assisting operators in developing and providing quality training to their employees. Similarly, operator sand training providers would be able to focus on the development and administration of training plans rather than on traditional procedures to gain our approval.

We are interested in comments on whether the proposed approach is appropriate, and whether we should require information in addition to what is required in the proposal before we consider a plan approved, or whether we should require less information. We are also interested in whether any commenters believe a traditional plan approval process, similar to the process in part 48, is needed to ensure that training plans meet minimum standards of quality, and why this may be true.

New Miner Training

Under the proposal, no minimum number of hours of training is required for a new miner before he or she begins work under the close supervision of an experienced miner. Instead, the proposal requires instruction in four subject areas before the miner can assume work duties. By not requiring a minimum number of hours of initial training for new miners, the proposal would provide flexibility to tailor training plans to focus on the unique needs of the mine and workforce and to provide the most effective and relevant training for the new miners. At the same time, because specific subject areas would be covered before new miners being work, the miners would receive training on relevant topics to ensure that they are familiar with the operations and environment at the mine,their job duties, and the hazards they may encounter at the mine site.

We are interested in whether commenters agree with this approach, or whether the final rule should establish a minimum number of hours of training that new miners must receive before beginning work. One possible approach would be to specify a minimum number of hours of initial training that must be provided to miners based on mine size or complexity of operation. For example, a large operation may be required to provide eight hours of training, swhile a very small operation would be required to provide one hour of training. We are interested in comments on this alternative, particularly on the criteria that might be used in determining how much initial new miner training must be given, such as employment, type of operation, type and amount of

equipment, etc. Commenters who believe that a minimum number of hours of training should be required should also specify what the minimum number of hours should be.

New Task Training

This proposed rule would require miners to be trained for new tasks and for regularly assignee tasks that have changed. The new task training requirements in the proposal are very performance-oriented, and do not include detailed specifications for this training. However, we are interested in comments on whether the final rule should include more detail and guidance on the elements of an effective new task training program, and what areas should be addressed. We are also interested in comments on whether new task training requirements under the final rule should be modeled after the requirements in part 48, as recommended by some comments at the public meetings.

Training Instructors

The proposal would not require a formal program for the approval or certification of instructors,or establish rigid minimum qualifications for instructors. Instead, training must be provided by a ''competent person,'' which is defined as a person designated by the operator who has the ability, training, knowledge, or experience to provide training to miners on a particular subject. Under this definition, the competent person must also be able to evaluate the effectiveness of the training.

We are interested in comments on the approach taken in the proposal for instructors, particularly on the fact that the proposal would not require a formal instructor approval or certification program. We are also interested in commenters' views on whether the final rule should require some minimum amount of formal training for instructors, designed to ensure that the instructor has the communication skills needed to provide effective training.

Annual Refresher Training

Under the proposal, refresher training must include, at a minimum, instruction on changes at the mine that could adversely affect the miner's health or safety. The proposal includes a list of suggested topics that refresher training could cover, but these topics are not mandatory. We are interested in whether the final rule should include more detailed requirements or guidance for refresher training programs. We are also interested in whether there are any other subjects that commenters believe should be required as part of annual refresher training at all mines, or whether the final rule should remain at performance-oriented as the proposal.

Effective Date and Compliance Deadlines

We are interested in comments on how much time should be allowed for the mining community to come into compliance with the final rule. Several speakers at the public meetings stated that one year after the date of publication of the final rule would provide a sufficient period of time for affected operations to come into compliance. Several other speakers indicated that six months past the publication date would be adequate.

One possible approach would be phased-in compliance deadlines, where some of the rule's requirements would go into effect at different stages. For example, the requirement that you develop and implement a training plan might become effective six months after the final rule is published, while the requirements for the various types of miner training would take effect one year after publication.

We are seeking comments on whether phased-in deadlines would be useful in facilitating compliance, and what period of time will be needed for full compliance. We understand that there will be a very large number of operations coming into compliance simultaneously and wish to allow a reasonable amount of time for the transition.

Costs and Benefits of the Proposed Rule

We are interested in comments on all elements (including methodology, assumptions, and data) of our analysis of the costs and benefits of compliance with the proposed rule.

In terms of compliance costs, we specifically request comments on the following issues: (1) The non-compliance estimates used in our preliminary Regulatory Economic Analysis for the proposed rule and whether partial compliance with existing part 48 training requirements would be a more realistic and useful assumption; (2) whether new mines are predominantly opened by current mine owners (who would presumably be able to adopt an approved training plan) and, more generally, whether the cost assumptions for existing mines to develop a training plan are equally applicable to new mines; (3) the assumptions concerning short safety meetings used to derive the estimate of exempt mine operator savings attributable to the proposed rule; and (4) the cost assumptions concerning hazard training, including, particularly, the number of persons requiring hazard training.

In terms of safety and health benefits, we request comments on (1) our estimates of the number of fatalities likely to be prevented by compliance with the proposed rule; (2) the effect of increased production levels on the number of fatalities and the fatality rate; and (3) what factors, other than training, might make exempt mines more hazardous than nonexempt mines.

