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Wednesday
May 19, 1999

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206–AI53

Authorization of Solicitations During the Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule giving the Director the discretion to authorize solicitations upon written request during the Combined Federal Campaign (CFC). In extraordinary circumstances, solicitations in support of victims in cases of emergencies or disasters may be approved. The intended effect of this rule is to enable the Federal workforce to respond to emergencies or disasters of catastrophic proportions which may occur during the CFC.

DATES: Final rule effective: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Becky Kumar, Office of General Counsel, Office of Personnel Management, (202) 606–2885.

SUPPLEMENTARY INFORMATION: The devastation in Central America caused by Hurricane Mitch in late October and early November of 1998 resulted in over 10,000 deaths and destroyed the homes and communities of many thousands more. This tragedy provided the impetus for OPM to review its regulations governing the solicitation of the Federal workforce and to conclude that there is a need for further flexibility in its regulations in order to respond to emergencies and disasters of catastrophic proportions.

The CFC regulations prohibit solicitations of the Federal workforce apart from those conducted as part of the Combined Federal Campaign. The CFC was designed to be the one concentrated period during which Federal employees may be solicited to contribute to all eligible organizations. The rationale for limiting the CFC to a single period during the year is to provide Federal employees with a means of contributing to a wide variety of worthy voluntary organizations, but to accomplish this with minimal disruption to the work of the Government.

The regulations contain an exception for solicitations requested in writing on behalf of victims of emergencies and disasters, with the limitation that no such solicitations may occur between September 1 to December 15, the period of the CFC. In our review of this matter, we have determined that, on rare occasions, it may be necessary to authorize a solicitation during this time period. Natural disasters are not subject to time constraints, and extraordinary occurrences may necessitate extraordinary relief measures. OPM believes that this time period is of continuing concern in the future, since, according to the National Oceanic and Atmospheric Administration, the Atlantic hurricane season runs from June 1 through November 30 each year and the Pacific hurricane season runs from May 15 through November 30. Both of these periods overlap with the CFC.

On November 30, 1998, OPM published an interim rule allowing the Director to authorize solicitations during the CFC for victims of disasters or emergencies, upon written request and a showing of extraordinary circumstances. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as the final rule.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 950

Administrative practice and procedure, Charitable contributions, Government employees, Military personnel, Nonprofit organizations.

Accordingly, under the authority of E.O. 12353, 47 FR 12785 (1982), the interim rule amending 5 CFR part 950, published on November 30, 1998 (63 FR 65637), is adopted as final without any changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–12551 Filed 5–18–99; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

RIN 1904–AB–00

[Docket No. EE–RM–99–BIOD]

Alternative Fuel Transportation Program; Biodiesel Fuel Use Credit

AGENCY: Department of Energy.

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) is today publishing an interim final rule required by the Energy Conservation Reauthorization Act of 1998 (ECRA), which amended Title III of the Energy Policy Act of 1992 (EPACT) to allow fleets that are required to purchase alternative fueled vehicles under Titles III, IV and V of EPACT to meet these requirements, in part, through the use of biodiesel fuel use credits. The rule establishes procedures for fleets and covered persons to request credits for specified biodiesel fuel use and implements ECRA's credit eligibility and allocation provisions. By publishing this rule, DOE is giving fleets and covered persons, who are otherwise required under EPACT to purchase an alternative fueled vehicle, the option of purchasing and using 450 gallons of biodiesel in vehicles in excess of 8,500 lbs. gross vehicle weight instead of acquiring an alternative fueled vehicle.

DATES: This interim final rule is effective June 18, 1999. DOE will

consider any public comments that are received on or before July 19, 1999.

ADDRESSES: Written comments (5 copies) should be sent to: Paul McArdle, U.S. Department of Energy, EE–34, Docket No. EE–RM–99–BIOD, 1000 Independence Ave., SW, Washington, DC 20585. Comments will be available for public inspection at DOE's Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul McArdle, Office of Energy Efficiency and Renewable Energy, EE–34, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9171.

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B. Prior Administrative Action on Biodiesel
II. Section-by-Section Discussion of Interim Final Rule
III. Public Comment
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H. Congressional Notification

I. Introduction

Section 7 of the Energy Conservation Reauthorization Act of 1998 (ECRA), Pub. L. 105–388, adds section 312 to Title III of the Energy Policy Act of 1992 (EPACT), 42 U.S.C. 13211–13219. Section 312 allows Titles III and V fleets and covered persons, which are required to acquire certain annual percentages of alternative fueled vehicles, to use biodiesel fuel use credits to meet, in part, these acquisition requirements (although Title IV is included as one of the Titles that is covered in ECRA, this inclusion appears to be a drafting error since Title IV has no mandated acquisition requirements for fleets and covered persons). DOE is required to allocate one credit to fleets and covered persons for using in certain vehicles 450 gallons (or ''qualifying volume'') of the biodiesel component of a motor fuel containing at least 20 percent biodiesel by volume.

Although the ''qualifying volume'' is denominated in gallons of neat biodiesel (B–100), which is a fuel composed of 100 percent biodiesel by volume, a fleet or covered person can also be allocated a biodiesel fuel use credit through the use of motor fuels containing at least 20 percent biodiesel by volume. So for example, if a fleet wished to qualify for the credit using B–100, it would need to purchase and use 450 gallons of B–100 to receive one biodiesel fuel use credit. Alternatively, if a fleet wanted to qualify for the credit using B–20 (a motor fuel containing 20 percent biodiesel and 80 percent petroleum diesel by volume) it would need to purchase and use 2,250 gallons of B–20, since each gallon of B–20 contains one-fifth of a gallon of biodiesel ((2,250 gallons of B–20) * (⅕) = 450 gallons of B–100).

The allocation of each biodiesel fuel use credit requires the full purchase and use of 450 gallons of biodiesel. No rounding of the biodiesel fuel use credit upward is allowed. For example, if a fleet or covered person purchased and used 1,200 gallons of biodiesel, an initial credit calculation would indicate 2.67 credits. However, since ECRA requires that 450 gallons are needed to achieve each biodiesel fuel use credit, the fleet or covered person could only be allocated two biodiesel fuel use credits, using this example. The use of the biodiesel fuel use credit as the equivalent of acquiring one alternative fueled vehicle is also restricted to the model year in which it is generated and cannot be carried forward like alternative fueled vehicle acquisition credits generated under Subpart F.

The legislation, however, authorizes the Secretary to collect data which could support a determination to increase the qualifying volume of biodiesel required to allocate a biodiesel fuel use credit. Any increase in the qualifying volume would be set equal to the average annual alternative fuel use in light duty vehicles by fleets and covered persons. If the data support an increase, the Secretary is to issue a rulemaking to determine if the qualifying volume should be increased.

Additionally, the vehicles in which the fuel is used must weigh more than 8,500 pounds gross vehicle weight rating. Fleets and covered persons must own or operate these vehicles. Credits will be allocated only for the biodiesel fuel purchased after the enactment of ECRA, i.e., November 13, 1998.

The legislation prohibits the allocation of biodiesel fuel use credits for the purchase of biodiesel when the biodiesel is used in alternative fueled vehicles that are utilized to satisfy the EPACT alternative fueled vehicle purchase requirements, or when biodiesel fuel use is required by Federal or State law. With the exception of biodiesel fuel providers, allocated credits can be used to satisfy up to 50 percent of a fleet's or covered person's alternative fueled vehicles requirements. For example, if a fleet's, or covered person's, alternative fueled vehicle acquisition requirements for a given model year were 20 alternative fueled vehicles, that fleet would only be able to use up to 10 biodiesel fuel use credits as a contribution to its acquisition requirements. To achieve the 10 biodiesel fuel use credits the fleet or covered person could purchase and use 4,500 gallons of B–100 (10 credits). In this example, any biodiesel purchases beyond 4,500 gallons would not generate any additional credits. Alternatively, the fleet could also be granted the 10 credits through the purchase and use of 22,500 gallons of B–20, since each gallon of B–20 has one-fifth of a gallon of biodiesel ((22,500 gallons of B–20) * (⅕) = 4,500 gallons of B–100).

Today's rule adds a new Subpart H to DOE's Alternative Fuel Transportation Program rules at 10 CFR part 490. Some of the provisions in current Part 490, such as definitions of fleet and covered persons, are also applicable to Subpart H. However, the biodiesel credits provisions under Subpart H cannot be considered a credit under Subpart F. Because of the relationship of Subpart H to the overall Alternative Fuel Transportation Program, a brief overall summary of 10 CFR part 490 is discussed.

A. Overview of DOE's Alternative Fuel Transportation Program

10 CFR part 490 sets forth regulations that implement title V of EPACT, 42 U.S.C. 13251–13264. The regulations mandate alternative fueled vehicle acquisition requirements for certain alternative fuel providers and State government fleets. Part 490 is one of a variety of EPACT programs designed to promote alternative and replacement fuels that reduce reliance on imported oil, decrease greenhouse gas emissions, lessen pollutant emissions and help realize EPACT's 10 percent and 30 percent petroleum replacement fuels goals in the years 2000 and 2010, respectively.

Title III of EPACT requires Federal fleet acquisitions of alternative fueled vehicles. Title IV includes specific authority for a financial incentive program for States, a public information program, and a program for certifying alternative fuel technician training programs. In addition to the mandates for the purchase of alternative fueled vehicles that apply to certain alternative

fuel providers and State government fleets, Title V provides for a possible similar mandate for certain private and municipal fleets. DOE issued an Advanced Notice of Proposed Rulemaking in the **Federal Register** on April 17, 1998, to solicit comments on whether alternative fueled vehicle acquisition requirements for certain private and local government fleets should be promulgated under the terms of section 507(g) of EPACT (63 FR 19732). Title VI provides for a program to promote electric motor vehicles.

The types of vehicles that satisfy the alternative fuel provider and State government fleet mandates in Title V are determined in part by the definition of ''alternative fuel'' in Title III, section 301(2). That definition provides: '' 'Alternative fuel' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum, and would yield substantial energy security benefits and substantial environmental benefits.'' 42 U.S.C. 13211(2).

EPACT also defines the term ''replacement fuel.'' Section 301(14) provides: ''the term 'replacement fuel' means the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers, or any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.'' 42 U.S.C. 13211(14).

B. Prior Administrative Action on Biodiesel

DOE considered the allocation of credits for use of biodiesel fuel in the rulemaking that implemented the alternative fuel provider and State government fleet mandates. After considering public comments on the issue of whether biodiesel was an alternative fuel, DOE concluded that neat biodiesel (B–100), a fuel that is 100 percent biodiesel by volume, is included in the definition of ''alternative fuel.'' Section 301(2) of EPACT expressly refers to fuels derived from biological materials. With respect to the credit program under section 508 of EPACT (Subpart F of 10 CFR part 490), DOE concluded that credits could be given in certain circumstances for the purchase of medium- and heavy-duty alternative fueled vehicles, as provided in Subpart F, but multiple credits based on the amount of fuel consumed were not allowable.

During the rulemaking to implement the alternative fuel provider and State government fleet mandates, proponents of biodiesel fuel also requested DOE to include B–20, a fuel that is 20 percent biodiesel and 80 percent petroleum diesel by volume, in the list of alternative fuels. DOE declined on the grounds that the comments did not provide sufficient supporting information to warrant including this issue within the scope of the rulemaking. The final rule was published on March 14, 1996 (61 FR 10653).

On September 10, 1996, the National Biodiesel Board (NBB) and a number of co-petitioners submitted to DOE a petition requesting DOE to initiate a rulemaking to amend the definition of ''alternative fuel'' in the regulations by adding, without limitation, B–20. In response to the NBB petition, DOE, on July 15, 1997, issued a notice in the **Federal Register** (62 FR 37897) inviting interested members of the public to comment on the petition and to attend a public workshop on July 31 and August 1, 1997 at which the petition and related policy issues were discussed. On November 16, 1999, NBB and the co-petitioners withdrew their petition.

II. Section-by-Section Discussion of Interim Final Rule

This section of the Supplementary Information contains explanatory material for some of the ECRA and interim final rule provisions, in order to provide interpretive guidance to States and persons that must comply with this part.

The biodiesel fuel use credit is also available to Federal fleets that are required under Title III, Section 303 of the Energy Policy Act of 1992, to purchase certain percentages of alternative fueled vehicles. Federal fleet purchase requirements are also stipulated in Executive Order 13031 (61 FR 66529). Under Executive Order 13031, Federal agencies, as part of their annual budget submission to the Office of Management and Budget, are required to submit a report on their compliance with section 303 of EPACT. A copy of the report is also submitted to DOE and the General Services Administration (GSA). DOE and GSA cooperatively analyze the agency alternative fueled vehicle reports and acquisition plans, and jointly submit a summary report to the OMB. Section 8 of ECRA also amended section 310 of EPACT to require each Federal agency to report annually to the Congress on compliance with the alternative fuel purchasing requirements for Federal fleets, including a plan with specific dates for achieving compliance. Federal agencies will also be required to publicly disseminate such reports in the **Federal Register** and on the Internet.

Federal agency alternative fueled vehicle acquisition compliance data are currently submitted to DOE under the Federal Energy Management Program (FEMP). DOE plans on amending the FEMP reporting form to allow for the allocation of biodiesel fuel use credits for Federal fleets. Like State and alternative fuel provider fleets, Federal fleets will be required to report the quantity of biodiesel purchased for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight. Federal fleets seeking to utilize the biodiesel fuel use credit should follow the requirements laid out below in 10 CFR Part 490 Subpart H, as well as any other guidance issued by DOE. The only difference for the Federal fleets will be that their reporting year is for the fiscal year, October 1 through September 30, as opposed to a model year, September 1 through August 31, which applies to State and alternative fuel provider fleets, as well as private and municipal government fleets if DOE determines that such fleets should be covered under the Alternative Fuel Transportation Program.

Section 490.702 Definitions. This section contains definitions of biodiesel and qualifying volume that are in section 312(f) of ECRA. The term 'biodiesel' is defined as a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act.

The term ''qualifying volume'' is set equal to 450 gallons. If DOE determines, after the rulemaking, that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, DOE may set a qualifying volume that is equal to the average annual alternative fuel use determined by its collection of data under section 490.703.

Section 490.703 Biodiesel Fuel Use Credit Allocation. This section prescribes the conditions and exceptions under which DOE may allocate an alternative fueled vehicle acquisition credit to a fleet or covered person for each ''qualifying volume'' of the biodiesel component of a fuel containing at least 20 percent biodiesel by volume. The allocation of such a credit is restricted to vehicles owned or operated by the fleet or covered person that have a gross vehicle weight rating of more than 8,500 lbs.

Paragraph (b) of this section states the statutory exceptions to allocation of biodiesel fuel credits. No credits may be allocated when the biodiesel purchased is for use in an alternative fueled vehicle, as defined in Section 490.2. This exception is designed to prevent fleets and covered persons from utilizing the biodiesel fuel use credit to claim an additional alternative fueled vehicle acquisition credit on an alternative fueled vehicle which has already received credit by virtue of its acquisition for use in a covered fleet. Additionally, no alternative fueled vehicle acquisition credit shall be awarded if the biodiesel purchased is required by Federal or State law.

Section 490.704 Procedures and Documentation. Paragraph (a) of this section specifies the office within DOE that will receive requests for biodiesel fuel credits, and paragraph (b) covers the documentation that must accompany a request. To ensure proper credit allocation, a fleet or covered person under this section must provide written documentation to DOE supporting the allocation of a biodiesel fuel use credit. The written documentation must be submitted by the December 31 after the applicable model year. The initial model year for use of the biodiesel fuel use credit began on November 14, 1998, the enactment of ECRA, and will close on August 31, 1999 for State and alternative fuel provider fleets and September 30, 1999 for Federal fleets. Future model years, beginning with the 2000 model year, for use of the biodiesel fuel use credit, however, will be complete 12-month years.

Such documentation must include meeting the annual reporting requirements of section 490.704, as well as section 490.205 for State fleets and section 490.309 for alternative fuel provider fleets. The form referenced in paragraph (a) is the annual reporting form DOE/OTT/101, Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets. It will be amended to include the documentation requirements of section 490.704. Documentation requirements include listing the quantity of biodiesel purchased for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight for the model year covered in the report.

Section 490.705 Use of Credits. Section 490.705 delineates the use and limits of the biodiesel fuel use credit. At the request of a fleet or covered person, DOE shall, for the model year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under Subpart C (State fleets), Subpart D (alternative fuel provider fleets), and Title III of EPACT (Federal fleets). The use of the biodiesel fuel use credit to serve as the acquisition of one alternative fueled vehicle is restricted to the model year, or the fiscal year in the case of Federal fleets, in which the biodiesel is purchased and cannot be carried forward like alternative fueled vehicle acquisition credits generated under Subpart F. The House of Representatives Commerce Committee Report addressed these restrictions, stating that biodiesel fuel use credits ''may only be used by the fleet or covered person that earned the credits and only in the year the credit is issued, so they cannot be traded or banked.'' [1]

Credits allocated under subsection 490.703 may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under Subpart C (State fleets), Subpart D (alternative fuel provider fleets), and Title III of EPACT (Federal fleets). This limitation would also apply to private and municipal government fleets if DOE determines that such fleets should be included in the Alternative Fuel Transportation Program. The 50 percent limitation in section 490.705 does not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in sections 490.301 and 490.303. Biodiesel alternative fuel providers may satisfy up to 100 percent of their alternative fueled vehicle acquisition requirements through the use of biodiesel fuel use credits.

Section 490.706 Procedure for Modifying the Biodiesel Component Percentage. This section includes a cross-reference to the procedures a person may use to request DOE to exercise the authority provided in section 312(a)(3) of ECRA to lower the minimum 20 percent biodiesel volume requirement for reasons related to cold start, safety, or vehicle function considerations. DOE expects petitions to change the percentage requirement to be supported by data demonstrating the need for lowering the percentage.

Section 490.707 Increasing the Qualifying Volume of the Biodiesel Component. This section allows DOE to collect the data required to make a determination that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents. Such a data collection effort would be used by DOE to propose an increase in the 450 gallon qualifying volume necessary to generate credits under the Section 490.701 biodiesel fuel use credit. A DOE proposal to increase the qualifying volume would have to be done through a rulemaking that provides public notice and opportunity for comment. DOE does not, at this time, plan on proposing an increase in the qualifying volume. If the data that become available on alternative fuel use by EPACT alternative fueled vehicles indicate that average alternative fuel use is higher than 450 gallons, DOE will consider proposing an increase in the qualifying volume level.

III. Public Comment

This rule prescribes procedures and contains interpretive guidance for implementing the biodiesel fuel use credit provisions of ECRA, section 7. An opportunity for prior public comment is not required by the Administrative Procedure Act, 5 U.S.C. 553, or any other law for this type of rule, nor does DOE see any need for prior public comment as a matter of policy. The rule contains straightforward procedures for requesting credits, necessary cross-references to other provisions in the Part 490 Alternative Fuel Transportation Program, and implementing provisions that closely track the statute.

Although DOE is making this rule effective 30 days after publication, it is nevertheless interested in any written data, views, or comments that interested persons may have with respect to the rule. DOE will take appropriate action after considering the comments. DOE invites public comments by the deadline in the **DATES** section at the beginning of this notice. Written comments (5 copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: ''Biodiesel Fuel Use Credit Interim Final Rule, Docket Number EE–RM–99–BIOD''. In the event any person wishing to submit a written comment cannot provide five copies, alternative arrangements may be made in advance

[1] H.R. Rep. No. 105–727, Pt. 3, at 33 (1998).

by calling Ms. Andi Kasarsky at (202) 586–3012. All comments submitted will be available for examination in the Rule Docket File (EE–RM–99–BIOD) in DOE's Freedom of Information Reading Room at the address indicated at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that are believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The DOE will make its own determination of any such claim.

IV. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12612

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action. The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined there are no federalism implications that would warrant the preparation of a federalism assessment. The interim final rule will not have a substantial direct effect on States, the relationship between the States and Federal Government, or the distribution of power and responsibilities among various levels of government.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires preparation of an initial regulatory flexibility analysis for every rule for which the law requires publication of a general notice of proposed rulemaking unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Today's interim final rule is not subject to a legal requirement for a general notice of proposed rulemaking. Accordingly, DOE did not prepare a regulatory flexibility analysis for this rule.