We are also interested in comments related to potential economic benefits you might derive from improved miner safety and health resulting from compliance with the rule. For example, during the public meetings, several speakers stated that their companies were able to reduce workers' compensation insurance costs significantly by instituting an effective safety and health training program. We are specifically interested in comments concerning how compliance with proposed part 46 might affect workers' compensation costs at your operations. Other economic benefits from improved miner health and safety we request your comments on include, but are not limited to, an increase in productivity; a reduction in property loss and down time associated with accidents; and a reduction in employee turnover.

III. Hearing Procedures

We will conduct the hearings in an informal manner with a panel of MSHA officials. Although formal rules of evidence or cross examination do not apply, the chair may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

We will begin each session with an opening statement and will then give members of the public an opportunity to make oral presentations. The hearing panel may ask questions of speakers. Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available for public review, and will also be posted on our Internet Home Page at http://www.msha.gov.

We will also accept written comments and other appropriate information from any interested party, including those who do not make oral presentations. All comments and information submitted will be considered by us in the development of the final rule and included as part of the rulemaking record. To allow for the submission of posthearing comments, the record will remain open until June 16, 1999.

Dated: April 6, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–8895 Filed 4–8–99; 9:52 am]

BILLING CODE 4510–43–U

federal register

Wednesday
April 14, 1999

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3418

Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3418

RIN 0524–AA23

Stakeholder Input Requirements for Recipients of Agricultural Research, Education, and Extension Formula Funds

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to add a new part 3418 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of implementing section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612(c)) which requires 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions that receive agricultural research, extension, or education formula funds to establish a process for stakeholder input on the uses of such funds. Failure to comply with these shakeholder input requirements may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of the final rule, comments must be received on or before May 14, 1999.

ADDRESSES: Address all comments to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, DC 20250–2299. Comments may be hand-delivered to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Room 302 Aerospace Center; 901 D Street, SW; Washington, DC 20024. Comments may also be mailed electronically to oep@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Louise Ebaugh; Director, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Washington, DC 20250; at 202–720–9181, 202–401–7752 (fax) or via electronic mail at oep@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) proposes a rule to implement section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7612(c)) which requires 1862, 1890, and 1994 institutions (specific land-grant colleges and universities as defined by section 2 of AREERA (7 U.S.C. 7601)) receiving agricultural research, extension, or education formula funds from CSREES to establish a process for receiving input from persons who conduct or use agricultural research, extension, or education on the uses of such funds. For purposes of this rule, these persons are referred to as stakeholders. Section 102(c)(2) of AREERA required the Secretary of Agriculture to promulgate regulations specifying what those land-grant institutions had to do to meet this stakeholder input requirement, and what consequences would befall any institution that did not meet such a requirement.

Section 102(c) on its face only applies to land-grant colleges and universities established pursuant to the First Morrill Act, as amended (7 U.S.C. 301, *et seq.*) (1862 institutions), the Second Morrill Act, as amended (7 U.S.C. 321, *et seq.*) (1890 institutions), and the Equity in Educational Land-Grant Status Act of 1994, as amended (7 U.S.C. 301 note) (1994 institutions). CSREES has determined that the formula funds specified in section 102(c) are: agricultural research funds provided to the 1862 institutions and agricultural experiment stations under the Hatch Act of 1887, as amended (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act, as amended (7 U.S.C. 343(b) and (c)), and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471, as amended; agricultural research and extension funds provided to 1890 institutions under sections 1444 and 1445, respectively, of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided for forestry schools under the McIntire-Stennis Act of 1962, as amended (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA, as amended (7 U.S.C. 3195).

The 1862, 1890, and 1994 institutions are not the sole institutions eligible to receive formula funds under all of these Acts. There is one agricultural experiment station that is not a college or university, and a handful of forestry or veterinary schools that are not land-grant institutions. However, given that the number of such institutions is de minimus, and the impracticality of trying to segregate stakeholder comments with respect to these few institutions, CSREES has determined to apply this proposed rule to any recipient of the aforementioned formula funds.

The proposed rule does not require recipient institutions to adopt any particular format for soliciting stakeholder input. It only requires that recipient institutions report annually to CSREES (1) the actions taken to encourage stakeholder input; and (2) a brief statement of the process used by a recipient institution to identify individuals or groups as stakeholders and to collect input from them.

Failure to comply with the requirements of this rule may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions, as authorized by law.

In addition to the comments from the recipient institutions directly affected by this rule, CSREES encourages public comments from stakeholders. Interested parties also are invited to review the Guidelines for State Plans of Work to be published in the **Federal Register** for comment by mid April 1999, which will describe related land-grant processes involving stakeholders.

Classification

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this executive order. This rule also will not 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.

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required for this proposed rule.

Catalog of Federal Domestic Assistance

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under No. 10.203, Payments to Agricultural Experiment Stations Under the Hatch Act, No. 10.205, Payments to 1890 Land-Grant Colleges and Tuskegee University, No. 10.202, Cooperative Forestry Research, No. 10.207, Animal Health and Disease Research, No. 10.500, Cooperative Extension Service, and No. 10.221, Tribal Colleges Education Equity Grants.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1955 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements that will be imposed in implementation of this proposed rule have been submitted to OMB for approval. These requirements would not become effective prior to OMB approval.

This new collection of information and recordkeeping requirement will enable CSREES to determine whether the recipient institutions have established and implemented stakeholder input processes. Many of the land-grant institutions already have functioning stakeholder input processes and use the results of these processes to develop long range plans, commonly referred to as plans of work, for their agricultural research, education, and extension activities. The proposed 7 CFR 3418 will require that by October 1, 1999, each recipient institution will have established and implemented a stakeholder input process on the uses of their agricultural research, education, and extension formula funds and that the institution submit an annual report on this process to CSREES. Failure to comply may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions, as authorized by law.

Respondents: First-tier respondents will be the land-grant institutions of the States and tribes, or other specific institutions as defined in the regulation, which will provide information to USDA on the process and actions used by recipient institutions to identify stakeholders and solicit their input. Second-tier respondents to the collection of information will be the stakeholders who conduct or use agricultural research, extension, or education within a State or tribe receiving formula funds.

This collection of information will be mandatory for first-tier respondents while it will be voluntary for the second-tier respondents.

Estimate of the Burden: The burden on the first-tier respondents is estimated at 9.19 hours per response.

Estimated Number of Respondents: 116.

Estimated Annual Number of Responses: 311.

Estimated Total Annual Burden on Respondents: 2,859 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, DC 20250–2299 by June 14, 1999 or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

List of Subjects in 7 CFR 3418

Agricultural education, Agricultural extension, Agricultural research, Colleges and universities.

For reasons stated in the preamble, chapter XXXIV of Title 7 of the Code of Federal Regulations is amended by adding Part 3418 to read as follows:

PART 3418—STAKEHOLDER INPUT REQUIREMENTS FOR RECIPIENTS OF AGRICULTURAL RESEARCH, EDUCATION, AND EXTENSION FORMULA FUNDS

Sec.
3418.1 Definitions.
3418.2 Scope and Purpose.
3418.3 Applicability.
3418.4 Reporting Requirement.
3418.5 Failure to Report.
3418.6 Prohibition.

Authority: 5 U.S.C. 301; 7 U.S.C. 7612(c)(2).

§ 3418.1 Definitions.

As used in this part:

1862 institution means a college or university eligible to receive funds under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*).

1890 institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, *et seq.*), including Tuskegee University.

1994 institution means an institution as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Formula funds means agricultural research funds provided to 1862 institutions and agricultural experiment stations under the Hatch Act of 1887 (7 U.S.C. 361a, *et seq.*); extension funds provided to 1862 institutions under sections 3(b) and 3(c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and section 208(c) of the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. 93–471; agricultural extension and research funds provided to 1890 institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3221 and 3222); education formula funds provided to 1994 institutions under section 534(a) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); research funds provided to forestry schools under the McIntire-Stennis Act of 1962 (16 U.S.C. 582a, *et seq.*); and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA (7 U.S.C. 3195).

Recipient institution means any 1862 institution, 1890 institution, 1994 institution, or any other institution that receives formula funds from the Department of Agriculture.

Stakeholder means any person who has the opportunity to use or conduct agricultural research, extension, or education activities of recipient institutions.

§ 3418.2 Scope and purpose.

Section 102(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7612(c)) requires land-grant institutions, as a condition of receipt of formula funds, to solicit and consider input and recommendations from stakeholders concerning the use of formula funds. This regulation implements this requirement consistently for all recipient institutions that receive formula funds.

§ 3418.3 Applicability.

To obtain formula funds after September 30, 1999, each recipient institution shall establish and implement a process for obtaining stakeholder input on the uses of formula funds in accordance with this part.

§ 3418.4 Reporting requirement.

Each recipient institution shall report to the Department of Agriculture by October 1 of each fiscal year, the following information related to stakeholder input and recommendations: (1) actions taken to seek stakeholder input that encourages their participation and

(2) a brief statement of the process used by the recipient institution to identify individuals and groups who are stakeholders and to collect input from them.

§ 3418.5 Failure to report.

Formula funds may be withheld and redistributed if a recipient institution fails to either comply with § 3418.3 or report under § 3418.4.

§ 3418.6 Prohibition.

A recipient institution shall not require input from stakeholders as a condition of receiving the benefits of, or participating in, the agricultural research, education, or extension programs of the recipient institution.

Done at Washington, DC, this 7th day of April 1999.

Eileen Kennedy,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 99–9262 Filed 4–13–99; 8:45 am]

BILLING CODE 3410–22–P

federal register

Wednesday
April 14, 1999

Part V

Department of Housing and Urban Development

24 CFR Part 103

Fair Housing Complaint Processing; Plain Language Revision and Reorganization; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 103

[Docket No. FR–4433–I–01]

RIN 2529–AA86

Fair Housing Complaint Processing; Plain Language Revision and Reorganization

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises HUD's regulations that concern the processing of fair housing complaints in two ways. First, the current sections that address the filing of complaints have been rewritten using plain language. Plain language is an approach to writing that promotes responsive, accessible, and understandable written communication. Second, the sections that address the investigation of complaints have been moved to another place in the regulations. We are revising these regulations to make the procedures for filing housing discrimination complaints easier to understand. This rule does not change the substance of the existing fair housing complaint processing regulations.