D. Review Under the National Environmental Policy Act

The Department has determined that this rule is covered by Categorical Exclusion in paragraph A5 to Subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under the Paperwork Reduction Act

This interim final rule contains a collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. More specifically, DOE plans to obtain documentation to support allocation of credits by use of the annual reporting form DOE/OTT/101, Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets. DOE proposes to amend that form to include the documentation requirements of § 490.704. Fleets claiming credits must, for the model year in which the biodiesel fuel is purchased, report the quantity of biodiesel purchased for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight.

The title, description, and respondent description of the collection of information for the existing Alternative Fuel Transportation Program are shown as follows with an estimate of the annual reporting and record keeping burden. Included in the estimate are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and providing the information. DOE does not expect any change in the existing burden with the addition of the availability of the biodiesel fuel use credit to affected fleets. Should fleets utilize the biodiesel fuel use credit, DOE believes that the increased burden of reporting biodiesel fuel use credits would be counterbalanced by a reduced burden of reporting the number of alternative fueled vehicles acquired.

Collection Title: Annual Alternative Fueled Vehicle Acquisition Report for State Government and Alternative Fuel Provider Fleets.

Type of Review: Revised collection.

OMB Number: 1910–5101.

Type of Respondents: States and alternative fuel provider firms.

Estimated Number of Respondents: 1,000.

Estimated Total Burden Hours: 12,000.

Frequency of Responses: Annually.

DOE invites comments on: (1) The need for the proposed collection of information; (2) the accuracy of DOE's burden estimates, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

As provided in 5 CFR 1320.5(c)(1), collections of information addressed in an interim final rule are subject to the procedures in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection in this rule by July 19, 1999 to Paul McArdle, Office of Energy Efficiency and Renewable Energy, (EE–34), U. S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 and to the DOE Desk Officer, OMB, NRD, Room 10202, 725 17th Street, NW, Washington, DC 20503.

At the close of the 60-day comment period, DOE will review the comments received, revise the information collection as necessary, and submit these provisions to OMB for review. DOE will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. DOE will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current, valid OMB control number.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of

Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The interim final rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 490

Administrative practice and procedure, Energy conservation, Fuel, Motor vehicles.

Issued in Washington, DC on April 28, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the Preamble, Part 490 of Title 10, Chapter II, Subchapter D of the Code of Federal Regulations, is amended as follows:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

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

Authority: 42 U.S.C. 7191, 13211–13212, 13235, 13251, 13257, 12260–12263.

2. Subpart H—Biodiesel Fuel Use Credit is added to read as follows:

Subpart H—Biodiesel Fuel Use Credit

Sec.
490.701 Purpose and scope.
490.702 Definitions.
490.703 Biodiesel fuel use credit allocation.
490.704 Procedures and documentation.
490.705 Use of credits.
490.706 Procedure for modifying the biodiesel component percentage.
490.707 Increasing the qualifying volume of the biodiesel component.
490.708 Violations.

§ 490.701 Purpose and scope.

(a) This subpart implements provisions of the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388) that require, subject to some limitations, the allocation of credit to a fleet or covered person under Titles III and V of the Energy Policy Act of 1992 for the purchase of a qualifying volume of the biodiesel component of a fuel containing at least 20 percent biodiesel by volume.

(b) Fleets and covered persons may use these credits to meet, in part, their mandated alternative fueled vehicle acquisition requirements.

§ 490.702 Definitions.

In addition to the definitions found in § 490.2, the following definitions apply to this subpart—

Biodiesel means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act; and

Qualifying volume means—

(1) 450 gallons; or

(2) If DOE determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use.

§ 490.703 Biodiesel fuel use credit allocation.

(a) DOE shall allocate to a fleet or covered person one credit for each qualifying volume of the biodiesel component of a fuel that contains at least 20 percent biodiesel by volume if:

(1) Each qualifying volume of the biodiesel component of a fuel was purchased after November 13, 1998;

(2) The biodiesel component of fuel is used in vehicles owned or operated by the fleet or covered person; and

(3) The biodiesel component of the fuel is used in vehicles weighing more than 8,500 pounds gross vehicle weight rating.

(b) No credit shall be allocated under this subpart for a purchase of the biodiesel component of a fuel if the fuel is:

(1) For use in alternative fueled vehicles; or

(2) Required by Federal or State law.

§ 490.704 Procedures and documentation.

(a) To receive a credit under this subpart, the fleet or covered person shall submit its request, on a form obtained from DOE, to the Office of Energy Efficiency and Renewable Energy, U. S. Department of Energy, EE–34, 1000 Independence Ave. SW., Washington, DC 20585, or such other address as DOE may publish in the **Federal Register**, along with the documentation required by paragraph (b) of this section.

(b) Each request for a credit under this subpart must be submitted on or before the December 31 after the close of the applicable model year and must include written documentation stating the quantity of biodiesel purchased, for the given model year, for use in vehicles weighing in excess of 8,500 lbs. gross vehicle weight;

(c) A fleet or covered person submitting a request for a credit under this subpart must maintain and retain purchase records verifying information in the request for a period of three years from December 31 immediately after the close of the model year for which the request is submitted.

§ 490.705 Use of credits.

(a) At the request of a fleet or covered person allocated a credit under this subpart, DOE shall, for the model year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under sections 490.201, 490.302 and 490.307, and Title III of the Energy Policy Act of 1992.

(b) Except as provided in paragraph (c) of this section, credits allocated

under this subpart may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under sections 490.201, 490.302 and 490.307, and Title III of the Energy Policy Act of 1992.

(c) A fleet or covered person that is a biodiesel alternative fuel provider described in section 490.303 of this part may use its credits allocated under this subpart to satisfy all of its alternative fueled vehicle requirements under section 490.302.

§ 490.706 Procedure for modifying the biodiesel component percentage.

(a) DOE may, by rule, lower the 20 percent biodiesel volume requirement of this subpart for reasons related to cold start, safety, or vehicle function considerations.

(b) Any person may use the procedures in section 490.6 of this part to petition DOE for a rulemaking to lower the biodiesel volume percentage. A petitioner should include any data or information that it wants DOE to consider in deciding whether or not to begin a rulemaking.

§ 490.707 Increasing the qualifying volume of the biodiesel component.

DOE may increase the qualifying volume of the biodiesel component of fuel for purposes of allocation of credits under this subpart only after it:

(a) Collects data establishing that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents; and

(b) Conducts a rulemaking to amend the provisions of this subpart to change the qualifying volume to the average annual alternative fuel use.

§ 490.708 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

[FR Doc. 99–12571 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM152; Special Conditions No. 25–144–SC]

Special Conditions: Boeing Model 717–200 Airplane; Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 717–200 airplane. This airplane will have novel or unusual design features associated with its electronic flight and engine control systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Gerry Lakin, FAA, Standardization Branch, ANM–113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1187, facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1994, the Los Angeles Aircraft Certification Office received an application from the McDonnell Douglas Corporation, now a wholly owned subsidiary of The Boeing Company, informing the FAA of their intention to seek an amendment to FAA Type Certificate No. A6WE to add the new Model MD–95–30, which was later renamed the Boeing Model 717–200.

The Boeing Model 717–200 is a derivative of the DC–9/MD–80/MD–90 series of airplanes, Type Certificate No. A6WE, and is scheduled to be certificated in September 1999. The Boeing Model 717–200 is a low-wing, pressurized airplane with twin, body-mounted, jet engines that is configured for approximately 100 passengers. The airplane has a maximum takeoff weight of 121,000 pounds, a maximum landing weight of 104,000 pounds, a maximum operating altitude of 37,000 feet, and a range of 1500 nautical miles at a cruise speed of Mach 0.76. The overall length of the Boeing Model 717–200 is 124 feet, the height is 29 feet, 1 inch, and the wing span is 93 feet, 4 inches. Features have been added to the Boeing Model 717–200 to provide cost-efficient performance and decreased crew workload. These features include an advanced flight compartment, BMW/Rolls-Royce BR715 engines, an advanced auxiliary power unit (APU), advanced environmental systems, and an updated interior.

The advanced flight compartment includes an electronic instrument system, with six liquid crystal displays, to show navigation, engine, and system data. For decreased crew workload, the Boeing Model 717–200 has a flight management system and an autoflight system, with Category IIIa autoland capability. A central fault display system allows maintenance personnel access to fault data to perform return-to-service tests.

The Boeing Model 717–200 is equipped with two electronically controlled BMW/Rolls-Royce BR715 high-bypasss ratio engines capable of supplying up to 21,000 pounds of thrust. For reverse thrust, the engine has fixed pivot door type thrust reversers.

The advanced APU is a simple design with a single-stage compressor and turbine. The APU uses modular components for increased reliability and decreased maintenance and is controlled by an electronic control unit.

The Boeing Model 717–200 has a simplified pneumatic system to supply bleed-air for the airplane systems. The dual cabin pressure control system has automatic control, with a manual backup.

The passenger compartment interior has overhead stowage compartments, forward and aft lavatories, and two forward service galleys. The interior also has a full-grip lighted handrail attached to the overhead stowage compartments, for safety and convenience. Class C cargo compartments are located in the lower forward and aft ends of the airplane.

Type Certification Basis

Under the provisions of § 21.101, The Boeing Company must show that the Model 717–200 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A6WE or the applicable regulations in effect on the date of application for the change to the Model 717–200. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A6WE are as follows:

The type certification basis for the Boeing Model 717–200 airplane is 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–82, except for certain reversions to earlier amendments for parts of the airplane not affected by these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 717–200 because of a novel or unusual design feature,

special conditions are prescribed under the provisions of § 21.16.

In addition, to the applicable airworthiness regulations and special conditions, the Model 717–200 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 717–200 will incorporate the following novel or unusual design features:

The Boeing Model 717–200 airplane will utilize electronic flight and engine control systems that establish the criticality of the electrical power generation and distribution systems. Since the loss of all electrical power may be catastrophic to the airplane, a special condition is proposed to retain the level of safety envisioned by § 25.1351(d).

The Boeing Model 717–200 airplane will require a continuous source of electrical power in order for the electronic flight instrument system to remain operable. Section § 25.1351(d), ''Operation without normal electrical power,'' requires safe operation in visual flight rule (VFR) conditions for a period of not less than five minutes with inoperative normal power. This rule was structured around a traditional design utilizing analog/mechanical flight instrumentation, which allows the crew to sort out the electrical failure, start engine(s) if necessary, and re-establish some of the electrical power generation capability. However, with today's aircraft, complex electronic/avionics systems are now performing critical functions that may require uninterrupted electrical power for continued safe flight (in instrument meteorological conditions (IMC)) and landing.

In addition, § 121.161 states that an operator may fly a twin-engine airplane over a route that allows up to one-hour flying time from a suitable airport. If Boeing seeks operational approval for extended over water operations, with a possible diversion time of one hour, the emergency power system must be capable of providing at least one hour of operation to critical and essential systems. If, however, Boeing intends to exclude extended over water operations, then only 30 minutes of emergency power will be required.

In order to maintain the same level of safety associated with traditional designs, the Boeing Model 717–200 design must provide at least 30 minutes of emergency power without the normal source of engine or APU generated electrical power. It should be noted that service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue through safe flight and landing with only the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing. The emergency electrical power system must be designed to:

1. Continue to operate the airplane for immediate safety without the need for crew action following the loss of the normal engine (which includes APU power) generator electrical power system,
2. Supply electrical power required for continued safe flight and landing, and
3. Supply electrical power required to restart the engines.

For compliance purposes a test demonstration of the loss of normal engine generator power is to be established such that:

1. The failure condition is assumed to occur during night IMC at the most critical phase of the flight relative to the electrical power system design and distribution of equipment loads on the system.
2. The airplane engine restart capability must be provided and operations continued in IMC after the unrestorable loss of normal engine generator power.
3. The airplane is demonstrated to be capable of continuous safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.
4. The availability of APU operation should not be considered in establishing emergency power system adequacy.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–99–01–SC for the Boeing Model 717–200 series airplanes was published in the **Federal Register** on March 25, 1999 (64 FR 14408). One commenter responded and had no objection to the special conditions. The special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 717–200 airplanes. Should the McDonnell Douglas Corporation, now a wholly owned subsidiary of The Boeing Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 717–200 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 717–200 airplanes.

1. *Operation Without Normal Electrical Power.* In lieu of compliance with § 25.1351(d), ''It must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation must be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.''

Issued in Renton, Washington on May 11, 1999.

Donald E. Gonder,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–12608 Filed 5–18–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 95F–0191]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyestercarbonate resins produced by the condensation of 4,4′-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride. The finished resins are composed of 45 to 85 mole percent ester, of which up to 55 mole percent is the terephthaloyl isomer, as articles or components of articles in contact with food. This action responds to a petition filed by the General Electric Co.

DATES: This regulation is effective May 19, 1999; written objections and requests for a hearing by June 18, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 31, 1995 (60 FR 39000), FDA announced that a food additive petition (FAP 5B4470) had been filed by the General Electric Co., 1 Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposed to amend the food additive regulations in § 177.1585 *Polyestercarbonate resins* (21 CFR 177.1585) to provide for the safe use of polyestercarbonate resins produced by the condensation of 4,4′-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride. The finished resins are composed of 45 to 85 percent ester, of which up to 55 percent is the terephthaloyl isomer, as articles or components of articles in contact with food. (The agency will subsequently use mole-percent to describe these resins because this term better describes the resin composition.)

In its evaluation of the safety of this food additive, FDA has reviewed the safety of the additive itself, the starting materials used, and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain residual amounts of methylene chloride, which has been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as methylene chloride, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (409(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, polyestercarbonate resins, as food packaging, will not significantly increase the overall exposure to polyestercarbonate oligomers, monomers, *p*-cumylphenol, and methylene chloride above the exposure from the currently regulated uses of these polyestercarbonate resins (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive use of which will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by methylene chloride, the carcinogenic chemical that may be present as an impurity in the additive. This risk evaluation of methylene chloride has two aspects: (1) Assessment of exposure to the impurity from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

A. Methylene Chloride

FDA has estimated the exposure to methylene chloride from the petitioned and regulated uses of polyestercarbonate resins as articles intended to contact food to be no more than 4.9 parts per billion in the daily diet (3 kilogram), or 15 micrograms per person per day (Ref. 1). The agency used data in the National Toxicology Program Report No. 306 (January 1986), on inhalation studies in F344/N rats and $B6C3F_1$ mice to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned and regulated uses of the additive (Ref. 3). The authors reported that the test material caused an increased incidence of liver cell neoplasms and lung neoplasms in both male and female $B6C3F_1$ mice.

Based on the agency's estimate that exposure to methylene chloride will not exceed 15 micrograms/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the regulated and petitioned uses of the polyestercarbonate resins is 1×10^{-7} or 1 in 10 million (Ref. 4). Because of numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to methylene chloride is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the

agency concludes that there is reasonable certainty that no harm from exposure to methylene chloride would result from the petitioned use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of methylene chloride present as an impurity in the additive. The agency finds that the specification currently in § 177.1585 is adequate to insure that the risk from methylene chloride resulting from the petitioned use of the polyestercarbonate resins in contact with food is insignificant and that use of the resins is safe.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed uses for the food additive in food-contact articles are safe, that the food additive will achieve its intended technical effect, and that the regulations in § 177.1585 should be amended as set forth in the codified of this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed previously. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 18, 1999, file with the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections and the grounds for the objection. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated April 25, 1996, from the Chemistry Review Branch (HFS–247), to the Indirect Additives Branch (HFS–216) entitled ''FAP 5B4470 (MATSt 825, M2.0 and 2.1—General Electric Company (GE) Polyestercarbonate (PEC) resins. Submission dated 6-1-95.''

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. ''Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) (CAS Reg. No. 75–09–2) in F344/N Rats and B6C3F$_1$ Mice (Inhalation Studies),'' National Toxicology Program Technical Report Series, No. 306 (January 1986).

4. Memorandum, dated June 4, 1996, from the Indirect Additives Branch, (HFS–216), to Executive Secretary, Quantitative Risk Assessment Committee (QRAC), (HFS–308), entitled ''Estimation of Upper-bound Lifetime Human Risk from Methylene Chloride in Polyestercarbonate Resins, the Subject of FAP 5B4470 (General Electric Co.).''

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1585 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 177.1585 Polyestercarbonate resins.

* * * * *

(a) Polyestercarbonate resins (CAS Reg. No. 71519–80–7) are produced by the condensation of 4,4′-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride such that the finished resins are composed of 45 to 85 molepercent ester, of which up to 55 mole-percent is the terephthaloyl isomer. The resins are manufactured using a phthaloyl chloride/carbonyl chloride mole ratio of 0.81 to 5.7/1 and isophthaloyl chloride/terephthaloyl chloride mole ratio of 0.81/1 or greater. The resins are also properly identified by CAS Reg. No. 114096–64–9 when produced with the use of greater than 2 but not greater than 5 weight percent *p*-cumylphenol (CAS Reg. No. 599–64–4), as an optional adjuvant substance in accordance with paragraph (b)(2) of this section.

* * * * *

(c) * * *

(1) *Specifications*. Polyestercarbonate resins identified in paragraph (a) of this section can be identified by their characteristic infrared spectrum. The resins shall comply with either or both of the following specifications:

(i) The solution intrinsic viscosity of the polyestercarbonate resins shall be a minimum of 0.44 deciliter per gram, as determined by a method entitled ''Intrinsic Viscosity (IV) of Lexan® Polyestercarbonate Resin by a Single Point Method Using Dichloromethane as the Solvent,'' developed by the General Electric Co., September 20, 1985, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Office of Premarket Approval, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug

Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC; or

(ii) A minimum weight-average molecular weight of 27,000, as determined by gel permeation chromatography using polystyrene standards.

* * * * *

Dated: May 10, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–12531 Filed 5–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–034]

Drawbridge Operating Regulation; Gulf Intracoastal Waterway, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.977 governing the operation of the Pelican Island Causeway bascule drawbridge across the Gulf Intracoastal Waterway, mile 356.1 at Galveston, Galveston County, Texas. This deviation allows the Galveston County Navigation District to maintain the bridge in the closed-to-navigation position from 7 a.m. until 7 p.m. from Monday, May 17, 1999, until Friday, June 4, 1999. Additionally, the bridge may remain in the closed-to-navigation position continuously from 7 a.m. on Thursday, May 20, 1999, until 7 p.m. on Sunday, May 23, 1999. At all other times, the bridge will operate normally for the passage of vessels. This temporary deviation is issued to allow for the replacement of the bridge fendering system.

DATES: This deviation is effective from 7 a.m. on Monday, May 17, 1999, until 7 p.m. on Friday, June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Galveston County Navigation District requested a temporary deviation from the normal operation of the bridge in order to accommodate the replacement of the fender system of the bridge. The fender system will be replaced in-kind.

This deviation allows the draw of the Pelican Island Causeway bascule span drawbridge across the Gulf Intracoastal Waterway, mile 356.1 at Galveston, Galveston County, Texas, to remain in the closed-to-navigation position from 7 a.m. until 7 p.m. from Monday, May 17, 1999, until Friday, June 4, 1999. Additionally, the bridge may remain in the closed-to-navigation position continuously from 7 a.m. on Thursday, May 20, 1999, until 7 p.m. on Sunday, May 23, 1999. At all other times, the bridge will operate normally for the passage of vessels. Presently, the draw opens on signal for the passage of vessels; except that, from 7 a.m. to 8:30 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. Public vessels of the United States and vessels in distress shall be passed at any time.

Dated: May 12, 1999.

A. L. Gerfin, Jr.,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 99–12610 Filed 5–18–99; 8:45 am]

BILLING CODE 4310–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0002a and WY–001–0003a; FRL–6344–2]

Approval and Promulgation of State Implementation Plans; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves two revisions to the Wyoming State Implementation Plan (SIP) regarding particulate matter. The SIP revisions include clarification and revisions to the particulate matter control requirements in section 25 of the Wyoming Air Quality Standards and Regulations (WAQSR) for the FMC Corporation Trona plant in the Trona Industrial Area of Wyoming, and the addition of guidelines for best available control technology (BACT) in the minor source construction permitting requirements of section 21 of the WAQSR for large mining operations. The State submitted these SIP revisions to EPA for approval on September 15, 1982 and on May 16, 1985, respectively. We approve these SIP revisions because they are consistent with Federal requirements.