DATES: Effective Date: May 14, 1999. Comments Due Date: Comments must be submitted by June 14, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Judith Keeler, Acting Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–2000; telephone (202) 708–0836 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Civil Rights Act of 1968 (Public Law 90–284, 82 Stat. 81, approved April 11, 1968, codified as amended at 42 U.S.C. 3601–3619) (the Fair Housing Act) prohibits discrimination in the sale, rental, or financing of housing based on race, color, religion, national origin, sex, disability, or familial status. To enforce this prohibition, the Fair Housing Act authorizes HUD to receive and investigate housing discrimination complaints.

In 1988, the Fair Housing Amendments Act (Public Law 100–430, 102 Stat. 1619, approved September 13, 1988) (the 1988 Act) expanded HUD's authority to initiate fair housing investigations and to file complaints. We implemented the 1988 Act through final regulations published on January 23, 1989 (54 FR 3232). The January 23, 1989 final rule, among other things, established a new 24 CFR part 103. Part 103 describes the policies and procedures that govern the processing of fair housing complaints.

This rule revises subpart B (entitled ''Complaints'') of the part 103 regulations in two ways. First, the sections in subpart B that address the filing of complaints have been rewritten using plain language. Second, the sections in subpart B that address the investigation of complaints have been moved to subpart D (entitled ''Investigation Procedures''). Subpart D concerns investigation procedures for fair housing complaints.

Plain Language

HUD has revised 24 CFR part 103, subpart B using plain language in response to President Clinton's Memorandum of June 1, 1998, entitled ''Plain Language in Government'' (63 FR 31885, Wednesday, June 10, 1998). In this memorandum, President Clinton directed Federal agencies to use plain language in all government writing. With respect to rules, President Clinton directed Federal agencies to use plain language in new proposed and final rules beginning January 1, 1999. In the same memorandum, President Clinton also urged Federal agencies to consider rewriting existing regulations in plain language, as resources permit.

Plain language is an approach to writing that promotes responsive, accessible, and understandable written communications. It involves the use of a number of writing tools to create documents that are visually inviting, logically organized, and understandable on the first reading. These writing tools include:

—Using the active voice and strong verbs;
—Using compact sentences;
—Using personal pronouns such as ''you'' and ''we'';
—Using common, everyday words;
—Avoiding surplus words and technical or legal jargon;
—Using tables to present information where appropriate; and
—Using a design and layout that increases comprehension.

We selected subpart B of 24 CFR part 103 as the first of our regulations to be rewritten in plain language format, because it is important that regulations addressing housing discrimination be easy to understand.

For more information about plain language, please contact the National Partnership for Reinventing Government using one of the following methods:

If you are using this method...	please use this address:
World Wide Web	http://www.plainlanguage.gov
Email	info@plainlanguage.gov
Postal Address	National Partnership for Reinventing Government 750–17th Street, NW, Suite 200, Washington, DC 20006.
Phone (voice)	Customer Service Desk: (202) 694–0001.

Sections Moved From Subpart B to Subpart D of 24 CFR Part 103

This interim rule moves §§ 103.45, 103.50, and 103.55 from 24 CFR part 103, subpart B to 24 CFR part 103, subpart D. These sections, which relate to the investigation of complaints, are more appropriately located in subpart D. Subpart D addresses the investigation procedures for fair housing complaints. In addition, this rule adds a new § 103.204 to subpart D, entitled ''HUD

complaints and compliance reviews.'' Paragraph (a) of new § 103.210 clarifies that HUD may conduct a fair housing investigation and file a complaint based on information that one or more discriminatory housing practices has occurred, or is about to occur.

Paragraph (b) of § 103.210 repeats the language of current § 103.10(b). This section concerns HUD compliance reviews under other civil rights authorities, such as Executive Order 11063, entitled ''Equal Opportunity in Housing'' (27 FR 11527, November 20, 1962, reprinted as amended at 42 U.S.C. 1982 note), title VI of the Civil Rights Act of 1964 (Public Law 88–352, 78 Stat. 241, 252, approved July 2, 1964, codified as amended at 42 U.S.C. 2000d et seq.), section 109 of the Housing and Community Development Act of 1974 (Public Law 93–383, 88 Stat. 633, 649, approved August 22, 1974, codified at 42 U.S.C. 5309), section 504 of the Rehabilitation Act of 1973 (Public Law 93–112, 87 Stat. 355, 394, approved September 26, 1973, codified as amended at 29 U.S.C. 794), and the Age Discrimination Act of 1975 (Public Law 94–135, 89 Stat. 728, approved November 28, 1975, codified as amended at 42 U.S.C. 6101–6107). HUD is making these revisions to clarify and simplify the organization of its fair housing complaint processing regulations.

Substance of Complaints Filing Process Unchanged

This interim rule does not change the substance of the existing fair housing complaint processing regulations. We are revising these regulations to make the housing discrimination filing procedures more accessible and understandable to the public. All procedures and requirements for filing housing discrimination complaints remain as they are currently.

List of Fair Housing Offices

The list of HUD's fair housing offices, with mailing addresses and phone numbers, is provided in the table below. These offices have special expertise in handling fair housing claims.