We also revise 40 CFR 52.2620 to list subsections 21(a)(iv), 24(a)(xix), 24(b)(iv), and 24(b)(xii)(H) of the WAQSR in the ''Incorporation by reference'' section. We approved these subsections in previous SIP approvals (on November 29, 1994 and on November 3, 1995, respectively) but we inadvertently neglected to identify those subsections as incorporated into the SIP in the CFR.

DATES: This rule is effective on July 19, 1999 without further notice, unless we receive adverse comment by June 18, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

We approve two revisions to the Wyoming SIP pertaining to particulate matter. Specifically, we approve the following: (A) clarification and revisions to the particulate matter control requirements for the FMC Corporation in the Trona Industrial Area of Sweetwater County, Wyoming; and (B)

the addition of specific BACT guidelines in the State's minor source construction permitting requirements for controlling particulate matter from large mining operations. The State submitted these SIP revisions on September 15, 1982 and on May 16, 1985, respectively.

We also revise 40 CFR 52.2620 to list in the ''Incorporation by reference'' section various subsections of the WAQSR that we approved in past actions but inadvertently did not list in the CFR, as follows:

(A) Subsection 21(a)(iv) of the WAQSR, that was part of the State's November 12, 1993 SIP submittal approved by EPA on November 29, 1994 (59 FR 60905) at 40 CFR 52.2620(c)(25); and

(B) Subsections 24(a)(xix), 24(b)(iv), and 24(b)(xii)(H), that were part of the State's March 14, 1995 SIP submittal approved by EPA on November 3, 1995 (60 FR 55798) at 40 CFR 52.2620(c)(26).

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective July 19, 1999 without further notice unless we receive adverse comments by June 18, 1999. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. What Changes Were Made to the Wyoming SIP?

A. Changes to the Requirements for FMC Corporation

The State revised the particulate matter control requirements for the FMC Corporation in section 25c.(2) of the WAQSR. The FMC Corporation owns and operates a trona plant in the Trona Industrial Area, which had previously been designated as a nonattainment area under EPA's former national ambient air quality standards (NAAQS) for total suspended particulate matter (TSP). In the September 15, 1982 SIP submittal, the State clarified the fugitive dust requirements that apply to FMC's coal stockpile to identify the specific measures being implemented by FMC. In addition, the State revised the fugitive dust control requirements for the loadout facilities to not include the sesqui loadout facility, because the State found that controls at the sesqui loadout facility were not necessary to attain the TSP NAAQS.

B. Addition of Specific BACT Measures for Large Mining Operations

In its May 16, 1985 SIP submittal, the State added guidelines on BACT for large mining operations to its minor source construction permitting requirements. These provisions were added to section 21c.(5) of the WAQSR. The guidelines control fugitive particulate emissions from access and haul roads and stockpiles. Section 21c.(5) lists the measures that will normally be required, although the BACT determination is not limited to those measures. Note that the State imposes a separate BACT requirement to new or modified major stationary sources under the State's prevention of significant deterioration (PSD) permitting program in section 24 of the WAQSR. If a large mining operation is subject to PSD permitting as a new or modified major stationary source, then it will have to meet BACT as defined in the PSD regulations and EPA policy, considering the controls that are currently available.

III. Why Is EPA Approving the SIP Revisions?

We approve the revisions to section 25 of the WAQSR regarding FMC Corporation because the revisions are consistent with Federal requirements regarding attainment and maintenance of the NAAQS. The requirements for the coal stockpile are more clearly defined in the revised section 25, which strengthens the enforceability of the rule. The State's SIP submittal also included documentation to show that fugitive particulate controls were not needed at the sesqui loadout facility to attain the TSP NAAQS.[1] FMC Corporation has three PM–10 monitors on-site, and none have recorded a violation of the PM–10 NAAQS.

We approve the revisions to section 21 of the WAQSR because these revisions help to reduce particulate emissions from large mining operations by applying the State's BACT requirements, thus furthering the goals of protecting the particulate matter NAAQS.

We also find that the State met the applicable public participation requirements of the Clean Air Act by providing at least thirty days notice to the public prior to the public hearings on these rule changes, which were held on December 7, 1981 for the changes to section 25 of the WAQSR and on January 23–24, 1984 for the changes to section 21 of the WAQSR.

IV. What Are the Administrative Requirements Associated With This Action?

A. Executive Order 12866

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

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a 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 13045

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O.

[1] EPA replaced the TSP NAAQS with a NAAQS for PM–10 (particulate matter with an aerodynamic diameter of less than 10 microns) on July 1, 1987 (see 52 FR 24634). EPA subsequently revised the PM–10 NAAQS and added a NAAQS for particulate matter with an aerodynamic diameter of less than 2.5 microns on July 18, 1997 (see 62 FR 38652).

12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

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

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

G. 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 Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 7, 1999.

Jack McGraw,

Acting Regional Administrator, Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart ZZ—Wyoming

2. Section 52.2620 is amended by adding paragraph (c)(27) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(27) On September 15, 1982, the Administrator of the Wyoming Air Quality Division submitted clarifications and revisions to the particulate matter control requirements of Section 25 of the Wyoming Air Quality Standards and Regulations (WAQSR) for FMC Corporation in the Trona Industrial Area. In addition, on May 16, 1985, the Administrator of the Wyoming Air Quality Division submitted revisions to the construction

permitting requirements in Section 21 of the WAQSR to specify guidelines for best available control technology for new large mining operations. The Governor of Wyoming submitted revisions to Section 21 of the WAQSR, ''Permit requirements for construction, modification, and operation,'' on November 12, 1993. Last, the Governor of Wyoming submitted revisions to Section 24 of the WAQSR, ''Prevention of Significant Deterioration,'' on March 14, 1995.

(i) Incorporation by reference.

(A) Revisions to Section 25 of the WAQSR, ''Sweetwater County Non-Attainment Area Particulate Matter Regulations,'' subsection c.(2), effective September 13, 1982.

(B) Revisions to Section 21 of the WAQSR, ''Permit requirements for construction, modification, and operation,'' subsection c.(5), effective May 10, 1985.

(C) Revisions to Section 21 of the WAQSR, ''Permit requirements for construction, modification, and operation,'' subsection (a)(iv), effective October 26, 1993.

(D) Revisions to Section 24 of the WAQSR, ''Prevention of Significant Deterioration,'' subsections (a)(xix), (b)(iv), and (b)(xii)(H), effective February 13, 1995.

[FR Doc. 99–12582 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300848; FRL–6077–7]

RIN 2070–AB78

Methacrylic Copolymer; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the methacrylic copolymer when applied to growing crops, to raw agricultural commodities after harvest or to animals when applied/used as an inert ingredient in the pesticide formulations. Rohm and Haas Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of methacrylic copolymer.

DATES: This regulation is effective May 19, 1999. Objections and requests for hearings must be received by EPA on or before July 19, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300848], 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) 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–300848], 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 electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300848]. 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: Bipin Gandhi, 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. 713J, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–8380, gandhi.bipin@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 1998 (63 FR 64478) (FRL–6042–4), 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 (Pub. L. 104–170) announcing the filing of a pesticide tolerance petition (PP 8E4952) by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. This notice included a summary of the petition prepared by the petitioner Rohm and Haas Company. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of methacrylic copolymer.

I. Background and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide us in residential settings.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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 methacrylic copolymer are discussed in this unit:

In the case of certain chemical substances that are defined as ''polymers'', the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Alkyl (C_{12}-C_{20}) Methacrylate copolymer conforms to the definition of a polymer given in 40 CFR 723.250 (b) and meet the following criteria that are used to identify low risk polymers:

1. Alkyl (C_{12}-C_{20}) Methacrylate copolymer is not a cationic polymer, nor is it capable of becoming a cationic polymer in the natural aquatic environment.

2. Alkyl (C_{12}-C_{20}) Methacrylate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. Alkyl (C_{12}-C_{20}) Methacrylate copolymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250 (d)(2)(iii).

4. Alkyl (C_{12}-C_{20}) Methacrylate copolymer is not designed, nor is it reasonably anticipated to substantially degrade, decompose or depolymerize.

5. Alkyl (C_{12}-C_{20}) Methacrylate copolymer is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Alkyl (C_{12}-C_{20}) Methacrylate copolymer is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000 daltons.

7. The minimum number-average molecular weight of Alkyl (C_{12}-C_{20}) Methacrylate copolymer is ~ 15,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. Alkyl (C_{12}-C_{20}) Methacrylate copolymer has a minimum number average molecular weight of ~ 15,000 and contains less than 2% oligomeric material below molecular weight 500 and less than 5 percent oligomeric material below 1,000 molecular weight.

9. Alkyl (C_{12}-C_{20}) Methacrylate copolymer does contain aliphatic ester groups as reactive functional groups. However, these reactive groups are not intended or reasonably anticipated to undergo further reactions under usual environmental conditions.

III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Alkyl (C_{12}-C_{20}) Methacrylate copolymer is not absorbed through the intact gastrointestinal tract and is considered incapable of eliciting a toxic response.

2. *Drinking water exposure.* Based upon the aqueous insolubility of Alkyl (C_{12}-C_{20}) Methacrylate copolymer, there is no reason to expect human exposure to residues in drinking water.

B. Other Non-Occupational Exposure

Typical use of Alkyl (C_{12}-C_{20}) Methacrylate copolymer is in the oil industry as a wax and viscosity modifier at very low use rates. In these uses the primary exposure rate would be dermal, however, Alkyl (C_{12}-C_{20}) Methacrylate copolymer with a molecular weight significantly greater that 400 is not absorbed through the intact skin.

IV. Cumulative Effects

There is data to support cumulative risk from Alkyl (C_{12}-C_{20}) Methacrylate copolymer, since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there is no reasonable expectations of increased risk due to cumulative exposure.

V. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population.* Alkyl (C_{12}-C_{20}) Methacrylate copolymer causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250 (b) and as such is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there would be additional risk.

2. *Infants and children.* Alkyl (C_{12}-C_{20}) Methacrylate copolymer causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250 (b) and as such is considered incapable of eliciting a toxic response. Also there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be at additional risk.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to methacrylic copolymer residues. Accordingly, EPA finds that exempting methacrylic copolymer from the requirement of a tolerance will be safe.

VI. Other Considerations

A. Endocrine Disruptors

There are no evidence that Alkyl (C_{12}-C_{20}) Methacrylate copolymer is an endocrine disrupter, where as substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

B. Analytical Method(s)

Rohm and Haas has petitioned that Alkyl (C_{12}-C_{20}) Methacrylate copolymer be exempt from the requirement of a tolerance based upon the low risk polymer as per 40 CFR 723.250. Therefore, an analytical method to determine residues of Alkyl (C_{12}-C_{20}) Methacrylate copolymer in raw agricultural commodities has not been proposed.

C. Codex Maximum Residue Level

The Agency is not aware of any country requiring a tolerance for Alkyl (C_{12}-C_{20}) Methacrylate copolymer. Nor have been there been any CODEX

Maximum Residue Levels (MRL's) established for any food crops at this time.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) and 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 governs 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 July 19, 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(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300848] (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.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement 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 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.

X. Submission to Congress and the Comptroller General

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

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

PART 180–[AMENDED]

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

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

2. In § 180.1001, the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Methacrylic Copolymer (CAS Reg. No. 63150-03-8), minimum number average molecular weight (in amu) 15,000.	.....	Inert
* *	* * *	* *

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Methacrylic Copolymer (CAS Reg. No. 63150-03-8), minimum number average molecular weight (in amu) 15,000.	.....	Inert
* *	* * *	* *

[FR Doc. 99–12248 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300853; FRL–6078–4]

RIN 2070–AB78

Sulfosulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of sulfosulfuron: 1-(4,6-dimethoxypyrimidin-2yl)-3-[(2-ethanesulfonyl-imidazo[1,2-a]pyridine-3-yl)sulfonyl]urea and its metabolites converted to 2-(ethylsulfonyl)-imidazo[1,2-a]pyridine and calculated as sulfosulfuron in or on wheat grain at 0.02 parts per million (ppm), wheat straw at 0.1 ppm, wheat hay at 0.3 ppm, wheat forage at 4.0 ppm, milk at 0.006 ppm, fat and meat of cattle, goat, swine, horse, and sheep at 0.005 ppm, and meat by-products of cattle, goat, swine, horse, and sheep at 0.05 ppm. 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 May 19, 1999. Objections and requests for hearings must be received by EPA on or before July 19, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300853], 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–300853], 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 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–300853]. 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, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, Tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 23, 1998 (63 FR 71126) (FRL–6047–7), 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) 7F4840 for tolerance by Monsanto Company. This notice included a summary of the petition prepared by the Monsanto Company, 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 sulfosulfuron in or on wheat grain at 0.02 part per million (ppm), wheat straw at 0.1 ppm, wheat hay at 0.3 ppm, wheat forage at 4.0 ppm, milk at 0.006 ppm, fat and meat of cattle, goat, swine, horse, and sheep at 0.005 ppm, and meat by-products of cattle, goat, swine, horse, and sheep at 0.05 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 Sulfosulfuron and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of 1-(4,6-dimethoxypyrimidin-2yl)-3-[(2-ethanesulfonyl-imidazo[1,2-a]pyridine-3-yl)sulfonyl]urea and its metabolites converted to 2-(ethylsulfonyl)-imidazo[1,2-a]pyridine and calculated as sulfosulfuron on wheat grain at 0.02 parts per million (ppm), wheat straw at 0.1 ppm, wheat hay at 0.3 ppm, wheat forage at 4.0 ppm, milk at 0.006 ppm, fat and meat of cattle, goat, swine, horse, and sheep at 0.005 ppm, and meat by-products of cattle, goat, swine, horse, and sheep at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. Several acute toxicity studies place technical sulfosulfuron in Toxicity Categories III or IV. Technical sulfosulfuron is not a dermal sensitizer.

2. In a rat subchronic oral toxicity study, sulfosulfuron was administered in the diet for 13 weeks at a dose levels of 0, 20, 200, 2,000, 6,000, or 20,000 ppm (equivalent to average daily intake of 0, 1.2, 12.1, 123.2, 370.3 or 1,277.5 miligrams/kilograms/day (mg/kg/day) for males and 0, 1.5, 14.6, 144.3, 447.5 or 1,489.1 mg/kg/day for females). The systemic toxicity lowest observed adverse effect level (LOAEL) is 20,000 ppm (1,277.5 mg/kg/day), based on decreased body weight/weight gain in males, possible decreased weight gain in pregnant females during gestation days 14–21, and possible renal lesions related to formulation of calculi. The no observed adverse effect level (NOAEL) is 6,000 ppm (370.3 mg/kg/day).

3. In a dog subchronic oral toxicity study, sulfosulfuron was administered by gelatin capsule at dose levels of 0, 30, 100, 300, or 1,000 mg/kg/day for 90 days. The systemic toxicity LOAEL is 300 mg/kg/day, based on lesions in the urinary bladder in females occurring subsequent to urinary crystal formation and on abnormal urinary crystals in males and females. The NOAEL for systemic toxicity is 100 mg/kg/day.

4. In a 28–day rat dermal study, sulfosulfuron was applied dermally at dose levels of 0,100, 300 or 1,000 mg/kg/day for 5 days/week for 4 weeks. The NOAEL is ≧ 1,000 mg/kg/day the highest dose tested for males and females.

5. In a 1–year dog chronic feeding study, sulfosulfuron was administered by gelatin capsule at dose levels of 0, 5, 20, 100 or 500 mg/kg/day, 5 days/week, for 1 year. The LOAEL is 500 mg/kg/day based on the presence of abnormal urinary crystals and bladder pathology secondary to formation of urinary tract calculi in males. The NOAEL is 100 mg/kg/day.

6. In a rat chronic feeding/carcinogenicity study, sulfosulfuron was administered in the diet at dose levels of 0, 50, 500, 5,000 and 20,000 ppm (females only) for 22 months. Surviving males at 20,000 ppm were sacrificed on day 259 due to excessive mortality. The average daily intake of test material was 0, 2.4, 24.4 or 244.2 mg/kg/day(males up to 5,000 ppm); 1,178.3 mg/kg/day, males at 20,000 ppm until day 259) and 3.1, 30.4, 314.1 or 1,296.5 mg/kg/day for females. The LOAEL is 5,000 ppm (244.2 mg/kg/day), based on increased incidence of urinary tract gross/microscopic lesions, mineralization in several tissues (males), abnormal urine crystals and possibly decreased albumin (males, termination). The NOAEL is 500 ppm (24.4 mg/kg/day) Transitional cell papilloma and carcinoma of the urinary bladder occurred at 1,296.5 mg/kg/day (5,000 ppm) in females. These tumors were determined to be treatment related.

7. In a mouse carcinogenicity study, sulfosulfuron was administered in the diet at dose levels of 0, 30, 700, 3,000, or 7,000 ppm (0, 4.0, 93.4, 393.6 or 943.5 mg/kg/day to males or 0, 6.5 153.0 634.9 or 1,388.2 mg/kg/day to females) for 18 months. The LOAEL is 3,000 ppm (393.6 mg/kg/day), based on gross and microscopic effects related to urinary calculus formation in the urinary bladder of males. The NOAEL is 700 ppm (93.4 mg/kg/day) Benign mesenchymal tumors of the urinary bladder occurred in males at 943.5 mg/kg/day (7,000 ppm). These tumors also occurred in one male at 393.6 mg/kg/day (3,000 ppm), one control female and one female at 1,388.2 mg/kg/day (7,000 ppm). Incidences of renal tubular adenoma were observed in one male and one female at 943.5 and 1,388.2 mg/kg/day or 7,000 ppm. The mesenchymal tumors and adenoma in females were determined to be treatment related.

8. In a 2–generation rat reproduction study, sulfosulfuron was administered in the diet at dose levels of 0, 50, 500, 5,000 or 20,000 ppm during premating (equivalent to average daily intake for P adults of 0, 3.1, 31.6, 312.1 or 1,312.8 mg/kg/day, males and 0, 3.6, 36.2. 363.2 or 1,454.1 mg/kg/day, females; for F1a adults, 0, 3.1, 31.1, 315.8, 1,378.8 mg/kg/day, males and 0, 3.7, 37.7, 377.8 or 1,598.0 mg/kg/day, females). The reproductive toxicity NOAEL is ≧ 20,000 ppm (1,312.8 mg/kg/day) and the LOAEL is > 20,000 ppm. The parental systemic toxicity LOAEL is 20,000 ppm based on decreased parental body weight and/or weight gain during premating, gestation and lactation, mortality (males) and increased incidence of urinary tract pathology related calculus formation. The parental systemic NOAEL is 5,000 ppm (312.1 mg/kg/day). The offspring toxicity LOAEL is 20,000 ppm (1,312.8 mg/kg/day) based on decreased body weight gain in postweaning adolescent rats, and the offspring NOAEL is 5,000 ppm (312.1 mg/kg/day).

9. In a rat developmental study, sulfosulfuron was administered by gavage at dose levels of 0, 100, 300, and 1000 mg/kg/day to females from day 6 through 15 of gestation. The NOAELs for maternal and developmental toxicity were greater than 1,000 mg/kg/day, the highest dose tested.

10. In a rabbit developmental study, sulfosulfuron was administered by gavage at dose levels of 0, 50, 250, or 1,000 mg/kg/day from day 7 through 19 of gestation. The NOAEL for maternal toxicity is greater than 1,000 mg/kg/day the highest dose tested. No LOAEL for developmental toxicity was observed in this study.

11. In an acute rat oral neurotoxicity screening study, sulfosulfuron was administered by gavage at dose levels of 0, 125, 500, or 2,000 mg/kg/day. No treatment-related effects on clinical signs, body weight, food consumption, functional observational battery parameters, motor activity, gross pathology or neuropathology were observed. The NOAEL is ≧ 2,000 mg/kg/day. The LOAEL > 2,000 mg/kg/day.

12. In a rat subchronic neurotoxicity study, sulfosulfuron was administered in the diet at dose levels of 0, 200, 2,000, 20,000 ppm (corresponding to average daily doses of 0, 12, 122, or 1,211 mg/kg/day in males and 0, 14, 141, or 1,467 mg/kg/day in females). The NOAEL is 20,000 ppm (1,211 mg/kg/day), based on marginal reductions in body weight/weight gain of males. The LOAEL is > 20,000 ppm (> 1,211 mg/kg/day).

13. Mutagenicity data included a gene mutation bacterial reverse gene mutation with Salmonella (negative for inducing reverse gene mutation); an *in vitro* mammalian forward gene mutation with Chinese hamster ovary cells (negative for inducing forward gene mutations at the HGPRT locus in Chinese hamster ovary (CHO) with and without S9 activation); *in vitro* chromosome aberration study on human lymphocytes (did not induce structural chromosome damage); and an *in vivo* structural chromosome aberration micronucleus test (negative).

14. Based on the results of the rat metabolism study, more than 90% of the administered radioactivity was excreted by 72–hours post-dosing. Between 77% to 87% was excreted in the urine in all low dose groups. Feces was the major route of elimination at the high dose. In all dose groups minimal radioactivity was retained in the tissue. Metabolism of sulfosulfuron in all groups was minimal and most was excreted unmetabolized.

B. Toxicological Endpoints

1. *Acute toxicity.* A dose and endpoint were not selected for the acute dietary risk assessment because there were no effects attributable to a single dose (exposure) observed in oral toxicity studies including developmental toxicity studies in the rat and rabbit (up to 1,000 mg/kg/day) and an acute neurotoxicity study in rat (up to 2,000 mg/kg). The acute oral, dermal and inhalation toxicity of sulfosulfuron is very low.

2. *Short- and intermediate-term toxicity.* No short- or intermediate-term dermal or inhalation endpoints were

identified. No dermal or systemic toxicity was seen following dermal applications in the 28–day dermal toxicity study with rats up to 1,000 mg/kg/day.

Based on the low acute inhalation toxicity (Toxicity Category IV, no mortality at 3.0 mg/liter (l), the formulation of the product as wettable granules and the low application rates from the proposed use patterns, there is minimal concern for potential inhalation exposure and risk.

3. *Chronic toxicity*. EPA has established the RfD for sulfosulfuron at 0.24 mg/kg/day. This Reference Dose (RfD) is based on the rat chronic toxicity/carcinogenicity study NOAEL of 24.0 mg/kg/day and an uncertainty factor of 100.

4. *Carcinogenicity*. In accordance with the Agency's Proposed Guidelines for Carcinogenic Risk Assessment (April 10, 1996), the HED Cancer Assessment Review Committee (CARC) classified sulfosulfuron as a likely human carcinogen. The weight-of-evidence for this classification are as follows: (i) occurrence of rare transitional cell papilloma and carcinoma of the urinary bladder in female rats; (ii) occurrence of rare benign mesenchymal tumors of the urinary bladder in male as well as one renal adenoma in both male and female mice; and (iii) the relevancy of the observed tumors to human exposure. The Committee recommended that a linear low-dose approach (Q_1*) for human risk characterization and extrapolation of risk should be based on the incidence of benign mesenchymal bladder tumors in male mice. The unit risk, Q_1* (mg/kg/day), of sulfosulfuron based upon male mouse urinary bladder mesenchymal tumor rates is 1.03×10^{-3} $(mg/kg/day)^{-1}$ in human equivalents.

C. Exposures and Risks

1. *From food and feed uses*. No tolerances have been established for sulfosulfuron. Risk assessments were conducted by EPA to assess exposures from sulfosulfuron 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 risk from the proposed use is not expected because no effect attributed to a single dose (exposure) were observed in oral toxicology studies including developmental toxicity in the rat and the rabbit and an acute neurotoxicity study in the rat. The Agency concludes with reasonable certainly that sulfosulfusulfuron does not elicit an acute toxicological response.

ii. *Chronic exposure and risk*. A chronic dietary exposure analysis was performed using the RfD of 0.24 mg/kg/day based on a chronic toxicity NOAEL of 24.0 mg/kg/day and an uncertainly factor of 100, assuming tolerance level residues and 100 % crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 28 subgroups. The TMRC for the all population subgroups represent <1% of the RfD. This is a highly conservative risk estimate since no refinements for percent crop treated or anticipated residues were made.

iii. *Carcinogenicity exposure and risk*. A cancer exposure analysis was performed (DEEM) software, USDA 1989–91 Nationwide Continuing Surveys for Food Intake by Individuals (CSFII) using tolerance level residues and 100% crop treated information to estimate the lifetime cancer risk for the general population. The lifetime risk was 8.45×10^{-8} for a 70–year exposure. The lifetime risk was 1.05×10^{-7} for infants, 2.55×10^{-7} for childern (1–6) and 1.47×10^{-7} for childern (7–12). The Agency considers risks in the range of 1×10^{-6} as negligible risk. The cancer dietary risk associated with sulfosulfuron is below the Agency's level of concern.

2. *From drinking water*. Tier I estimated environmental concentrations (EEC) were calculated for both surface water ((Generic expected environmental concentration) GENEEC model) and ground water ((Screening Concentration in GROund water) SCI-GROW). Tier I models represent the most conservative estimates of potential residues in drinking water. Drinking water levels of comparison (DWLOCs) for acute and chronic dietary risk from drinking water were calculated for both surface and ground water. Estimated environmental concentrations (EECs) for surface and ground water were 1.73 parts per billion (ppb) and 0.295 ppb, respectively.

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. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. OPP uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments.

i. *Acute exposure and risk*. An acute risk from the proposed use is not expected because no effect attributed to a single dose (exposure) were observed in oral toxicology studies including developmental toxicity in the rat and the rabbit and an acute neurotoxicity study in the rat.

ii. *Chronic exposure and risk*. The DWLOC s calculated for adults and children were 8,400 ppb and 2,400 ppb, respectively. These are higher than the EEC s of 1.73 ppb for surface water and 0.295 ppb for ground water.

iii. For cancer exposure to sulfosulfuron, the adult DWLOC is 27 ppb, which is above the EECs of 1.73 ppb for surface water and 0.0295 ppb for ground water.

3. *From non-dietary exposure*. Based on the proposed use of sulfosulfuron on turf at playgrounds, parks, and residential areas by professional applicators, potential for residential exposure exists, from post-application scenarios.

i. *Acute exposure and risk*. An acute risk from the proposed use is not expected because no effects attributed to a single dose (exposure) were observed in oral toxicology studies including developmental toxicity in the rat and the rabbit and an acute neurotoxicity study in the rat.

ii. *Chronic exposure and risk*. A chronic exposure is not expected for use of sulfosulfuron on agricultural, and non-agricultural areas, because exposure does not continuously (daily) occur more than 180 days.

iii. *Short- and intermediate-term exposure and risk*. No short-term or intermediate term dermal or inhalation endpoints were identified. The Agency concludes that exposures form residential uses of sulfosulfuron are not expected to pose undue risk.

iv. *Cancer exposure and risk*. Post-application exposures resulting from the proposed application of sulfosulfuron to recreational areas, parks, and residential areas (lawns) are not expected to pose an undue cancer risk.

A typical cancer risk for a residential adult was calculated for a Tc = 1,000 cm^2/hr (high activity for 1 hr.) and for a Tc = 500 cm^2/hr (low activity for 1 hr.). An average is usually used for cancer assessments. This assessment is based on conservative assumptions (due to the assessment using 50 years of exposure, and utilizing an estimated 20% (default) of dislodgeable foliar residues (DFR) from the turf; which is

derived from the maximum application rate). An average of 14 days of DFRs was used for this cancer assessment; this would be considered a 10% decrease each day (from dilution by rain, and mowing of the grass) of the 20% residue for at least 14 days, and then taking the mean value of this 14 day exposure. The Life time Average Daily Dose (LADD) = 6.0×10^{-5} mg/kg/day for a Tc = 1,000 cm^2/hr (high activity for 1 hr.) and for a Tc = 500 cm^2/hr (low activity for 1 hr.) is equal to 3.0×10^{-5} mg/kg/day. The cancer risks are 6.0×10^{-8} (for Tc =1,000 cm^2/hr, high activity) and 3.0×10^{-8} (for Tc = 500 cm^2/hr (low activity for 1 hr.)). The highest residential calculated level of cancer risk on day zero for a Tc =1,000 cm^2/hr (high activity for 1 hr.) is equal to 1.2×10^{-7}, and for a Tc = 500 cm^2/hr (low activity for 1 hr.) is equal to 6.0×10^{8}. This risk is considered minimal.

The cancer risk assessment for dermal post-application exposure for toddlers is based on conservative assumptions (due to the assessment using 12 years of exposure at maximum rate, for 14 days a year without a 10 % dissipation each day after day zero, and a high transfer coefficient (Tc); default for toddlers = 8,700 cm^2/hr (high activity for 2 hrs, Tier I.). It also utilizes dislodgeable foliar residues (DFR) derived from the maximum application rate and an estimated 20 % (upper percentile, default) of this residue remaining on the turf). The calculated level of cancer risk is 1.0×10^{6}. This is considered as a worst case scenario for toddlers, because the toddler default Tc = 8,700 cm^22/hr (high activity for 2 hrs, Tier I.), and an average of exposure over time is usually used for cancer assessments (which would be considered much less due to a 10% decrease each day, from dilution by rain and mowing of the grass, of the 20% residue for at least 14 days, and then taking the mean value of this 14 day exposure). This risk is considered minimal.

Although it is likely that toddlers also would be exposed to sulfosulfuron from incidental ingestion of grass, soil, or hand-to-mouth transfer, no risk assessment was performed for these scenarios because no relevant oral toxicological endpoints have been identified. There was no acute dietary endpoint identified for sulfosulfuron.

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 sulfosulfuron 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, sulfosulfuron 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 sulfosulfuron 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 risk from the proposed use is not expected because no effects attributed to a single dose (exposure) were observed in oral toxicology studies including developmental toxicity in the rat and the rabbit and an acute neurotoxicity study in the rat.

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

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

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

4. *Aggregate cancer risk for U.S. population*. The cancer aggregate risk which includes food, water, and the lifetime average daily dose from post application exposure for the general population is 2.05×10^{-7} which is lower than the Agency's negligible risk of 1×10^{-6}.

Aggregrate cancer risk for infants and childern. The aggregrate cancer risk for infants and childern which includes food, water, and lifetime average daily dose from post-application exposure is 1.1×10^{-6} which is considered negibile risk.

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 sulfosulfuron 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 Sulfosulfuron, 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 developmental and reproductive toxicity data did not indicate increased susceptibility to *in utero* and/or postnatal exposure.

iii. *Conclusion*. There is a complete toxicity database for Sulfosulfuron 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. Acceptable acute and subchronic neurotoxicity studies in rats have been submitted to the Agency. There were no data gaps for the assessment of the neurotoxic potential of sulfosulfuron. There was no evidence of neurotoxicity in other studies (including a rat 90–day feeding toxicity study, rat 2–year chronic toxicity/carcinogenicity study, dog oral (capsule) 90–day study and a dog 1 year oral (capsule) toxicity study, conducted on sulfosulfuron. The Agency believes that reliable data support the use of the standard 100–fold uncertainly factor, and that a tenfold (10x) uncertainty factor to protect the safety of infants and children should not be retained.

2. *Acute risk*. There are no acute toxicological endpoints for sulfosulfuron. 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 Sulfosulfuron from food will utilize < 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to Sulfosulfuron 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 lack of significant toxicological effects observed with sulfosulfuron under these exposure scenarios.

5. Aggregrate cancer risk for infants and childern. The aggregrate cancer risk for infants and childern which includes food, water, and lifetime average daily dose from post-application exposure is 1.1×10^{-6} which is considered negibile risk.

6. *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 Sulfosulfuron residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The guideline requirement for an animal metabolism study is satisfied. Sulfosulfuron is rapidly excreted, primarily unmetabolized. Excretion at low dose occurred primarily in the urine, whereas at high dose, a large percentage of the administered dose was excreted in the feces. Sulfosulfuron was not retained in tissues to any significant extent.

The nature of the residue in plants is understood. The sulfonyl urea bond is cleaved in soil prior to uptake by wheat and Pd-metabolites are taken up less readily than Im-metabolites. Metabolite formation appears to occur by demethylation and cleavage of sulfonyl urea bond.start

B. Analytical Enforcement Methodology

An interim adequate enforcement methodology (example - gas chromatography) is available to enforce the tolerance expression. The method is undergoing modification to improve the method. The improved method, when available, 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, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229. The interim method is available from the Analytical Chemistry Lab, BEAD (7503C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 305–2905.

C. Magnitude of Residues

Residues of 1-(4,6-dimethoxypyrimidin-2yl)-3-[(2-ethanesulfonyl-imidazo[1,2-a]pyridine-3-yl)sulfonyl]urea and its metabolites that are converted to 2-(ethylsulfonyl)-imidazol[1,2-a]pyridine and calculated as sulfosulfuron are not expected to exceed on wheat grain 0.02 ppm, wheat straw 0.1 ppm, wheat hay 0.3 ppm, wheat forage 4.0 ppm, milk 0.006 ppm, fat and meat of cattle, goat, swine, horse, and sheep 0.005 ppm, and meat by-products of cattle, goat, swine, horse, and sheep at 0.05 ppm.

D. International Residue Limits

No Codex or Mexican MRLs are established for sulfosulfuron. Canadian MRLs exist for sulfosulfuron on wheat grain at 0.02 mg/kg; milk at 0.006 mg/kg, meat and fat of cattle, goat, swine, horse , sheep and poultry at 0.005 mg/kg, eggs at 0.0005 mg/kg; and meat by products of cattle, goat, swine, horse, sheep and poultry at 0.05 mg/kg. The Canadian MRLs are the same as the United States tolerances. No Canadian MRLs exist for wheat straw, wheat hay, and wheat forage. These tolerances are necessary to support use patterns in the United States.

E. Rotational Crop Restrictions

Based on the results of the confined accumulation in rotational crops study, the appropriate plantback intervals are: 30 days for leafy and root crops. Limited rotational field trials are required to determine the appropriate rotation intervals for all other crops (except wheat).

IV. Conclusion

Therefore, the tolerances are established for residues of sulfosulfuron, 1-(4,6-dimethoxypyrimidin-2yl)-3-[(2-ethanesulfonyl-imidazo[1,2-a]pyridine-3-yl)sulfonyl]urea and its metabolites converted to 2-(ethylsulfonyl)-imidazo[1,2-a]pyridine and calculated as sulfosulfuron, in wheat grain at 0.02 ppm, wheat straw at 0.1 ppm, wheat hay at 0.3 ppm, wheat forage at 4.0 ppm, milk at 0.006 ppm, fat and meat of cattle, goat, swine, horse, and sheep at 0.005 ppm, and meat by-products of cattle, goat, swine, horse, and sheep at 0.05 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 July 19, 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, 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.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300853] (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.

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 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: May 6, 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), 346(a) and 371.

2. Section 180.552 is added to subpart C to read as follows:

§ 180.552 Sulfosulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide sulfosulfuron, 1–(4,6-dimethoxypyrimidin-2-yl)-3-[(2-ethanesulfonyl-imidazo[1,2-a]pyridine-3-yl) sulfonyl]urea and its metabolites converted to 2-(ethylsulfonyl)-imidazo[1,2-a]pyridine and calculated as sulfosulfuron in or on the raw agricultural commodities.

Commodity	Parts per million
Cattle, fat	0.005
Cattle, meat	0.005
Cattle, meat by-products	0.05
Goat, fat	0.005
Goat, meat	0.005
Goat, meat by-products	0.05
Horse, fat	0.005
Horse, meat	0.005
Horse, meat by-products	0.05
Milk	0.006
Sheep, fat	0.005
Sheep, meat	0.005
Sheep, meat by-products	0.05
Swine, fat	0.005
Swine, meat	0.005
Swine, meat by-products	0.05
Wheat, forage	4.0
Wheat, grain	0.02
Wheat, hay	0.3
Wheat, straw	0.1

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

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

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

[FR Doc. 99–12247 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300856; FRL–6079–7]

RIN 2070–AB78

Emamectin Benzoate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of the insecticide emamectin benzoate, 4′-epi-methylamino- 4′-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and a maximum of 10% 4′-epi-methlyamino-4′deoxyavermectin B_{1b} benzoate) and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide (8,9 ZMA); 4′-deoxy-4′-epi-amino-avermectin B_1 (AB_{1a}); 4′deoxy-4′-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(*N*-formyl)amino-avermectin B_1(FAB_{1a}) (CAS No. 137512–74–4) in or on Brassica, head & stem subgroup (5-A), head lettuce and celery. 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 May 19, 1999. Objections and requests for hearings must be received by EPA on or before July 19, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300856], 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–300856], 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–300856]. 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: George T. LaRocca, 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. 206, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–6100, larocca.george@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 2, 1997 (62 FR 35804) (FRL–5722–9), 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 (6F4628) for tolerance by Novartis Crop Protection, Inc., P.O Box 18300, Greensboro, NC 27419–8300. 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 180.505 be amended by establishing a tolerance for combined residues of the insecticide emamectin benzoate, 4′-epi-methylamino-4′-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and a maximum of 10% 4′-epi-methlyamino-4′deoxyavermectin B_{1b} benzoate) and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide (8,9 ZMA); 4′-deoxy-4′-epi-amino-avermectin B_1 (AB_{1a}); 4′deoxy-4′-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(*N*-formyl)amino-avermectin B_1(FAB_{1a}), in or on Brassica, head & stem subgroup (5-A), head lettuce and celery at 0.025 ppm part per million (ppm). Emamectin benzoate controls a broad spectrum of lepidopterous insects (including beet army worm, diamond back moths, cabbage loopers and fall army worms.

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 emamectin benzoate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of emamectin benzoate, 4′-epi-methylamino-4′-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and a maximum of 10% 4′-epi-methlyamino-4′ deoxyavermectin B_{1b} benzoate) and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide (8,9 ZMA); 4′-deoxy-4′-epi-amino-avermectin B_1 (AB_{1a}); 4′deoxy-4′-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(*N*-formyl)amino-avermectin B_1(FAB_{1a}) on Brassica, head & stem subgroup (5-A), head lettuce and celery at 0.025 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 emamectin benzoate are discussed in this unit.

1. Acute toxicology studies classify technical grade emamectin as having moderate acute toxicity and as being a severe eye irritant (Toxicity Category I). Emamectin falls into Toxicity Category 2 and 3 for acute oral and dermal toxicity, respectively. Emamectin did not cause dermal irritation and is not a dermal sensitizer.

2. A 13-week feeding study in rats resulted in a systemic toxicity no observable adverse effect level (NOAEL) of 2.5 mg/kg/day and a systemic toxicity lowest observable adverse effect level (LOAEL) of 5 mg/kg/day, based on tremors, hind limb splaying, urogenital staining, histological changes in brain and spinal cord, sciatic and optic nerves and skeletal muscles in males, emaciation, reduced body weight and reduced food consumption in both sexes.

3. A 14-week feeding study in dogs resulted in a systemic toxicity NOAEL of 0.25 mg/kg/day and a systemic toxicity LOAEL of 0.50 mg/kg/day, based on microscopic pathological signs of neurotoxicity consisting of skeletal muscle atrophy and white matter multi focal degeneration in the brains of both sexes and white matter multi focal degeneration in the spinal cords of males.

4. A chronic feeding study in rats resulted in a systemic toxicity NOAEL of 1.0 mg/kg/day and a systemic toxicity LOAEL of 2.5 mg/kg/day, based on increased incidence of neuronal degeneration in the brain and spinal cord, decreased rearing, and an increased incidence of animals with low arousal.

5. A chronic feeding study in dogs resulted in a systemic toxicity NOAEL of 0.25 mg/kg/day. The systemic toxicity LOAEL was 0.5 mg/kg/day, based on axonal degeneration in the pons, medulla and peripheral nerves (sciatic, sural, and tibial) in both sexes, clinical signs of neurotoxicity (whole body tremors, stiffness of the hind legs),

spinal cord axonal degeneration, and muscle fiber degeneration in females.