If you are in this area...	please contact this office:
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, or Vermont.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 321, Boston, MA 02222–1092, (617) 565–5308; (800) 827–5005; TTY (617) 565–5453.
New Jersey or New York	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, 26 Federal Plaza, Room 3532, New York, NY 10278–0068, (212) 264–9610; (800) 496–4294; TTY (212) 264–0927.
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, or West Virginia.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0660; (888) 799–2085; TTY (215) 656–3450.
Alabama, the Caribbean, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, or Tennessee.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Richard B. Russell Federal Building, 75 Spring Street, SW, Room 320, Atlanta, GA 30303–3388, (404) 331–5140; (800) 440–8091; TTY (404) 730–2654.
Illinois, Michigan, Minnesota, Ohio, or Wisconsin.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Room 2101, Chicago, IL 60604–3507, (312) 353–7776; (800) 765–9372; TTY (312) 353–7143.
Arkansas, Louisiana, New Mexico, Oklahoma, or Texas.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, 1600 Throckmorton, Room 502, Fort Worth, TX 76113–2905, (817) 978–9270; (800) 498–9371; TTY (817) 978–9274.
Iowa, Kansas, Missouri, or Nebraska	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Gateway Tower II, 400 State Avenue, Room 200, Kansas City, KS 66101–2406, (913) 551–6958; (800) 743–5323; TTY (913) 551–6972.
Colorado, Montana, North Dakota, South Dakota, Utah, or Wyoming.	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, 633 17th Street, Denver, CO 80202–3607, (303) 672–5437; (800) 877–7353; TTY (303) 672–5248.
Arizona, California, Hawaii, or Nevada	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102–3448, (415) 436–8400; (800) 347–3739; TTY (415) 436–6594.
Alaska, Idaho, Oregon, or Washington	Fair Housing Enforcement Center, U.S. Dept. of Housing and Urban Development, Seattle Federal Office Building, 909 First Avenue, Room 205, Seattle, WA 98104–1000, (206) 220–5170; (800) 877–0246; TTY (206) 220–5185.
If after contacting the local office nearest you, you still have questions—you may contact HUD further at:.	U.S. Dept. of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 451 Seventh Street, SW, Room 5204, Washington, DC 20410–2000, (202) 708–0836; (800) 669–9777; TTY (800) 927–9275.

Findings and Certifications

Justification for Interim Rule

Ordinarily, HUD provides notice and an opportunity for the public to comment on rules before they become effective. If, however, we determine that notice and public comment are impracticable, unnecessary, or contrary to the public interest, we are permitted, under 24 CFR 10.1 (entitled ''Policy''), to issue regulations directly through an interim or final rule. In this case, we have determined that initial notice and public comment are unnecessary. The purpose of this rule is to make the housing discrimination filing procedures more accessible and understandable to the public by using plain language. The rule does not make substantive changes to the regulations. All procedures and requirements for filing housing discrimination complaints remain as they are currently.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 109 Stat. 48, 64, approved March 22, 1995, codified at 2 U.S.C. 1531–1538)(UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

Environmental Impact

This interim rule sets out non-discrimination enforcement procedures. Accordingly, under 24 CFR 50.19(c)(3), this interim rule is categorically

excluded from environmental review under the National Environmental Policy Act of 1969 (Public Law 91–190, 83 Stat. 852, approved January 1, 1970, codified as amended at 42 U.S.C. 4321–4347).

Impact on Small Entities

The Secretary, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, approved September 19, 1980, codified as amended at 5 U.S.C. 601–612), has reviewed and approved this interim rule and in so doing certifies that it would not have a significant economic impact on a substantial number of small entities.

The interim rule revises, using plain language, the text of HUD's fair housing complaint processing regulations in subpart B of 24 CFR part 103. The rule also moves certain sections from subpart B to subpart D. The rule does not amend the substance of HUD's fair housing complaint processing regulations at 24 CFR part 103. All procedures and requirements for filing housing discrimination complaints remain as they are currently. We are revising these regulations in order to make the housing discrimination filing procedures more accessible and understandable to the public.

While we have determined that this rule would not have a significant economic impact on a substantial number of small entities, we welcome any comments regarding alternatives to this rule that would meet our objectives, as described in this preamble, and would be less burdensome to small entities.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled ''Federalism''), has determined that the policies contained in this interim rule do not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

This interim rule does not alter the substance of HUD's existing fair housing complaint processing regulations. The interim rule revises and reformats the fair housing complaint processing regulations so that HUD's housing discrimination filing procedures more accessible to the public. The interim rule is exclusively concerned with policies and procedures applicable to the processing of fair housing complaints. No programmatic or policy changes result from this rule that affect the Federalism concerns addressed in the Executive Order. As a result, this interim rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.400.

List of Subjects in 24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 24 part 103 is amended as follows:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

1. The authority citation for 24 CFR part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Revise § 103.10 to read as follows:

§ 103.10 What can I do if I believe someone is discriminating against me in the sale, rental, finance, or advertisement of housing?

You can notify HUD if you believe there has been discrimination against you in any activity related to housing because of race, color, religion, national origin, sex, disability, or the presence of children under the age of 18 in a household.

3. Revise § 103.15 to read as follows:

§ 103.15 Can I file a claim if the discrimination has not yet occurred?

Yes, you may file a claim with HUD if you have knowledge that a discriminatory action is about to occur.

4. Revise § 103.20 to read as follows:

§ 103.20 Can someone help me with filing a claim?

HUD's Office of Fair Housing and Equal Opportunity can help you in filing a claim, if you contact them directly. You, or anyone who acts for you, may also ask any HUD office or an organization, individual, or attorney to help you.

5. Revise § 103.25 to read as follows:

§ 103.25 What information should I provide to HUD?

You should provide us with:

(a) Your name, address, and telephone numbers where you can be reached;

(b) The name and address of the persons, businesses, or organizations you believe discriminated against you;

(c) If there is a specific property involved, you should provide the property's address and physical description, such as apartment, condominium, house, or vacant lot; and

(d) A brief description of how you were discriminated against in an activity related to housing. You should include in this description the date when the discrimination happened and why you believe the discrimination occurred because of race, color, religion, national origin, sex, disability, or the presence of children under the age of 18 in a household.

6. Revise § 103.30 to read as follows:

§ 103.30 How should I bring a claim that I am the victim of discrimination?

(a) You can file a claim by mail or telephone with any of HUD's Offices of Fair Housing and Equal Opportunity or with any State or local agency that HUD has certified to receive complaints.

(b) You can call or go to any other HUD office for help in filing a claim. These offices will send your claim to HUD's Office of Fair Housing and Equal Opportunity, which will contact you about the filing of your complaint.

7. Add § 103.35 to read as follows:

§ 103.35 Is there a time limit on when I can file?

Yes, you must notify us within one year that you are a victim of discrimination. If you indicate that there is more than one act of discrimination, or that the discrimination is continuing, we must receive your information within one year of the last incident of discrimination.

8. Revise § 103.40 to read as follows:

§ 103.40 Can I change my complaint after it is filed?

(a) Yes, you may change your fair housing complaint:

(1) At any time to add or remove people according to the law and the facts; or

(2) To correct other items, such as to add additional information found during the investigation of the complaint.

(b) You must approve any change to your complaint; we will consider the changes made as of the date of your original complaint.

§ 103.42 [Removed]

9. Remove § 103.42.

§§ 103.45, 103.50, 103.55 [Redesignated]

10. Redesignate §§ 103.45, 103.50, and 103.55 as §§ 103.201, 103.202, and 103.203, respectively, and transfer to subpart D.

11. Revise newly redesignated § 103.202(b) to read as follows:

§ 103.202 Notification of respondent; joinder of additional or substitute respondents.

* * * * *

(b) The Assistant Secretary will also serve notice on any person who directs or controls, or who has the right to direct or control, the conduct of another person who is involved in a fair housing complaint.

12. Add § 103.204 to read as follows:

§ 103.204 HUD complaints and compliance reviews.

(a) The Assistant Secretary may conduct an investigation and file a complaint under this subpart based on information that one or more discriminatory housing practices has occurred, or is about to occur.

(b) HUD may also initiate compliance reviews under other appropriate civil rights authorities, such as E.O. 11063 on Equal Opportunity in Housing, title VI of the Civil Rights Act of 1964, section 109 of the Housing and Community Development Act of 1974, section 504 of the Rehabilitation Act of 1973 or the Age Discrimination Act of 1975.

(c) HUD may also make the information you provide available to other Federal, State, or local agencies having an interest in the matter. In making such information available, HUD will take steps to protect the confidentiality of any informant or complainant when desired by the informant or complainant.

Dated: March 2, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–9088 Filed 4–13–99; 8:45 am]

BILLING CODE 4210–28–P

federal register

Wednesday
April 14, 1999

Part VI

Department of Education

Office of Elementary and Secondary Education Programs; Inviting Applications for New Awards for Fiscal Year 1999; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grant Program—Middle School Drug Prevention and School Safety Program Coordinators

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for Fiscal Year 1999 and subsequent years.

SUMMARY: The Secretary announces the final priority and selection criteria for fiscal year (FY) 1999, and at the discretion of the Secretary for subsequent years, under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs Federal Activities Grants Program for the Middle School Drug Prevention and School Safety Program Coordinators competition. The Secretary takes this action to focus Federal financial assistance on national needs to recruit, hire, and train drug prevention and school safety program coordinators for middle schools with significant drug, discipline and violence problems.

EFFECTIVE DATE: This priority takes effect on April 14, 1999.

FOR FURTHER INFORMATION CONTACT: For further information about this priority under the Safe and Drug-Free Schools and Communities National Programs Federal Activities Grants Program, contact the Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E324, Washington, DC 20202–6123. Telephone: (202) 260–3954. FAX: (202) 260–7767. Internet: http://www.ed.gov/offices/OESE/SDFS.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audio tape, or computer diskette) upon request to the contact office listed above. Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that office. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This notice contains the final priority and selection criteria for FY 1999, and at the discretion of the Secretary, subsequent years. Under the absolute priority (Middle School Drug Prevention and School Safety Program Coordinators (CFDA 84.184K)), the Secretary may make awards for up to 36 months to local educational agencies.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and the diversity of proposed activities addressed by the projects, in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in FY 2000 from the rank-ordered list of unfunded applications from this competition.

Definitions

The following definitions apply to this competition:

(a) Middle schools are defined as any school serving students in two or more grades from grades five through nine.

Note: Students in grades lower than five or higher than nine are not eligible to be served under this priority.