6. A 2–year chronic/carcinogenicity study is rats was conducted. The systemic toxicity NOAEL was 1.0 mg/kg/day. The systemic toxicity LOAEL was 2.5/5.0 mg/kg/day, based on marked neural degeneration in the brain and spinal cord of both sexes, brain white matter degeneration in males, and on decreased body weight, body weight gain, and food efficiency in males. There were no signs of carcinogenicity in this study.

7. A 78–week carcinogenicity mouse study resulted in a systemic toxicity NOAEL of 2.5 mg/kg/day and a systemic toxicity LOAEL of 5.0 mg/kg/day for males and 7.5 mg/kg/day for females, based on increased mortality, decreased weight gain, neurological signs, and increased incidence and severity of infections. There were no signs of carcinogenicity in this study.

8. A developmental toxicity study in rabbits was conducted. The maternal toxicity NOAEL was 3 mg/kg/day. The maternal toxicity LOAEL was 6 mg/kg/day, based on a significant trend towards decreased body weight gain during the dosing period and increased clinical signs (mydriasis and decreased pupillary reaction). The developmental toxicity NOAEL was 6 mg/kg/day, however, the developmental toxicity LOAEL was not determined.

9. A developmental toxicity study in rats was conducted. The maternal toxicity NOAEL was 2 mg/kg/day. The maternal toxicity LOAEL was 4 mg/kg/day, based on a significant trend towards decreased body weight gain during the dosing period. The developmental toxicity NOAEL was 4 mg/kg/day. The developmental toxicity LOAEL was 8 mg/kg/day, based on altered growth and an increased incidence of supernumerary rib.

10. A 2–generation reproduction study in rats was conducted. The systemic toxicity NOAEL was 0.6 mg/kg/day. The systemic toxicity LOAEL of 1.8 mg/kg/day was based on decreased body weight gain and histopathological changes (neuronal degeneration in the brain and spinal cord) in both sexes and generations. The reproductive toxicity NOAEL was 0.6 mg/kg/day. The reproductive toxicity LOAEL of 1.8 mg/kg/day was based on decreased fecundity and fertility indices and clinical signs (tremors and hind limb extension) in offspring of both generations.

11. An acute neurotoxicity study was conducted in rats. A neurotoxicity NOAEL was not establisheD, since toxic signs of neurotoxicity as well as histological lesions in the brain, spinal cord and sciatic nerve occurred at all doses tested (27.4, 54.8 or 82.2 mg/kg).

12. A subchronic neurotoxicity study was conducted in rats. The neurotoxicity NOAEL was 1.0 mg/kg/day. The neurotoxicity LOAEL was 5.0 mg/kg/day (highest dose tested) based on mild tremors, posture, rearing, excessive salivation, fur appearance, gait, strength, mobility and righting reflex.

13. A dietary neurotoxicity study was conducted with CD–1 mice. The neurotoxicity NOAEL was 2.0 mg/kg/day (highest dose tested). No characteristic neuronal lesions were observed in the brain, spinal cord or sciatic nerve in mice of high dose group (2.0 mg/kg/day).

14. A dietary neurotoxicity study was conducted with CF–1 mice. The neurotoxicity NOAEL was less than 0.1 mg/kg/day. One of the low-dose males had tremors, hunched posture and piloerection on day 14.

15. A dietary neurotoxicity study was conducted with CF–1 mice. The neurotoxicity NOAEL was 0.075 mg/kg/day. The LOAEL was 0.10 mg/kg/day based on tremors observed beginning on day 3, decreases in body weight and food consumption as well as degeneration of the sciatic nerve.

16. A developmental neurotoxicity study in rats was conducted. The maternal toxicity NOAEL was 3.6/2.5 mg/kg/day (highest dose tested). The developmental neurotoxicity NOAEL was 0.10 mg/kg/day (lowest dose tested). The LOAEL was 0.60 mg/kg/day based on the dose-related decrease in open field motor activity in females at postnatal day 17. This study was the basis of EPA's conclusion that emamectin demonstrated increased susceptibility.

17. All required mutagenicity studies were conducted and found to be negative.

18. A metabolism study in rats was conducted. Radiolabeled MAB_{1a} benzoate was rapidly absorbed, distributed and excreted following oral and intravenus (i.v.) administration. The feces was the major route of excretion in oral and i.v. groups, while < 1% of the administered dose was recovered in the urine 7 days post dosing. Tissue distribution and bioaccumulation appeared minimal. The metabolism of MAB_{1a} benzoate appears to involve primarily *N*-demethylation to AB_{1a}. AB_{1a} was the only metabolite detected in the feces while unmetabolized parent compound represented a large amount of the radioactivity.

19. Two bioequivalence studies were conducted with dogs. The first study demonstrated that MK–0243 benzoate MTBE solvate and MK–0243 benzoate monohydrate were bioequivalent in male dogs following oral administration as indicated by similar plasma levels for the two compounds. The second study demonstrated that benzoate and HCl salts are bioequivalent after oral administration in male beagle dogs.

20. A repeated-dose dermal toxicity study was conducted in rabbits using the 0.16 EC formulation (Proclaim). The NOAEL was 100 mg/kg/day. The LOAEL was 250 mg/kg/day, based on systemic effects based on axonal degeneration of the sciatic nerve in both sexes (and possibly spinal cord axonal degeneration in one male).

21. A dermal absorption study was conducted. A group of 4 male Rhesus monkeys received a dermal application of 0.8 mCi. H3–MAB1A and 300 µg of MK–244 on a shaved portion of the forearm. Blood and excreta were collected for 26 days following treatment. Dermal absorption was minimal and was approximately 1.79% of the administered dose. The dermal absorption factor is 1.8%

B. Toxicological Endpoints

1. *Acute toxicity*. For acute dietary risk assessment, an acute Reference Dose (RfD) of 0.00075 mg/kg/day has been selected, based on the NOAEL of 0.075 mg/kg/day from a 15–day neurotoxicity study in mice and an uncertainty factor of 100 (10X for inter-species differences extrapolation and 10X for intra species variability). The endpoint is based on tremors observed beginning on day 3 at the LOAEL of 0.10 mg/kg/day.

2. *Short- and intermediate-term toxicity*. For dermal and inhalation risk assessments, the oral NOAEL of 0.075 mg/kg/day from the 15–day neurotoxicity study in mice was used for the short and intermediate-term exposure scenarios because the neurotoxic clinical signs in mice were seen 3–5 days after dosing, which is appropriate for the short term exposure period of concern, and the toxicological profiles of emamectin benzoate and it metabolites indicated that mice are the most sensitive species. The intermediate-term exposure endpoint was based on tremors on day 3 of dosing, mortality (moribund sacrifices), clinical signs of neurotoxicity, decreases in body weight and food consumption and histopathological lesions in the sciatic nerve at the LOAEL of 0.10 mg/kg/day.

Since an oral NOAEL was selected for a dermal and inhalation risk assessment, a rate of 1.8% for dermal absorption and 100% for inhalation absorption was used when converting dermal and

inhalation exposures to oral equivalents. Dermal and inhalation risk assessments are necessary only for short-and intermediate-term exposures. The current use pattern does not indicate the need for a Long-Term dermal or inhalation exposure risk assessment.

3. *Chronic dietary toxicity*. EPA has established the chronic RfD for emamectin benzoate at 0.00025 mg/kg/day. The RfD is based on the NOAEL of 0.075 mg/kg/day, from the 15–day neurotoxicity study in mice and an uncertainty factor of 300 (10X for inter-species differences extrapolation and 10X for intra species variability and 3X for use of a study of short duration). The endpoint is based on mortality (moribund sacrifices), clinical signs of neurotoxicity, decreases in body weight and food consumption and histopathological lesions in the sciatic nerve at the LOAEL of 0.10 mg/kg/day.

4. *Carcinogenicity*. Emamectin benzoate was classified as a ''not likely'' human carcinogen. This classification was based on the lack of evidence of carcinogenicity in male and female rats/mice at doses that were judged to be adequate to assess the carcinogenic potential of the chemical.

C. Exposures and Risks

1. *From food and feed uses*. There are currently no permanent tolerances for emamectin benzoate in/on raw agricultural commodities. A time-limited temporary tolerance was established for cabbage (head and Napa) at 0.025 ppm under FIFRA section 18 emergency exemptions. The tolerance expired on December 31, 1998.

For the dietary risk assessment, chronic analysis used tolerance level residues and percent crop treated data at 25% for all commodities. Thus this risk assessment should be viewed as highly refined. Further refinement using anticipated residue values would result in a lower estimate of chronic dietary exposure.

As a result of the retention of the FQPA safety factor, EPA will consider the population-adjusted-doses (PAD) for infants, children and females 13 years and older to be 0.00025 mg/kg/day for acute and 0.000083 mg/kg/day for chronic dietary exposure. For other populations (i.e., adult males). exposures will be compared to the acute and chronic RfDs, 0.00075 mg/kg/day and 0.00025 mg/kg/day, respectively.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (2) that the exposure estimate does not underestimate exposure for any significant subpopulation group and; (3) if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent 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 routine chronic dietary exposure analysis for Brassica, head & stem subgroup (5-A), head lettuce and celery was based on 25% PCT. For this action, residues were highly refined: 25% crop treated was assumed, along with residue levels at ½ the limit of quantitation. Since emamectin is a new chemical, it is unlikely that it would be used on 25% of crops. Although dietary risk was not calculated based on the assumption of 100% crop treated, EPA is confident that the estimate of percent of crop treated which was used, 25%, is an over estimate, and does not expect more than 25% of any crop to be treated with emamectin.

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 a maximum of 0.09 lb ai/acre/season, 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 emamectin benzoate in a particular area. Risk assessments were conducted by EPA to assess dietary exposures from emamectin benzoate as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute dietary risk assessment was performed for emamectin benzoate. EPA used Dietary Exposure Evaluation Model (DEEM) software to conduct an acute dietary analysis and used the acute RfD of 0.00075 mg/kg/day from the 15–day mouse study and the acute PAD of 0.00025 mg/kg/day for subgroups of concern (infants, children and females 13+). The DEEM detailed acute analysis estimates the distribution of single exposures for the overall U.S. population and certain subgroups. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–1991 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of emamectin in the commodity supply.

EPA is generally concerned with acute exposures that exceed 100% of the PAD or RfD. For the population subgroups of concern, infants, children and females 13 years and older, the estimated 99.9th percentile of acute dietary exposure occupies 8% of the PAD, 65% of PAD and 27% of PAD, respectively.

ii. *Chronic exposure and risk*. A chronic dietary risk assessment was performed for emamectin benzoate. The analysis used the chronic RfD of 0.00025 mg/kg/day and the chronic PAD of 0.000083 mg/kg/day for subgroups of concern. Tolerance level residues and 25% of crop treated information were

used. EPA is generally concerned with chronic exposures that exceed 100% of the chronic RfD or PAD. For the population subgroups of concern, infants, children and females 13 years and older, the estimated exposure occupies < 1% of PAD, 5% of PAD and 5% of PAD, respectively.

2. *From drinking water.* No Maximum Contaminant Level or health advisory levels have been established for residues of emamectin benzoate in drinking water.

EPA does not have monitoring data available to perform a quantitative drinking water risk assessment for emamectin at this time. However, Environmental Fate data for this compound indicates that emamectin benzoate and its metabolites would be expected to be relatively immobile in the environment due to the high degree of sorption to particles.

EPA used its Screening Concentration in Ground Water (SCI-GROW) screening model and environmental fate data to determine the estimated environmental concentration (EEC) for emamectin benzoate in ground water. The Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) model was used to determine the EECs for emamectin benzoate in surface water. The EEC for emamectin benzoate in ground water was 6 ppt (parts per trillion) when applied at the maximum recommended application rate of 0.015 lbs ai/acre with a maximum of six applications. The EECs for surface water range from the peak concentration of 107.22 ppt to the 90 day average of 24.13 ppt when applied at the maximum label rate of 0.015 lb ai/acre and maximum of 0.09 lb ai/acre/season. The computer generated EECs represent conservative estimates and should be used only for screening.

The ground and surface water exposure estimates were calculated from the use of emamectin on cabbage. The drinking water values were calculated for the parent compound, emamectin; however, based on an evaluation of available data, these values can be considered to include both emamectin and its metabolites AB_{1a}, MFB_{1a}, and FAB_{1a}. These estimates were compared to back-calculated Drinking Water Levels of Comparison (DWLOCs) for emamectin for risk assessment purposes.

A DWLOC is a theoretical upper limit of a pesticide's concentration in drinking water in light of total aggregate exposure to that pesticide in food and through residential uses. A DWLOC will vary depending on the toxic endpoint, consumption and body weight. Different populations will have different DWLOCs. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, the DWLOC is used as a point of comparison against conservative model estimates of potential pesticide concentration in water. DWLOC values are not regulatory standards for drinking water.

i. *Acute exposure and risk.* The Agency has calculated the DWLOC for acute exposure to emamectin benzoate in drinking water for various population subgroups. The DWLOC's for emamectin benzoate (acute exposure) are summarized in the following table 1.

TABLE 1.— SUMMARY OF ACUTE DWLOC CALCULATIONS

Population Subgroup[1]	Acute Scenario					
	Acute PAD (mg/kg/day)	Acute Food Exposure (mg/kg/day)	Maximum Water Exposure (mg/kg/day)[2]	SCI-GROW (µg/L)	PRZM/EXAMS (ppb)	DWLOC(µg/L)
U.S. Population	0.00025	0.000078	0.000172	0.006	0.107	6
Children (1–6 years)	0.00025	0.000163	0.000087	0.006	0.107	1
Females 13+ years/nursing	0.00025	0.000067	0.000183	0.006	0.107	5

[1] Population subgroups chosen were U.S. population (70 kg. body weight assumed), and the two children subgroups with the highest food exposure (10 kg. body weight assumed).
[2] Maximum Water Exposure (mg/kg/day) = Acute PAD (mg/kg/day) - ARC from DEEM (mg/kg/day)

ii. *Chronic exposure and risk.* The Agency has calculated DWLOCs for chronic (non-cancer) exposure to emamectin benzoate and its metabolites for the U.S. population and selected subgroups. The DWLOCs for emamectin benzoate are summarized in the following table 2.

TABLE 2.— SUMMARY OF CHRONIC DWLOC CALCULATIONS

Population Subgroup[1]	Chronic Scenario					
	Chronic PAD (mg/kg/day)	Chronic Food Exposure (mg/kg/day)	Maximum Water Exposure (mg/kg/day)[2]	SCI-GROW (µg/L)[3]	PRZM/EXAMS (ppb)	DWLOC(µg/L)
U.S. Population	0.000083	0.000003	0.00008	0.0006	0.0203	3
Children (1–6 years)	0.000083	0.000004	0.00008	0.0006	0.0203	1
Females (13+ years)	0.000083	0.000004	0.00008	0.0006	0.0203	2

[1] Population subgroups chosen were U.S. population (70 kg. body weight assumed), the infant or children subgroup with the highest food exposure (10 kg. body weight assumed), and females 13+ (60 kg body weight assumed).
[2]Maximum Water Exposure (mg/kg/day) = Chronic RfD (mg/kg/day) - ARC from DEEM (mg/kg/day)
[3] The crop producing the highest level was used.

The estimated maximum concentrations of emamectin and its metabolites in surface and ground water are less than the DWLOCs as a contribution to acute and chronic aggregate exposure. The estimated concentrations of emamectin and its metabolites in ground and surface water are conservative estimates. Therefore, the Agency concludes with reasonable certainty that residues of emamectin in food and drinking water would not result in an unacceptable estimate of acute or chronic (non-cancer) aggregate human health risk at this time.

3. *From non-dietary exposure.* There are no registered or proposed residential uses for emamectin benzoate. Therefore, there is no risk associated with non-dietary exposure.

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.''

Emamectin benzoate is synthetically derived from avermectin, which is derived from the antibiotic-producing actinomycetes, the source of all of the antibiotic fungicides. *Streptomyces avermitilus* produces the insecticide avermectin, which is a mixture of two homologs, avermectin B_{1a} and B_{1b}, which have equal biological activity. Currently, the only member of this class which is registered for agricultural uses is avermectin. Avermectin and ivermectin are structurally similar to emamectin. EPA does not have at this time available data to determine whether emamectin benzoate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based upon a common mechanism, emamectin benzoate does not appear to produce a toxic metabolite produced by other substances. For the purpose of this tolerance action therefore, EPA has not assumed that emamectin benzoate has a common mechanism of toxicity with these other substances. An explanation of the current Agency approach to assessment of pesticides with a common mechanism of toxicity may be found in 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.* Exposure to emamectin benzoate residues in food will occupy no more than 31% of the acute PAD for adult population subgroups and no more than 65% PAD for infant/children subgroups. Residue levels used for food-source dietary risk assessments were highly refined (used ½ level of quantitation (LOQ) residues) and did incorporate 25% of crop treated information. Acute dietary exposure estimates were for the 99.9th percentile. Estimated concentrations of emamectin residues in surface and ground water are lower than EPA's DWLOCs. Therefore, EPA does not expect acute aggregate risk to emamectin benzoate residues from food and water sources to exceed level of concern for acute dietary exposure.

2. *Chronic risk.* The chronic dietary exposure to emamectin residues in food will occupy no more than 4% of the chronic RfD for adult population subgroups and no more than 5% PAD for infant/children subgroups. Residue levels used for food-source dietary risk assessments were highly refined and did incorporate percent of crop treated information, as indicated above. EPA generally has no concern for exposures below 100% of the PAD/RfD because of PAD/RfD represents the level at or below which daily aggregated dietary exposure over a lifetime will not pose appreciable risks to human health. The estimated concentrations of emamectin residues in surface and ground water are lower than the Agency's DWLOCs. Despite the potential for exposure to emamectin benzoate in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD/RfD. Therefore, EPA does not expect chronic aggregate risk to emamectin residues from food and water sources to exceed level of concern for chronic dietary exposure.

3. *Aggregate cancer risk for U.S. population.* There is no evidence of carcinogenicity.

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

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

For emamectin benzoate, the Agency has determined the tenfold safety factor for the protection of infants and children should be reduced to 3x. The rationale for reducing the FQPA Safety Factor is as follows:

- No increased susceptibility was demonstrated in rats or rabbits following *in utero* and/or postnatal exposure to emamectin. However, increased susceptibility was demonstrated in a developmental neurotoxicity study in rats.
- Although increased susceptibility was demonstrated in a developmental neurotoxicity study in rats, the Committee determined that the 10x factor should be reduced to 3x based on the following weight-of-the-evidence considerations in the developmental neurotoxicity study: (1) The LOAEL was based on a single effect/end point (i.e., decrease in open field motor activity); (2) theeffect at the LOAEL was seen only on postnatal day 17 and was not seen either on earlier (Day 13) or later (Day 21) evaluations whereas at the high dose (3.6/2.5 mg/kg/day), this effect was seen on postnatal days 13 and 17; (3) the effect at the LOAEL was not accompanied with other toxicity whereas at the high dose tremors and

hind limb splay were also seen; (4) the decreased performance was lower only when compared to the concurrent control; and (5) there was limited (only 2 studies) historical control data available for comparison.

Exposure assessments do not indicate a concern for potential risk to infants and children because: (1) The dietary exposure estimates are based on market share data assuming 25% percent crop treated resulting in an overestimate of dietary exposure. This is considered an overestimate because the 25% figure is considered to be a conservative upper-bound estimate, since a new chemical would have a very small market share; (2) modeling data were used for the ground and surface source drinking water exposure assessments; the resulting estimates are considered to be reasonable upper-bound concentrations; (3) there are no registered residential uses.

EPA also determined that the FQPA Safety Factor (3x) is applicable for acute dietary risk assessments for the general population including infants and children because the endpoint for this risk assessment is neurotoxicity (tremors), and to chronic dietary because the endpoint for this risk assessment is based on clinical signs of neurotoxicity histopathological lesions in the sciatic nerve following oral exposure. As a result of the retention of the FQPA Safety Factor, the Agency considered the PAD for infants, children and females 13 years and older to be 0.00025 mg/kg/day for acute and 0.000083 mg/kg/day for chronic dietary exposure. For other populations (i.e., adult males) exposures were compared to the acute and chronic RfDs, 0.00075 mg/kg/day and 0.00025 mg/kg/day, respectively.

ii. *Conclusion*. There is a complete toxicity database for emamectin benzoate and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Taking into account the completeness of the data base, EPA concludes, based on reliable data, the use of the additional safety factor would be safe for infants and children.