(b) Local education agencies (LEAs) with the most significant problems in their middle schools are defined as those that have identified drug use, drug prevention and school safety as serious problems in their most recent needs assessment and have taken one or more of the following actions within the 12 months preceding the date of this announcement:

(1) Suspended, expelled, or transferred to alternative schools or programs at least one middle school student for possession, distribution, or use of alcohol or drugs, including tobacco;

(2) Referred for treatment of substance abuse at least five middle school students;

(3) Suspended, expelled, or transferred to alternative schools or programs at least one middle school student for possession or use of a firearm or other weapon;

(4) Suspended, expelled or transferred to alternative schools or programs at least five middle school students for physical attacks or fights.

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. on June 1, 1999. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority.

Under the absolute funding priority for this grant competition, LEAs with significant drug, discipline, or school safety problems in their middle schools must propose projects that—

(a) Recruit, hire, and train full-time drug prevention and school safety program coordinator(s) for their middle schools with the most significant drug, discipline, or school safety problems;

(c) Require coordinators hired with funds under this priority to perform at least the following functions in one or more middle schools with significant drug, discipline or school safety problems:

(1) Identify research-based drug and violence prevention strategies and programs;

(2) Assist schools in adopting the most successful strategies, including training of teachers, staff and relevant partners as, as needed;

(3) Develop, conduct, and analyze assessments of school crime and drug problems;

(4) Work with community agencies and organizations to ensure that students' needs are met;

(5) Work with parents and students to obtain information about effective programs and strategies and encourage their participation in program selection and implementation;

(6) Assist in the development and implementation of evaluation strategies;

(7) Identify additional funding sources for drug prevention and school safety program initiatives;

(8) Provide feedback to SEAs on programs and activities that have proven to be successful in reducing drug use and violent behavior; and

(9) Coordinate with student assistance and employee assistance programs.

Local educational agencies may apply for funding under this priority to hire one or more coordinators to serve middle schools in the district. Each coordinator hired with funds from this grant must:

(1) Serve at least one middle school but no more than seven middle schools;

(2) Serve only students in two or more grades from grades five through nine;

Note: Students in grades lower than five or higher than nine are not eligible to be served under this priority.

(3) Have no duties other than coordination of drug prevention or school safety programs;

(4) At a minimum, have a degree from an accredited four-year institution of higher education and an academic background or equivalent work experience in a field related to youth development, such as education, psychology, sociology, social work, or nursing.

LEAs may apply in consortia with one or more adjacent LEAs; however, each participating LEA must ensure that all requirements of the priority for this competition are met.

The Secretary funds under this competition only applications that meet this absolute priority.

Selection Criteria

The following selection criteria will be used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points.

(1) *Need for the project.* (25 points)

(a) Applicants must:

(i) Describe the drug, violence, or safety problems in middle schools that will be served by coordinators(s) funded by these grants;

(ii) Provide data on the number of students in grades five through nine who were suspended, expelled or transferred to alternative settings for drug use or violent behavior during the 12 months preceding the date of this announcement;

(iii) Explain how the coordinator(s) will make a difference in the drug, violence and safety problems at the middle schools to be served by this initiative; and

(iv) Describe how the position funded by this grant will be coordinated with existing prevention programs and staff.

(b) In determining the need for the proposed project, the following factor is considered:

The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Quality of the project design.* (25 points)

(a) Applicants must:

(i) Provide a detailed description of their plan for bringing about change in the type and quality of drug prevention and school safety programs for students in grades five through nine; and

(ii) Describe how the community will be involved in designing and supporting these programs.

(b) The following factors are considered in determining the quality of the project design:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population;

(ii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance;

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population, including community coalitions;

(iv) The extent to which the proposed project encourages parental involvement; and

(v) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(3) *Adequacy of Resources* (25 points)

(a) Applicants must:

(i) Describe their plan for supporting and institutionalizing the coordinator position into the district's permanent staffing structure, including how they will ensure its continuation when Federal funding ends;

(ii) Explain how this coordinator position will be integrated into the staffing structure of the district as a whole, including where the coordinator will be housed and to whom the coordinator will report;

(iii) Explain the district's plan to support the authority of the coordinator to design, select and implement prevention initiatives; and

(iv) Explain how information developed by coordinators will be used by LEA policy makers.

(b) Factors considered in determining the adequacy of resources are:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources from the applicant organization or the lead applicant organization;

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits;

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support; and

(iv) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(4) *Quality of the project evaluation* (25 points)

(a) Applicants must:

(i) Provide a detailed description of their plan to evaluate implementation of the coordinator initiative with particular attention to how prevention strategies have changed as a result of the coordinator's efforts and the effects on student outcomes; and

(ii) Agree to cooperate with the national evaluation of the coordinators' initiative that will be funded by the Department of Education.

(b) In determining the quality of the project evaluation, the following factors are considered:

(i) The extent to which the methods of evaluation are appropriate to the context within which the project operates;

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies; and

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437 (d)(1) of the General Education Provision Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. Funding was provided for this new initiative in the fiscal year 1999 appropriations act enacted October 21, 1998. The Secretary, in accordance with section 437 (d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document

Department of Education documents are published in the **Federal Register**, in text or portable document format (PDF) on the world wide web at either of the following sites:

http://www.ocfo.ed.gov/fedreg.html or http://www.ed.gov/news.html.