2. *Acute risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to emamectin benzoate from food will utilize no more than 65% of the acute PAD/RfD for infants and children. EPA generally has no concern for exposures below 100% of the PAD/RfD because the PAD/RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to emamectin benzoate from food will utilize no more than 5% of the chronic PAD/RfD for infants and children. EPA generally has no concern for exposures below 100% of the PAD/RfD because the PAD/RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *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 emamectin benzoate residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The following residues are required in the tolerance expression and dietary risk assessment for the proposed use: emamectin, 8,9-ZMA, and metabolites/photodegradates AB_{1a}, MFB_{1a} and FAB_{1a}. Metabolites/photodegradates 8AOXOMA and 8AOHMA are also of toxicological concern, but based upon their relative levels to the emamectin and the other four emamectin-like residues (8,9-ZMA, AB_{1a}, MFB_{1a} and FAB_{1a}), these are not needed in the tolerance expression or dietary risk assessment.

No animal feed items are associated with the commodities for which permanent tolerances are proposed. Therefore, no animal metabolism or feeding studies are required.

B. Analytical Enforcement Methodology

The proposed enforcement method for residues of emamectin on plant commodities is currently undergoing the Agency's method validation at this time. In the interim, EPA has conducted a preliminary review of the method and has indicated that it 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 method is adequate for data collection purposes and has provided the Agency with a successful Independent Laboratory Validation, coupled with the EPA laboratory's preliminary review, EPA concludes that the method is suitable as an enforcement method to support tolerances associated with this action.

C. Multiresidue Methods Testing

Data previously submitted by the petitioner show that residues of emamectin are not likely to be recovered by FDA multiresidue methods. The petitioner submitted data pertaining to the multiresidue methods testing of emamectin (B_{1a} and B_{1b} components), AB_{1a}, FAB_{1a}, MFB_{1a} and the 8,9-Z isomer (B_{1a} component). The data have been forwarded to FDA for inclusion in PAM I.

D. Magnitude of Residues

EPA has concluded that there were sufficient residue field trial data using the end use product Proclaim 1.6 EC and Proclaim 5 SG to support a 0.025 ppm tolerance on Brassica, head & stem subgroup (5-A), head lettuce and celery.

E. International Residue Limits

There are currently no Codex, Canadian, or Mexican maximum residue limits on emamectin benzoate and its metabolites.

F. Rotational Crop Restrictions

The confined rotational crop data base is adequate. No plantback restrictions need to be listed on the label.

G. Residues in Meat, Milk, Poultry and Eggs

No animal metabolism or feeding studies were submitted with this petition. However, tolerances in milk, eggs, and animal tissues are not required at this time since no feed items are associated with the subject commodities for which permanent tolerances are being proposed.

IV. Conclusion

Therefore, the tolerance is established for combined residues of emamectin benzoate, 4′-epi-methylamino-4′-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and a maximum of 10% 4′-epi-methlyamino-4′deoxyavermectin B_{1b} benzoate) and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide (8,9 ZMA); 4′-deoxy-4′-epi-amino-avermectin B_1 (AB_{1a}); 4′deoxy-4′-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(*N*-formyl)amino-avermectin B_1(FAB_{1a}) in Brassica, head & stem subgroup (5-A), head lettuce and celery at 0.025 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 July 19, 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–300856] (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: May 11, 1999.

Susan B. Hazen,

Actinig 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. In § 180.505, by revising paragraph (a) to read as follows:

§ 180.505 Emamectin Benzoate; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide emamectin benzoate, 4′-epi-methylamino-4′-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and a maximum of 10% 4′-epi-methlyamino-4′deoxyavermectin B_{1b} benzoate) and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide (8,9 ZMA); 4′-deoxy-4′-epi-amino-avermectin B_1 (AB_{1a}); 4′deoxy-4′-epi-(*N*-formyl-*N*-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(*N*-formyl)amino-avermectin B_1(FAB_{1a}) in or on the following commodities:

Commodity	Parts per million
Brassica, head & stem subgroup (5-A)	0.025
Celery	0.025
Lettuce, head	0.025

* * * * *

[FR Doc. 99–12593 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 99–93]

Amendment of the Commission's Rules of Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document we amend the Commission's rules, to extend the deadline for the filing of paper documents such as petitions, pleadings, and tariffs, that are not required to be accompanied by a fee, and that are hand-delivered to the Commission's Office of the Secretary. The filing deadline for all such documents is extended from 5:30 p.m. until 7:00 p.m.

DATES: Effective May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Andra Cunningham, Office of the Secretary, (202) 418–0300.

SUPPLEMENTARY INFORMATION:

1. By this Order, the Commission amends section 1.4(f) of the Commission's rules, 47 CFR 1.4(f), to extend the deadline for the filing of paper documents such as petitions, pleadings, and tariffs, that are not required to be accompanied by a fee, and that are hand-delivered to the Commission's Office of the Secretary.

2. Currently, the filing deadline for all such documents is 5:30 p.m. The amendment adopted here extends the deadline for the filing of paper documents to 7:00 p.m. The document must be tendered for filing in complete form with the Office of the Secretary at the designated filing counter, TW–A325, at the Commission's new offices, located at 445 12th Street, SW, Washington, DC. This amendment is designed to facilitate the filing of paper documents in a timely manner.

3. Because the rule amendment adopted here is a matter of agency practice and procedure, compliance with the notice and comment and effective date provisions of the Administrative Procedure Act is not required. *See* 5 U.S.C. 553(b)(A)–(d).

4. It is ordered that, pursuant to authority found in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), 154(j), and 303(r).

5. It is further ordered that the rules as amended shall become effective upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows.

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r), 309.

2. Section 1.4 is amended by revising paragraph (f) to read as follows:

§ 1.4 Computation of time.

* * * * *

(f) Except as provided in § 0.401(b) of this chapter, all petitions, pleadings, tariffs or other documents not required to be accompanied by a fee and which are hand-delivered must be tendered for filing in complete form, as directed by the Rules, with the Office of the Secretary before 7:00 p.m., at 445 12th St., SW., TW–A325, Washington, DC. The Secretary will determine whether a tendered document meets the pre-7:00 p.m. deadline. Documents filed electronically pursuant to § 1.49(f) must be received by the Commission's electronic filing system before midnight. Applications, attachments and pleadings filed electronically in the Universal Licensing System (ULS) pursuant to § 1.939(b) must be received before midnight on the filing date. Mass Media Bureau applications and reports filed electronically pursuant to § 73.3500 of this Chapter must be received by the electronic filing system before midnight on the filing date.

* * * * *

[FR Doc. 99–12613 Filed 5–18–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. NHTSA–98–4853]

RIN 2127–AG95

Passenger Automobile Average Fuel Economy Standards

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

ACTION: Final rule.

SUMMARY: This rule amends the passenger automobile fuel economy regulation by providing a procedure by which a vehicle manufacturer may notify NHTSA of the model year in which it elects to consider production of components and automobile assembly in Mexico as domestic value added. This domestic value added is used to determine if a passenger automobile should be assigned to the manufacturer's import or domestic fleet for computation of the fleet average fuel economy. The amendment implements a provision of the North American Free Trade Agreement Implementation Act of 1993.

EFFECTIVE DATE: This amendment is effective July 19, 1999.

ADDRESS: Petitions for reconsideration should refer to the docket number set forth above and be submitted to Docket Management Section, Pl–403, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 7th Street, SW, Washington, DC 20590. Telephone: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Background

The Corporate Average Fuel Economy (CAFE) law, codified as Chapter 329 of title 49, United States Code, provides that the Administrator of the Environmental Protection Agency (EPA) calculates the CAFE of each automobile manufacturer (49 U.S.C. 32904(a)). Section 32904(b) provides that passenger automobiles manufactured by a manufacturer are to be divided into two fleets, according to whether or not they are manufactured domestically. Each manufacturer's domestic and non-domestic fleet is required to comply separately with the passenger automobile CAFE standard. An automobile is considered to be manufactured domestically if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States and Canada.

The North American Free Trade Agreement Implementation Act of 1993, Pub. L. 103–182, amended Section 32904(b) to provide that the value added to a passenger automobile in Mexico is considered to be domestic value. As amended, paragraph 32904(b)(3)(A) provides that

> [A] passenger car is deemed to be manufactured domestically in a model year, as provided in subparagraph (B) of this paragraph, if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States, Canada, or Mexico, unless the assembly of the vehicle is completed in Canada or Mexico and the automobile is imported into the United States more than 30 days after the end of the model year.

The effect of the amendment is that value added in Mexico is considered on the same terms as value added in Canada or the United States. However, the transition to treating Mexican value as domestic value was not to be immediate. Subparagraph (B) of paragraph 32904(b)(3) sets forth specific conditions to govern the transition, and specifies different dates for manufacturers, according to whether or when they began to assemble passenger automobiles in Mexico.

Under subparagraph 32904(b)(3)(B)(i), a manufacturer that began to assemble automobiles in Mexico before model year 1992 can elect to have its Mexican production considered domestic beginning with a model year that begins after the date of its election in the period from January 1, 1997, through January 1, 2004.

A manufacturer that began assembling automobiles in Mexico after model year 1991 is required to count the value added in Mexico as domestic value beginning with the model year that begins after January 1, 1994, or the model year in which the manufacturer begins to assemble automobiles in Mexico, whichever is later (subparagraph (B)(ii)).

A manufacturer that does not assemble automobiles in Mexico may elect under subparagraph (B)(iii) to have the value of Mexican components treated as domestic value for purposes of automobiles manufactured in a model year beginning after the date of its election in the period from January 1, 1997, through January 1, 2004.

A manufacturer that does not assemble automobiles in either the United States, Canada, or Mexico is required to count the value of any Mexican components as domestic value, beginning with the model year that begins after January 1, 1994 (subparagraph (B)(iv)).

A manufacturer covered by either subparagraph (B)(i) or (B)(iii) that does not make an election within the specified period must consider any value added in Mexico as domestic value beginning with the model year that begins after January 1, 2004 (subparagraph (B)(v)).

Subparagraph 32904(b)(3)(C) provides that the Secretary of Transportation ''shall prescribe reasonable procedures'' for those manufacturers that can elect the model year for which the value added in Mexico is to be treated as domestic value. Insofar as the calculation of CAFE levels is the

responsibility of the EPA Administrator, the procedures issued by the Secretary must be in the form of directions to the EPA Administrator. EPA has amended its regulations at 40 CFR 600.511–80 to incorporate the provisions of the NAFTA Implementation Act (59 FR 33914; July 1, 1994). In anticipation of implementing regulations being issued by the Secretary of Transportation, subsection (b)(5) of 40 CFR 600.511–80 provides that any model year elections by a manufacturer are to be made in accordance with the regulations issued by the Secretary.

Insofar as 49 U.S.C. 32904(b)(3) does not limit a manufacturer's discretion to elect any model year in the period from January 1, 1997, through January 1, 2004, NHTSA concludes that the implementing procedures need only specify the method in which a manufacturer gives notice of its election and provide a minimum notice period before the beginning of the model year elected. Accordingly, this rule amends section 531.6 of title 49 CFR to provide that any manufacturer making a model-year election under subparagraphs (B)(i) and (B)(iii) of 49 U.S.C. 32904(b)(3) shall notify the EPA and NHTSA Administrators of its election not later than 60 days before the beginning of the model year to which the election applies.

Final Rule

This amendment is published as a final rule, without prior notice and opportunity to comment. The NAFTA Implementation Act required that the agency issue procedures to allow manufacturers to elect certain options by January 1, 1997. The regulations contained in this final rule are ministerial in nature and simply implement the express provisions of the NAFTA Implementation Act. Accordingly, the agency finds, for good cause, that notice and comment are unnecessary and issues the amendment as a final rule. 5 U.S.C. 53(b)(3)(B).

Impact Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has considered the economic implications of the rule and determined that it is not significant within the meaning of the DOT Regulatory Policies and Procedures. Today's amendment will not affect manufacturer or supplier costs.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rule would have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers, and some vehicle manufacturers are affected by the regulation, the effect on them is negligible.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of the rule in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has concluded that it will not have a significant effect on the quality of the human environment.

D. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

This final rule includes new ''collections of information,'' as that term is defined by the Office of Management and Budget (OMB). The rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collections are shown below with an estimate of the annual burden. Included in the estimate is the time for reviewing regulations, searching existing data sources, gathering and maintaining the data, and completing and reviewing the collection of information.

Title: 49 CFR part 531—Passenger Automobile Average Fuel Economy Standards.

Need for Information: This information is needed to determine the domestic and non-domestic automobile fleets for CAFE computation purposes. The NAFTA Implementation Act's provision for the treatment of Mexican content permits certain manufacturers to elect the model year for which Mexican content in their automobiles will be treated as domestic content.

Proposed Use of Information: The information would advise the EPA Administrator that a manufacturer has made an election as to the model year in which it will consider Mexican content to be domestic content, thereby enabling the EPA Administrator to identify the manufacturer's domestic and non-domestic automobile fleets.

Frequency: The agency estimates that manufacturers will report this information once as they prepare to consider Mexican content as domestic content.

Burden Estimate: The agency estimates that a manufacturer may encounter a total burden of five to seven hours to prepare a letter stating that it is electing to count the Mexican content in its passenger automobile fleet as domestic content. Seventeen manufacturers are eligible to make this election. Accordingly, the agency estimates the total burden hours to be 85 to 119.

Respondents: There are 20 manufacturers, but only 17 are eligible to make an election. The other three manufacturers produce only light trucks, and light truck fleets are not divided into domestic and non-domestic fleets for CAFE purposes.

Form(s): Not applicable.

Average burden hours per respondent: The agency estimates that a manufacturer may experience a total burden of five to seven hours to prepare a letter stating its intent to include Mexican content as domestic content in its passenger automobile fleet.

Average burden cost per respondent: The agency estimates that a manufacturer may incur a cost of $200 to $300 to comply with this requirement. This cost includes the salary of its personnel to review this requirement, to examine its passenger automobile fleet content data, and to prepare and send the letter advising EPA and NHTSA Administrators of the manufacturer's election.

Individuals and organizations may submit comments on the information collection requirements by June 18, 1999. The reporting and recordkeeping requirements associated with this final rule will be submitted to OMB for approval in accordance with the Paperwork Reduction Act (Pub. L. 104–13). The agency believes that the amendment made by this rule will result in a minimal increase in the paperwork burden for vehicle manufacturers and suppliers.

F. Civil Justice Reform

This rule will not have any retroactive effect and does not preempt any State law. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action requires only that manufacturers provide notice of elections they are making with regard to the inclusion of value added in Mexico. It does not affect a manufacturer's ability to make an election or the timing its election. In view of the negligible impacts of the rule, the agency finds there is good cause to issue the rule without prior notice and opportunity for comment.

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Gasoline, Imports, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 531 is amended as follows:

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

1. The authority citation for Part 531 is revised to read as follows:

Authority: 49 U.S.C. 32902, 49 U.S.C. 32904; Delegation of authority at 49 CFR 1.50.

2. Section 531.6(b) is added to read as follows:

§ 531.6 Measurement and calculation procedures.

* * * * *

(b) A manufacturer that is eligible to elect a model year in which to include value added in Mexico as domestic value, under subparagraphs (B)(i) and (B)(iii) of 49 U.S.C. 32904(b)(3), shall notify the Administrators of the Environmental Protection Agency and the National Highway Traffic Safety Administration of its election not later than 60 days before it begins production of automobiles for the model year. If an eligible manufacturer does not elect a model year before January 1, 2004, any value added in Mexico will be considered domestic value for automobiles manufactured in the next model year beginning after January 1, 2004, and in subsequent model years.

Issued on: May 10, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–12607 Filed 5–18–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 99–5682]

RIN 2127–AG48

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: NHTSA is deleting the provision in Standard No. 209, Seat Belt Assemblies, requiring that the lap belt portion of a safety belt system be designed to remain on the pelvis under all conditions. NHTSA has concluded retention of this requirement is unnecessary since provisions in Standard No. 209, Standard No. 208, Occupant Crash Protection, and Standard No. 210, Seat Belt Assembly Anchorages, together require pelvic restraint. Further, those requirements are more readily enforceable than the requirement being deleted from Standard No. 209. Today's rule responds to a petition for rulemaking from the Association of International Automobile Manufacturers (AIAM). It is also consistent with the President's Regulatory Reinvention Initiative, which directed Federal agencies to identify and eliminate unnecessary Federal Regulations.

DATES: This final rule is effective July 19, 1999. Petitions for Reconsideration must be received by July 6, 1999.

ADDRESSES: Petitions should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. John Lee, Office of Crashworthiness Standards, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–2264, facsimile (202) 366–4329, electronic mail jlee@nhtsa.dot.gov.

For legal issues: Ms. Nicole H. Fradette, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail nfradette@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 209, Seat Belt Assemblies, specifies requirements for seat belt assemblies, including the pelvic restraint (i.e., lap belt) and the upper torso restraint (i.e. shoulder belt). Other requirements address the release mechanism, the attachment hardware, the adjustment, the webbing, the strap, and marking and other informational instructions. NHTSA adopted Standard No. 209 in 1967 as one of the initial Federal motor vehicle safety standards (32 FR 2408, February 3, 1967).[1]

S4.1(b) Pelvic restraint of Standard No. 209 states:

> A seat belt assembly shall provide pelvic restraint whether or not upper torso restraint is provided, and the pelvic restraint shall be designed to remain on the pelvis under all conditions, including collision or roll-over of the motor vehicle. Pelvic restraint of a Type 2 seat belt assembly that can be used without upper torso restraint shall comply with requirement for Type 1 seat belt assembly in S4.1 to S4.4.

Although the brief preamble of the notice establishing the standard and paragraph S4.1(b) in 1967 did not discuss the purpose of that paragraph, NHTSA regards the purpose of S4.1 (b) to be the reduction of the likelihood of restrained occupants sliding forward and under a fastened safety belt during a crash (referred to as submarining). It is important that the lap belt remains on the pelvis so that the crash forces transferred by a lap belt are imposed on the strong, bony pelvis instead of the more vulnerable abdominal region.

II. NHTSA Response and Proposal

In a notice of proposed rulemaking (NPRM) published on July 7, 1997 (62 FR 36251)[2] NHTSA proposed to delete S4.1(b). NHTSA tentatively concluded that S4.1(b) was unclear and should either be clarified or deleted. The agency explained that it was unclear how it would determine that a lap belt complied with the Standard and was in fact ''designed'' to remain on the pelvis. NHTSA raised the issue of whether a

[1] Standard No. 209 was adopted from a Department of Commerce standard (32 FR 2408, February 3, 1967), which was adopted from a Society of Automotive Engineers (SAE) standard. (29 FR 16973, December 11, 1964).

[2] The NPRM was issued in response to a May 24, 1996 petition for rulemaking from the Association of International Automobile Manufacturers, Inc. (AIAM). AIAM petitioned NHTSA to delete S4.1(b) of Standard No. 209. AIAM stated that the phrase ''designed to remain on the pelvis under all conditions'' was redundant of other, more specific and more stringent requirements in Standard No. 208, Occupant Crash Protection, Standard No. 209, and Standard No. 210, Seat Belt Assembly Anchorages, which already provide specific requirements that affect pelvic restraint.

lap belt's failure to remain on the pelvis during a crash could be sufficient to establish that the belt was not ''designed'' to remain on the pelvis under all conditions. In addition, NHTSA noted that the meaning of the words, ''remain on the pelvis,'' was unclear. The agency also stated its belief that Standard No. 208, other provisions in Standard No. 209, and Standard No. 210 contained more specific requirements that collectively have the effect of requiring pelvic restraint and thereby reducing the likelihood of occupants submarining during a crash. NHTSA tentatively concluded the requirement appeared to be unnecessary and unenforceable and was an appropriate candidate for deletion.

III. Response to the NPRM

NHTSA received nine comments in response to the NPRM. General Motors Corporation (GM), Mercedes Benz, Automotive Occupant Restraint Council (AORC), Association of International Automobile Manufacturers (AIAM), Chrysler Corporation (Chrysler), Ford Motor Company (Ford), and Volkswagen of America, Inc. (VW) all favored the agency's proposal to delete S4.1(b) from Standard 209. Advocates for Highway Safety (Advocates) and the National Transportation Safety Board (NTSB) opposed it.

General Motors stated that it is unclear how compliance with S4.1 (b) is to be evaluated as no test has ever been conceived for this purpose. GM also stated that Standards No. 208, 209 and 210 provide adequate and more readily enforceable requirements for pelvic restraint. Mercedes Benz stated that its crash data demonstrate that other requirements in Standards No. 209 and 210 cause the lap belt to be designed to remain on the pelvis in real world crashes and thus reduce the likelihood of occupant submarining. AORC argued that S4.1 (b) is redundant and has little effect in comparison to other more specific and more stringent requirements in Standards No. 210, 208 and 209. AIAM also argued that there is no need for S4.1(b) in light of other provisions in other standards. Chrysler stated that deleting S4.1(b) would not adversely affect safety. Ford argued that S4.1(b) is not stated in objective terms and, as GM did, stated that there was no means to measure performance under that paragraph. Ford suggested that NHTSA cooperate with Transport Canada in developing a computer model for belt fit evaluation or harmonization. Volkswagen also stated that S4.1 (b) is redundant, unclear and lacks objectivity.

Advocates opposed deleting S4.1(b) from Standard 209. Advocates stated that it did not believe that the pelvic restraint requirement is unclear or that other provisions in the safety standards render S4.1(b) redundant. Advocates argued that rather than deleting the provision, NHTSA should clarify it by deleting the words ''be designed to'' from S4.1(b). The NTSB expressed concern that deleting S4.1(b) would adversely affect safety by deleting, what it believed to be, the only performance standard for seat belt restraint systems covering occupants other than 50th percentile adult males. NTSB argued that S4.1(b) should be retained until a more effective performance standard is in place to protect a larger segment of the traveling public.

IV. Agency Decision and Response to Comments

NHTSA adopted Standard No. 209 in 1967 along with several other standards as part of the initial Federal motor vehicle safety standards. As stated earlier in this notice, NHTSA regards S4.1(b) of the standard as being intended to reduce the risk of occupant submarining by requiring that the lap belt remains on the pelvis during a crash.

NHTSA has concluded that S4.1(b) is unnecessary because subsequently adopted provisions in Standard No. 208 and Standard No. 210, and other provisions in Standard No. 209, contain more specific requirements that collectively achieve the same objective for a broad category of vehicle occupants. These provisions regulate the primary aspects of lap belt design and performance that affect the likelihood of occupant submarining. Specifically, they regulate belt angle, adjustment, fit, and the amount of slack in the belt.

Standards No. 208 and 209 address seat belt fit and adjustment by requiring seat belts to fit a wide range of vehicle occupants. In 1971, NHTSA amended the fitting provisions in Standard No. 208 to specify that the lap belt portion of the safety belt must fit persons from a six-year-old child to a 95th percentile adult male.[3] NHTSA also amended Standard No. 209 in 1971 to specify that lap and shoulder belts must be capable of fitting persons from a fifth percentile adult female to a 95th percentile adult male.[4] NTSB is, therefore, incorrect when it states that S4.1(b) is the only requirement for seat belt restraint systems covering occupants other than 50th percentile adult males. Both Standard No. 208 and Standard No. 209 require seat belt restraint systems to fit occupants other than 50th percentile adult males.

In order to improve belt performance and reduce the potential of submarining, NHTSA amended S4.3.1 of Standard No. 210 in 1990 to increase the minimum lap belt angle from 20 degrees to 30 degrees. (55 FR 17970, April 30, 1990) As amended, S4.3.1 requires that the lap belt angle, measured from the seating reference point to either the anchorage or the point where the safety belt contacts the seat frame, must be between 30 and 75 degrees. NHTSA amended the requirement after agency research using test dummies demonstrated that increasing the angle of the lap belt reduced the potential for occupant submarining.[5] The possibility of submarining increases as the line of the lap belt approaches the horizontal (i.e., as the belt angle decreases). Too shallow a belt angle results in insufficient downward force to resist the upward motion of the lap belt that occurs in a crash.

The potential for occupant submarining is also affected by the amount of slack in a lap belt. An occupant is at a greater risk of submarining if a lap belt fits loosely around the occupant. The potential for occupant submarining, therefore, rises as the amount of slack in the belt increases. To help prevent belt webbing from playing out in a crash, NHTSA amended Standard No. 209 in 1971 to require that an emergency-locking retractor lock before the webbing extends one inch when the retractor is subjected to an acceleration of 0.7g.[6] This provision lowers the risk of occupant submarining by controlling

[3] S7.1 of Standard No. 208 states:

''Adjustment. S7.1.1 Except as specified in S7.1.1.1 and S 7.1.1.2, the lap belt of any seat belt assembly furnished in accordance with S4.1.2 shall adjust by means of any emergency-locking retractor or automatic locking retractor that conforms to § 571.209 to fit persons whose dimensions range from those of a 50th percentile 6-year-old to those of a 95th percentile adult male . . .''

[4] S4.1 of Standard No. 209 states:

''(g) Adjustment. (1) A Type 1 or Type 2 seat belt assembly shall be capable of adjustment to fit occupants whose dimensions and weight range from those of 5th percentile adult female to those of 95th-percentile adult male.''

[5] ''Rear Seat Submarining Investigation,'' DOT HS 807–347, May 1988.

[6] S4.3 (j) of Standard No. 209 states:

''(j) Emergency-locking retractor. An emergency-locking retractor of a Type 1 or Type 2 seat belt assembly, when tested in accordance with the procedures specified in paragraph S5.2(j)—

(1) Shall lock before the webbing extends 1 inch when the retractor is subjected to an acceleration of 0.7g.''

the amount of slack that may be introduced into the belt.

NHTSA has concluded that the comfort and fit provisions in Standards No. 208 and 209, together with the lap belt angle in Standard No. 210, and the emergency-locking retractor provisions in Standard No. 209 provide assurance that the lap belt limits the likelihood of occupant submarining. NHTSA believes that these provisions collectively provide the necessary specifications to assure pelvic restraint and that retention of S4.1(b) is therefore unnecessary.

Manufacturers are required to certify that their products conform to NHTSA's safety standards before they can be offered for sale. Compliance with the safety standards is required up to the first sale for purposes other than resale. NHTSA conducts vehicle testing of new vehicles to determine a manufacturer's compliance with the safety standards. Manufacturers must exercise due care to assure that any vehicle or equipment item will comply with the safety standards when tested by NHTSA. Manufacturers must know how NHTSA plans to test compliance with a particular standard if they are to ensure that their vehicles comply.

Since NHTSA does not have a test procedure to determine a manufacturer's compliance with S4.1(b), the provision is not readily enforceable. Further, NHTSA does not agree with Advocates that a repeatable, practicable test could be devised to determine compliance with the provision. The provision makes no specific reference to a particular test speed or type of collision. Even if it were feasible to develop dynamic tests that incorporated all crash conditions, for example, from a 90 mph head-on collision to a 20 mph rollover, NHTSA does not believe that such a requirement would be practicable. More importantly, in light of the provisions cited above in Standard Nos. 208, 209, and 210 that collectively provide the necessary specifications to assure effective pelvic restraint, NHTSA does not believe that developing a test procedure for S4.1(b) would yield benefits.

Although the comments addressed the first sentence of S4.1(b), the NPRM also proposed to delete the entire subsection, including the requirement in the second sentence for the pelvic restraint portion of a Type 2 seat belt assembly that can be used without the upper torso restraint. This type of seat belt assembly is no longer permitted; therefore, the requirement is no longer necessary and is being rescinded.

In summary, NHTSA concludes that Standard No. 208, other provisions in Standard No. 209, and Standard No. 210 contain more specific requirements than S4.1(b) that collectively promote pelvic restraint and reduce the likelihood of occupants submarining during a crash. Further, these provisions all have established test procedures to determine compliance and are readily enforceable. NHTSA concludes that S4.1(b) is unnecessary and unenforceable and should be deleted. This amendment will not adversely affect safety and is consistent with the President's Regulatory Reinvention Initiative.

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, Regulatory Planning and Review. This action has been determined to be not significant under the Department of Transportation's regulatory policies and procedures. There are no apparent cost savings or added costs. Deletion of this section is not expected to result in any changes to seat belt system design or in any change in the amount of testing by manufacturers. There are no apparent benefits (other than the deletion of a requirement that does not add to safety) or any negative results. Deletion of this section will not result in any design or performance changes for motor vehicle restraints.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule primarily affects passenger car, light truck, and multipurpose passenger vehicle manufacturers. The Small Business Administration's size standards (13 CFR part 121) are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

This final rule applies to the previously described vehicle manufacturers regardless of size. This final rule does not require and will not result in any vehicle design changes. This final rule deletes certain requirements and does not require any changes to the seat belt system. The changes will not affect the cost of new vehicles.

Paperwork Reduction Act

NHTSA has analyzed this rule under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and determined that it will not impose any information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

The National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will have no significant impact on the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. However, the incremental manufacturer costs for this final rule are estimated to be zero.

Executive Order 12612 (Federalism)

The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule does not have any retroactive effect. NHTSA is not aware of any state law that is preempted by this rule. This rule does not repeal any existing Federal law or regulation. It modifies existing law only to the extent that it deletes the requirement which specifies that the lap belt portion of a safety belt system be designed to remain on the pelvis under all conditions. This rule does not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.209 [Amended]

2. Section 571.209 is amended by removing and reserving S4.1(b).

Issued on: May 14, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–12628 Filed 5–18–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 950427117–9133–07; I.D.051299D]

RIN 0648–AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

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

ACTION: Temporary rule.

SUMMARY: NMFS is extending for 1 week its existing closure of all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR part 80), bounded by 32° N. lat. and 33° N. lat. within the Leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. The existing closure was scheduled to expire at 11:59 p.m. (local time) on May 21, 1999 (published in the **Federal Register** on May 12, 1999). The closure of the area will now expire at 11:59 p.m. (local time) on May 28, 1999. This continued closure is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 14, 1999 through 11:59 p.m. (local time) on May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570–5312, or Barbara A. Schroeder (301) 713–1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228) 762–4591 or by fax (228) 769–8699.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback conservation zone, NMFS is required to close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to 50 CFR 223.206(d)(2)(iv)(A) through (C).

An aerial survey conducted on April 27, 1999, along the South Carolina coast documented 70 leatherback turtles over a total survey trackline of 327 nm (606 km). The highest concentrations were noted in waters off the southern half of the state along two, parallel 46 nm (85.2 km) tracklines beginning at approximately 32°07' N. lat., 080°41' W. long. (offshore Hilton Head Island, SC) and ending at approximately 32°35' N. lat., 079°59' W. long. (offshore Kiawah Island, SC), where 35 leatherbacks were sighted along the trackline parallel to the coast at approximately 1.5 nm (2.8 km), and 17 leatherbacks were sighted along the trackline paralleling the coast at approximately 3.0 nm (5.6 km). On May 3, 1999, a survey along the same tracklines documented 1 leatherback on the 1.5 nm (2.8 km) and 11 leatherbacks on the 3.0 nm (5.6 km) from shore tracklines.

On May 7, 1999, the Assistant Administrator for Fisheries, NOAA (AA), based on high observed concentrations of leatherback sea turtles off the South Carolina coast (64 FR 25460, May 12, 1999) during these surveys, closed, from May 7, 1999, through 11:59 p.m.(local time) on May 21, 1999, all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 33° N. lat., within the Leatherback conservation zone, to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

NMFS has continued to monitor the presence of leatherback turtles along the Georgia and South Carolina coasts. A May 11, 1999, aerial survey along the South Carolina coast confirmed the continued high abundance of leatherback sea turtles in the currently closed area. Over the same portion of trackline, 14 leatherback turtles were sighted approximately 1.5 nm (2.8 km) from shore. Three more leatherbacks were sighted on the continuation of the survey, off of Folly Island immediately to the north. Low clouds and poor visibility prevented the survey of the parallel trackline 3 nm (5.6 km) from shore. Because this repeat aerial survey confirmed the continued presence of leatherback sea turtles, the AA has determined that under the regulations all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 33° N. lat., within the Leatherback conservation zone, are closed for 2 weeks to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B).

This closure will be filed with the Office of the Federal Register on or about Friday May 14, 1999. The effect is the same as extending the exsting closure for a 1-week period. The same restrictions apply during the entire period the area is closed.

NMFS will continue to monitor the presence of leatherback sea turtles along the Georgia and South Carolina coasts through weekly aerial surveys. Continued high abundance of leatherbacks greater than 10 turtles per 50 nm (92.6 km) of trackline will require further agency action, as per 50 CFR 223.206(d)(2)(iv)(B). If leatherback sightings fall to 5 or fewer turtles per 50 nm (92.6 km) of trackline, then the aerial surveys of the closed area will be replicated within 24 hours, or as soon as practicable thereafter. If sighting rates of 5 or fewer leatherbacks per 50 nm (92.6 km) are reconfirmed, then the AA may withdraw or modify the closure that is the subject of this rule, as per 50 CFR 223.206(d)(4)(ii). NMFS will consult with the appropriate state natural resource officials in the closed area in making a determination to withdraw or modify this closure, as per 50 CFR 223.206(d)(4)(iv). Fishermen should monitor NOAA weather radio for announcements.

The regulations at 50 CFR 223.206(d)(2)(iv) state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

The additional closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call Charles Oravetz (see **FOR FURTHER INFORMATION CONTACT**) for updated area closure information.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore, notice and opportunity to comment on this action was provided through the proposed rule establishing these actions (60 FR 25663, May 12, 1995). For these reasons, good cause exists under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As stated above, the additional closure has been announced on the NOAA weather radio, in newspapers, and other media, allowing time for the shrimp fishery to comply with this rule.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 14, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–12595 Filed 5–14–99; 3:48 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 990513131–9131–01; I.D. 051299B]

RIN 0648–AM69

Atlantic Tuna Fisheries; Regulatory Adjustments

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS amends the regulations governing the Atlantic bluefin tuna fisheries to suspend, for 1999 only, the deadline for Atlantic Tunas permit category changes. This regulatory amendment is necessary to provide vessel owners the opportunity to consider category changes after the effective date of a final rule and final quota specifications currently under review by NMFS and a proposed rule on the use of spotter aircraft currently in preparation. NMFS received comments in conjunction with the proposed rule and quota specifications indicating that because the final actions could affect the allowable operations of several fishing categories, it is not possible for vessel owners to make final choices prior to the previously established deadline of May 15.

DATES: The interim final rule is effective May 14, 1999. Comments must be recieved by June 1, 1999.

ADDRESSES: Comments on the interim final rule should be directed to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations to carry out ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

This interim final rule responds to certain comments received in conjunction with comments received on a proposed rulemaking (64 FR 3154, January 20, 1999) and proposed quota specifications (64 FR 9298, February 25, 1999) particularly with respect to the use of spotter aircraft in the commercial BFT categories. Background information about the need for revisions to Atlantic tunas fishery regulations was provided in the proposed rule and specifications as well as the Highly Migratory Species Fishery Management Plan and is not repeated here. Certain aspects of the final rule to implement the Fishery

Management Plan for Highly Migratory Species, currently under review would affect catch limits and gear restrictions in several permit categories. Also, final category quotas will affect fishing opportunities available to each category. Additionally, NMFS plans to issue a proposed rule regarding the use of spotter aircraft in the bluefin tuna fishery with the intent to have final action effective for the 1999 fishing year. NMFS received comment that because current regulations require a vessel owner to obtain a permit in the appropriate gear category and allow changes to permit categories only prior to May 15 each calendar year, it would be impossible to make a rational choice of permit category in 1999 until final rules and quota specifications are issued.

This interim final rule suspends indefinitely the deadline to change Atlantic tunas permit categories for calendar year 1999. This regulatory change will allow vessel owners to weigh any impacts of the final rules, when issued, on the operations and restrictions for each permit category. By allowing vessel owners to choose the most appropriate category, this measure will further the domestic management objectives for the Atlantic tuna fisheries.

NMFS is undertaking this action as an interim final rule because of the immediate need to postpone the deadline. This interim action will be superseded when a deadline for 1999 is specified in a final rule to be published at a later date.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

Classification

This interim final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq*. The AA has determined that these regulations are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule involves a collection of information requirement subject to the PRA and approved by OMB under control number 0648–0327. The burden associated with Atlantic tunas vessel permits is estimated at 30 minutes per initial permit application and 6 minutes per renewal.

Public comment is sought regarding whether this collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Highly Migratory Species Management Division and OMB (see **ADDRESSES**).

This interim final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has determined that, under 5 U.S.C. 553(b)(B), there is good cause to waive the requirement for prior notice and an opportunity for public comment on this rule as such procedures would be contrary to the public interest. NMFS has underway rulemakings on this, and other, tuna fishery management issues. Specifically, NMFS published a proposed rule on January 20, 1999, seeking public comment on a variety of tuna issues. Additionally, NMFS published proposed quota specifications on February 25, 1999, seeking public comment on fishing category allocations. However, while the process for these actions remains ongoing, NMFS has received comment that a postponement for 1999 in the deadline to choose a permit category is necessary to allow the public an opportunity to assess the impacts of the pending final rules and specifications. As such, given the public interest in affording vessel owners to make a reasoned decision as to fishing category and the fact that NMFS has already received public comment on the subject matter of this rule, further delay in the implementation of this action to provide an opportunity for additional comment is contrary to the public interest.

Further, under 5 U.S.C. 553(d)(1), because this rule relieves a restriction, it is not subject to a 30-day delay in effective date. NMFS has the ability to rapidly communicate the extension of the deadline to fishery participants through its FAX network and HMS Information Line.

This interim final rule is exempt from the Regulatory Flexibility Act because it was not subject to prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 13, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285, is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.21, paragraph (b)(7) is revised to read as follows:

§ 285.21 Vessel permits.

* * * * *

(b) * * *

(7) Except for purse seine vessels for which a permit has been issued under this section, an owner may change the category of the vessel's Atlantic tunas permit to another category by application on the appropriate form to NMFS or by dialing 1–888–USA-TUNA before the specified deadline. After the deadline, the vessel's permit category may not be changed to another category for the remainder of the calendar year, regardless of any change in the vessel's ownership. In years after 1999, the deadline for category changes is May 15.

* * * * *

[FR Doc. 99–12581 Filed 5–14–99; 1:33 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 051499A]

Fisheries of the Exclusive Economic Zone Off Alaska; Other Nontrawl Fisheries 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 each species and species group of groundfish in the other

nontrawl fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the 1999 Pacific halibut bycatch mortality allowance specified for the other nontrawl fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 15, 1999, until 1200 hrs, A.l.t., September 1, 1999.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 first seasonal apportionment of the 1999 Pacific halibut bycatch mortality allowance specified for the other nontrawl fishery category, which is defined at § 679.21(e)(4)(ii)(E), as 42 metric tons.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.21(e)(8), that the first seasonal apportionment of the 1999 Pacific halibut bycatch mortality allowance specified for the other nontrawl fishery category in the BSAI has been reached. Therefore, NMFS is closing the directed fishery for each species and species group of groundfish in the other nontrawl fishery category in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the first seasonal apportionment of the 1999 Pacific halibut bycatch mortality allowance specified for the other nontrawl fishery category. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet has taken the allowance. Further delay would only result in the first seasonal apportionment of the 1999 Pacific halibut bycatch mortality allowance specified for the other nontrawl fishery being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: May 14, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–12580 Filed 5–14–99; 1:01 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 96
Wednesday, May 19, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 70 and 88

[Docket No. 98–074–1]

RIN 0579–AB04

Commercial Transportation of Equines to Slaughter

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish regulations pertaining to the commercial transportation of equines to slaughtering facilities. We are proposing these regulations to fulfill our responsibility under the 1996 Farm Bill to regulate the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. The purpose of the proposed regulations is to establish minimum standards to ensure the humane movement of equines to slaughtering facilities via commercial transportation. As directed by Congress, the proposed regulations cover, among other things, the food, water, and rest provided to such equines. The proposed regulations would also require the shipper of the equines to take certain actions in loading and transporting the equines and would require that the shipper or owner of the equines certify that the commercial transportation meets certain requirements. In addition, the proposed regulations would prohibit the commercial transportation to slaughtering facilities of equines considered to be unfit for travel, the use of electric prods on equines in commercial transportation to slaughter, and, after 5 years, the use of double-deck trailers for commercial transportation of equines to slaughtering facilities.