To use pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Individuals may view these documents in text copy only on an electronic bulletin board of the Department. The documents are located under Option G—Files/Announcement, Bulletins and Press Releases. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

(Catalogue of Federal Domestic Assistance Number 84.184K, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program)

Judith Johnson,

Acting/Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 99–9341 Filed 4–13–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grant Program—Middle School Drug Prevention and School Safety Program Coordinators; Notice Inviting Applications for New Awards for Fiscal Year 1999

Purpose of Program: The National Programs portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) supports the development of programs that (1) provide models or proven effective practices that will assist schools and communities around the Nation to improve their programs funded under the State Grants portion of the SDFSCA; and (2) develop, implement, evaluate, and disseminate new or improved approaches to creating safe and orderly learning environments in schools.

Eligible Applicants: Local educational agencies.

Applications Available: April 14, 1999.

Deadline for Receipt of Applications: June 1, 1999.

Note: All applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. Applications by mail should be sent to U.S. Department of Education, Application Control Center, Attention: CFDA #84.184K, Washington, D.C. 20202–4725.

Deadline for Intergovernmental Review: July 28, 1999.

Available Funds: $31,650,000.

Estimated Range of Awards: $55,000–$275,000.

Estimated Average Size of Awards: $106,000.

Estimated Number of Awards: 300.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 98, and 99; and

(b) The notice of final priority and selection criteria for FY 1999 published elsewhere in this issue of the **Federal Register**.

For Applications or Information Contact: Ethel Jackson at the Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Room 3E314, Washington, DC 20202–6123. Telephone: (202) 260–3954. By FAX: (202) 260–7767. Internet: http://www.ed.gov/OESE/SDSF.

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 alternative format (e.g. Braille, large print, audio tape, or computer diskette) upon request to the contact person listed above. Individuals with disabilities may obtain a copy of the application package in an alternative format, also by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm or on the World Wide Web at http://www.ed.gov/news.html

To use the pdf you must have Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

(Catalogue of Federal Domestic Assistance Number 84.184K, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program)

Judith Johnson,

Acting/Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 99–9342 Filed 4–13–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Wednesday
April 14, 1999

Part VII

Department of Education

Special Education—Training and Information for Parents of Children with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

Special Education—Training and Information for Parents of Children with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year 1999

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1999.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1999 competitions under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended: Special Education—Training and Information for Parents of Children with Disabilities (one priority).

This notice supports the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA); and

(c) Projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

Information collection resulting from this notice has been submitted to OMB for review under the Paperwork Reduction Act and has been approved under control number 1820–0028, expiration date July 31, 2000.

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information help them to improve results for their children with disabilities.

Eligible Applicants: Local parent organizations must meet the criteria in section 682(g) of the Act, and also must meet one of the following criteria—

(a) Have a board of directors the majority of whom are from the community to be served; or

(b) Have as part of its mission, serving the interests of individuals with disabilities from such community; and have a special governing committee to administer the project, a majority of the members of which are individuals from such community; examples of administrative responsibilities include controlling the use of the project funds, and hiring and managing project personnel.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Priority

Under sections 661(e)(2) and 683 of the Act, and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Community Parent Resource Centers (84.328C)

The purpose of this statutory priority is to support local parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

(b) Be prepared to lead productive independent adult lives, to the maximum extent possible.

Each community parent training and information center supported under this priority must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the project;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under Section 615 of IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities by assisting parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decision making processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(d) Contract with the State education agencies, if the State elects to contract with the community parent resource center, for the purpose of meeting with parents who choose not to use the mediation process, to encourage the use and explain the benefits of mediation, consistent with Sections 615(e)(2)(B) and (D) of IDEA;

(e) In order to serve parents and families of children with the full range of disabilities, network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies;

(f) Establish cooperative partnerships with the parent training and information centers funded under Section 682 of IDEA;

(g) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support; and

(h) Annually report to the Secretary on—

(1) The number of parents to whom it provided information and training in the most recently concluded fiscal year; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

The Secretary intends to fund a maximum of three awards. *Competitive Priorities:* Within this Absolute Priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to

applications that meet one or both of the following competitive priorities:

The Secretary awards 20 points to an application submitted by a local parent organization that has a board of directors, the majority of whom are parents of children with disabilities, from the community to be served. These points are in addition to any points the application earns under the selection criteria for the program.

The Secretary awards 10 points to an application that provides parent training and information in one or more Empowerment Zones or Enterprise Communities in a manner that meets the competitive priority relating to Empowerment Zones or Enterprise Communities published in the **Federal Register** on November 7, 1994 (59 FR 55534). A list of areas that have been selected as Empowerment Zones or Enterprise Communities is included in the application package. These points are in addition to any points the application earns under the selection criteria for the program.

Project Period: Up to 36 months.

Project Award: Projects will not be funded in excess of $100,000 for any single budget period of 12 months.

For Applications and General Information Contact: Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 400 Maryland Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT, APPLICATION NOTICE FOR FISCAL YEAR 1999

CFDA No. and name	Application available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)[1]	Project period	Page limit	Estimated number of awards
84.328C Community Parent Resource Centers.	4/20/99	6/01/99	8/02/99	$100,000	Up to 36 mos.	([2])	3

[1] The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for the priority for any single budget period of 12 months.

[2] As noted above, there is no page limit for this priority.

Note: The Department of Education is not bound by any estimates in this notice.

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Note: The official version of a document is the document published in the **Federal Register**.

Dated: April 8, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–9261 Filed 4–13–99; 8:45 am]

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