DATES: Consideration will be given only to comments received on or before July 19, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–074–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–074–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Timothy Cordes, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–3279; or e-mail: timothy.r.cordes@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to establish regulations pertaining to the commercial transportation of equines to slaughtering facilities. We are taking this action to fulfill a responsibility given by Congress to the Secretary of Agriculture in the Federal Agriculture Improvement and Reform Act of 1996 (commonly referred to as ''the 1996 Farm Bill''). Congress added language to the 1996 Farm Bill concerning the commercial transportation of equines to slaughtering facilities after having determined that equines being transported to slaughter have unique and special needs.

Sections 901–905 of the 1996 Farm Bill (7 U.S.C. 1901 note, referred to below as ''the statute'') authorize the Secretary of Agriculture, subject to the availability of appropriations, to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. The Secretary is authorized to regulate the food, water, and rest provided to such equines in transit, to require the segregation of stallions from other equines during transit, and to review other related issues he considers appropriate. The Secretary is further authorized to require any person to maintain such records and reports as the Secretary considers necessary. The Secretary is also authorized to conduct such investigations and inspections as the Secretary considers necessary and to establish and enforce appropriate and effective civil penalties. In a final rule published in the **Federal Register** on December 30, 1996 (61 FR 68541–68542, Docket No. 96–058–1), the authority to carry out the statute was delegated from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs, from the Assistant Secretary for Marketing and Regulatory Programs to the Administrator of the Animal and Plant Health Inspection Service (APHIS), and from the APHIS Administrator to the Deputy Administrator for Veterinary Services.

To clarify its intentions, Congress set forth definitions in the statute. For purposes of interpreting the statute, ''commercial transportation'' is defined as the regular operation for profit of a transport business that uses trucks, tractors, trailers, or semitrailers, or any combination thereof, propelled or drawn by mechanical power on any highway or public road.'' ''Equine for slaughter'' means ''any member of the *Equidae* family being transferred to a slaughter facility, including an assembly point, feedlot, or stockyard.'' ''Person'' means ''any individual, partnership, corporation, or cooperative association that regularly engages in the commercial transportation of equine for slaughter'' but does not include any individual or other entity who ''occasionally transports equine for slaughter incidental to the principal activity of the individual or other entity in production agriculture.''

Congress further clarified its intentions with regard to the statute through a conference report. The conference report states that the object of any prospective regulation would be the individuals and companies that regularly engage in the commercial transport of equines to slaughter and not the individuals or others who periodically transport equines to slaughter outside of their regular activity. The conference report also stated that the Secretary has not been given the authority to regulate the routine or regular transportation of equines to other than a slaughtering facility or to regulate the transportation of any other livestock, including poultry, to any destination. In addition, the conference report stated that, to the

extent possible, the Secretary is to employ performance-based standards rather than engineering-based standards when establishing regulations to carry out the statute and that the Secretary is not to inhibit the commercially viable transport of equines to slaughtering facilities.

APHIS has thoroughly researched the issue of transporting equines to slaughter. Upon learning of the statute, APHIS established a working group that included participants from other parts of the U.S. Department of Agriculture (USDA), including the Food Safety and Inspection Service (FSIS) and the Agricultural Marketing Service (AMS), to develop an appropriate and effective program for carrying out the statute. In addition, to get public input, APHIS attended two meetings about the statute hosted by humane organizations and attended by representatives of the equine, auction, slaughter, and trucking industries and the research and veterinary communities.

APHIS used appropriations received late in FY 1998 for research to gather scientific data for the proposed regulations. We funded research by the Department of Animal Sciences of Colorado State University concerning the physical condition of equines upon arrival at slaughtering facilities via commercial transportation. The researchers observed equines being sold for slaughter at an auction, monitored trailer loads of equines arriving at slaughtering facilities, and examined the equines ante and post mortem for signs of physical trauma. We also funded research at Texas A&M University and the University of California at Davis regarding the effects of water deprivation in equines. The studies showed that equines deprived of water can begin to experience serious physiologic distress within 24 hours if the equines did not have access to water in the 6-hour period before deprivation occurred. Moreover, equines that had access to water in the 6-hour period before deprivation occurred did not experience serious physiologic distress for up to 30 hours without further access to water. Finally, we funded research at the University of California at Davis concerning stress in equines being shipped to slaughtering facilities. In that study, equines were loaded on trailers in California and shipped to a slaughtering facility in Texas where they were tested for signs of stress. We have used the data obtained from these research projects in developing the proposed regulations.

In addition, to help shippers of slaughter equines ensure the humane transport of the equines, APHIS will allocate funds for public information efforts. AMS has developed a series of informational materials regarding the humane transport of specific types of livestock. We are working with AMS to develop and disseminate educational materials about the humane transport of equines. To obtain further information about the research or the educational materials just described, contact the person listed in this document under **FOR FURTHER INFORMATION CONTACT.**

We are proposing to establish regulations pertaining to the commercial transportation of equines to slaughtering facilities in a new part of title 9 of the Code of Federal Regulations (CFR). The new regulations would be found at 9 CFR part 88. We are proposing to divide part 88 into six sections: § 88.1–Definitions, § 88.2–General information, § 88.3–Standards for onveyances, § 88.4–Requirements for transport, § 88.5–Requirements at a slaughtering facility, and § 88.6–Violations and penalties. A description of the proposed regulations in each section and our rationale for them follows this introductory text. The full text of the proposed regulations is provided in the rule portion of this document.

The proposed regulations would pertain only to the actual transport of a shipment of equines from the point of being loaded on the conveyance to arrival at the slaughtering facility. For practical reasons, we do not propose to regulate the care of equines destined for slaughter prior to loading on the conveyance for shipment to the slaughtering facility. Most shippers acquire equines for sale to slaughtering facilities at livestock auctions. To acquire enough slaughter-quality equines to fill a conveyance and make a long-distance trip to a slaughtering facility economically feasible, shippers often need to buy a few equines at a time at these auctions over a period of several weeks. During this period, the equines are maintained at public feedlots or private residences until a full shipment (about 38 to 45 equines, depending on the conveyance) has been acquired. (This scenario is described more fully in the section of this document called ''Executive Order 12866 and Regulatory Flexibility Act.'')

We do not believe that it is either necessary for ensuring the well-being of the equines or logistically possible for us to regulate the care provided to equines maintained at feedlots or at private residences prior to shipment to a slaughtering facility. Moreover, research has shown that the vast majority of injuries caused to equines in transit to slaughter occur when the equines are actually in transit or during loading or unloading. We recognize that, in some cases, shippers may want to deliver a shipment of equines en route to a slaughtering facility to a feedlot (for fattening or some other purpose) for a short period of time. In these cases, we would consider the transport to consist of two segments-from the point of origin of the shipment to the feedlot and from the feedlot to the slaughtering facility-and the shipper or shippers would be subject to the regulations during both segments. (If the shipper during the second segment of the trip is not the original shipper, then both shippers would be subject to the regulations.)

These proposed requirements would pertain to inter-and intrastate transport within the United States and also to the commercial transportation of equines for slaughter originating in other countries or being exported to other countries if the equines are transported by conveyance when in the United States. As examples, the proposed regulations would apply to the significant number of horses that are imported annually from Mexico for transport by truck to U.S. slaughtering facilities and to the significant number of horses from the United States that are exported annually to Canada by truck for slaughter at Canadian slaughtering facilities.

As directed by Congress, we have proposed performance-based regulations wherever possible. We believe that the proposed regulations would fulfill the intent of Congress under the statute to help ensure the humane treatment of equines in commercial transit to slaughtering facilities, and we do not believe that the proposed regulations would inhibit the viability of such commercial transportation. We welcome public comments on these proposed regulations.

Proposed Regulations

Proposed § 88.1–Definitions

The proposed *Definitions* section defines terms used in proposed part 88. While most of the terms and their proposed definitions are self-explanatory, a few warrant discussion.

We are proposing to divide the concepts inherent in the statute's definition of ''commercial transportation'' into two terms: *commercial transportation* and conveyance. We are proposing to define commercial transportation as ''movement for profit via conveyance on any highway or public road.'' This definition would apply to both interstate and intrastate movement. We are proposing to define *conveyance* as ''trucks, tractors, trailers, or semitrailers,

or any combination of these, propelled or drawn by mechanical power.''

We are proposing to define *owner* as ''any individual, partnership, corporation, or cooperative association that purchases equines for the purpose of sale to a slaughtering facility'' and *shipper* as ''any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of equines to slaughtering facilities more often than once a year, except any individual or other entity that occasionally transports equines to slaughtering facilities incidental to the principal activity of the individual or other entity in production agriculture.'' In cases in which the owner drives the conveyance carrying the equines to the slaughtering facility, the owner would also be the shipper. However, in many cases, owners hire commercial shippers to transport the equines. As proposed, both owners and shippers could be subject to the regulations.

The purpose of the definition of *shipper* is to carry out the mandate from Congress that ''the object of any prospective regulation on this matter will be the individual or company which regularly engages in the commercial transport of equine to slaughter, and will not extend to individuals or others who periodically transport equine for slaughter outside of their regular activity.'' We would consider any person who ships equines to slaughtering facilities more often than once a year, except for persons or entities who derive the majority of their income from production agriculture, to be subject to the proposed regulations.

Finally, we are proposing to define *slaughtering facility* as ''a commercial establishment that slaughters equines for any purpose.'' Equines, like other livestock, are slaughtered primarily at commercial slaughtering facilities for the purpose of human consumption. In addition, to a lesser extent, equines that are no longer valuable as live animals are used for purposes such as the manufacture of pet food and glue. Because the statute does not define ''slaughter facility,'' we believe that we have the authority to regulate the commercial transportation of equines for slaughter at any commercial facility-not only facilities that slaughter equines and other animals for human consumption. Therefore, any shipper who transports live equines to any facilities for slaughter and processing would be subject to the proposed regulations.

Proposed § 88.2–General information

The *General information* section includes two proposed statements: (1) State governments may enact and enforce regulations that are consistent with or that are more stringent than the regulations in proposed part 88; and (2) to determine whether an individual or other entity who transports equines to slaughtering facilities is subject to the regulations in proposed part 88, a USDA representative may request of any individual or other entity information, to be provided within 30 days, regarding the primary business of the individual or other entity transporting the equines.

Rationale

The first proposed statement conveys our willingness to allow the States to promulgate and enforce similar or even more stringent regulations to ensure the humane transport of equines to slaughtering facilities. The second proposed statement would provide a means by which USDA representatives enforcing the regulations could obtain business information about individuals or other entities found to be transporting equines to slaughtering facilities. Information about the primary source of income and frequency of shipping equines to slaughtering facilities of such persons would be necessary to determine if the individual or other entity meets the proposed definition of *shipper* and is, therefore, subject to the regulations in proposed part 88. We believe that the statute gives us the authority to request such information of anyone who might have information regarding the principal business of any individual or other entity found to transport equines to slaughter.

Proposed § 88.3—Standards for Conveyances

We are proposing to require that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities: (1) Be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the equines being transported (e.g., provides adequate ventilation, has no sharp protrusions, etc.); (2) include means of completely segregating each stallion and aggressive equine on the conveyance so that no stallion or aggressive equine can come into contact with any of the other equines on the conveyance; (3) have sufficient interior height to allow each equine on the conveyance to stand with its head extended to the fullest normal postural height; and (4) be equipped with doors and ramps of sufficient design, size, and location to provide for safe loading and unloading. We are further proposing to prohibit the commercial transportation of equines to slaughtering facilities in conveyances with animal cargo spaces divided into two or more stacked levels, except that conveyances lacking the capability to convert from two or more stacked levels to one level (''double-deck trailers'') may be used for 5 years following the publication of a final rule to this proposed rule. Conveyances with ''floating decks'' (collapsible floors that allow conversion of the animal cargo space to one, two, or three stacked levels) would need to be configured to transport equines on one level only.

Rationale

The proposed requirement concerning the design, construction, and maintenance of the conveyance is self-explanatory; because the purpose of the statute is to ensure the humane transport of equines to slaughtering facilities, the means of conveying the equines must not be a source of harm to them. As examples, the conveyance must be designed so that it provides adequate ventilation at all times for the equines, and it must be constructed and maintained so that no sharp edges or points that could injure an equine protrude from the walls, floor, or ceiling.

The proposed requirement concerning segregation of certain equines derives, in part, directly from the statute, which directs the Secretary to require the segregation of stallions from other equines during transit. Research conducted by Colorado State University has shown that one of the primary causes of injuries to equines being transported to slaughter is attacks by other equines. Stallions (uncastrated male equines that are 1 year of age or older, according to our proposed definition) are known to be aggressive animals that are easily provoked into attacking other equines. However, research has shown that aggressive geldings and mares also will attack other equines when placed together in close quarters. For that reason, we are proposing to also require the segregation of other aggressive equines.

The remaining three requirements pertaining to adequate headroom, sufficient doors and ramps, and a prohibition on the transport of equines in animal cargo spaces divided into two or more stacked levels are all somewhat related. Research has shown that the use of double-deck trailers for transporting equines to slaughtering facilities is likely to cause injuries and trauma to the equines. Double-deck trailers do not provide adequate headroom for equines, with the possible exception of foals and yearlings; therefore, adult equines transported in double-deck trailers can acquire cuts and abrasions to their

heads, which scrape the tops of the compartments. In addition, the equines cannot stand in a normal position with their heads raised. As a result of having to stand with their heads in a lowered position, they cannot maintain balance as easily and sustain injuries from falling. In addition, the ramps used to load animals onto double-deck trailers are at a relatively steep angle. While other species of animal, such as sheep, can maneuver the ramps without incident, equines frequently sustain injuries from being forced up or down the steep inclines. Because of their long legs and relatively high center of gravity, equines injure their withers and heads when they jump for the small opening at the top of a ramp leading out of a double-deck trailer.

The overpasses on most U.S. interstate highways are between 14- to 16-feet high. A tall equine can be 8 feet tall to the top of its head when standing on all four legs and close to 12 feet tall when rearing. Therefore, we believe that no conveyance is capable, under normal circumstances, of traversing most U.S. highways while carrying equines standing in a normal postural position on two or more stacked levels. Moreover, even if a route was chosen that did not involve passage under overpasses, a conveyance tall enough to transport equines standing in a normal postural position on two or more stacked levels would be extremely top-heavy and prone to tipping. For these reasons, we do not believe that equines can be safely and humanely transported on a conveyance that has an animal cargo space divided into two or more stacked levels, and we are proposing to prohibit the commercial transportation of equines to slaughtering facilities in such conveyances. However, to ease the burden of this proposed regulation on the affected entities, we are proposing to allow, for a period of 5 years following publication of a final rule to this proposal, the use of conveyances that lack the capability to convert from two or more stacked levels to one.

We arrived at the proposed ''grandfather clause'' of 5 years after much discussion with interested parties, including representatives of the trucking and equine industries, at the two meetings hosted by humane organizations mentioned earlier. The meeting participants came to a consensus on this issue, and we believe that the proposed timeframe is appropriate. Livestock trailers not used to haul equines can be serviceable for approximately 10 years. Trailers used to haul equines need to be replaced sooner because equines inflict significant damage to livestock trailers during transport. We believe that many of the double-deck trailers currently used to transport equines will need to be replaced in approximately 5 to 7 years.

Proposed § 88.4—Requirements for Transport

We are proposing various actions that must be taken by persons engaged in the commercial transportation of equines to slaughtering facilities.

We would require that, prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must: (1) For a period of not less than 6 consecutive hours prior to the equines being loaded on the conveyance, provide each equine appropriate food (i.e., food such as hay or grass that allows the equine to maintain well-being during transit), potable water, and the opportunity to rest; (2) apply a USDA backtag to each equine in the shipment; (3) complete and sign an owner-shipper certificate (described below) for each equine being transported; and (4) load the equines on the conveyance so that each equine has enough floor space to ensure that no equine is crowded in a way likely to cause injury or discomfort and each stallion and aggressive equine is completely segregated so that no stallion or aggressive equine can come into contact with any other equine on the conveyance.

The owner-shipper certificate would need to include the following information:

(1) The name and address of the shipper and, if the shipper is not the owner of the equine, the name and address of the owner;

(2) A description of the conveyance, including the license plate number;

(3) A description of the equine's physical characteristics, including such information as sex, coloring, distinguishing markings, permanent brands, and electronic identification, that could be used to identify the equine;

(4) The number of the USDA backtag applied to the equine;

(5) A statement of fitness to travel, which would have to indicate that the equine is able to bear weight on all four limbs, able to walk unassisted, not blind in both eyes, older than 6 months of age, and not likely to give birth during the trip;

(6) A description of anything unusual with regard to the physical condition of the equine, such as a wound or blindness in one eye, or any special handling requirements;

(7) The date, time, and place that the equine was loaded on the conveyance; and

(8) A statement that the equine was provided access to food, water, and rest prior to loading as required.

We are proposing to require that either the shipper or the owner must sign the owner-shipper certificate. We are also proposing that the owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility. In situations described previously in which the transport consists of two segments (including a stop at a feedlot), then two owner-shipper certificates would need to be prepared. Moreover, we are proposing to require that the person who signs the owner-shipper certificate (either the owner or the shipper) must maintain a copy of the certificate for 1 year following the date of signature.

We are proposing to require that, during transit to the slaughtering facility, a shipper must: (1) Drive in a manner to avoid causing injury to the equines; (2) observe the equines as frequently as circumstances allow, but not less than once every 6 hours, to check the physical condition of the equines and provide veterinary assistance as soon as possible to any equines in obvious physical distress; and (3) offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine, for at least 6 consecutive hours, appropriate food, potable water, and the opportunity to rest. If such offloading is required en route to the slaughtering facility, a shipper must prepare another owner-shipper certificate indicating the date, time, and location where the offloading occurred.

We are proposing to require that handling of all equines in commercial transportation to a slaughtering facility be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma. We are further proposing to prohibit the use of electric prods for any purpose on equines in commercial transportation to a slaughtering facility, including during loading or offloading on the conveyance, except when human safety is threatened.

Finally, we are proposing to state that, at any point during the commercial transportation of equines to a slaughtering facility, a USDA representative may examine the equines, inspect the conveyance, or review the owner-shipper certificates. Moreover, at any time during the commercial transportation of equines to a slaughtering facility, a USDA representative may direct a shipper to take appropriate actions to alleviate the

suffering of any equine. If deemed necessary by the USDA representative, such actions could include offloading an ill or injured equine and securing the services of a veterinary professional to treat the equine, including performing euthanasia when necessary.

Rationale

We are proposing to require that, for at least 6 hours prior to being loaded on the conveyance, equines in commercial transportation to a slaughtering facility be provided with appropriate food, potable water, and the opportunity to rest because research has shown that equines that have been provided these things prior to transit can be transported for at least 28 hours with no adverse health effects. Access to water is the most serious concern. Many equines do not experience serious physiologic distress for 30 hours without water if they have had access to water during the 6-hour period prior to deprivation. However, after consultation with interested parties at the two meetings mentioned previously, we believe that the proposed 28-hour maximum allowable timeframe for deprivation of food, water, and rest during transport to slaughter is appropriate. This timeframe would allow for realistic travel times from most points of the United States to the equine slaughtering plants and would ensure that the equines would not undergo serious physiologic distress. For these reasons, we are also proposing to require that any equine that has been on the conveyance for 28 consecutive hours must be offloaded and, for at least 6 consecutive hours before continuing the journey, provided appropriate food, potable water, and the opportunity to rest. Adequate amounts of hay and grass are examples of food that we would consider to be appropriate; oats are less desirable as they can cause digestive problems for equines in transit.

We are proposing to require that a shipper apply a USDA backtag to each equine to facilitate identification of the equines upon arrival at a slaughtering facility. The owner-shipper certificates would have to include the USDA backtag number of the equine. A USDA representative would examine the owner-shipper certificates and the backtags on the equines to ascertain which equines were identified on which certificates.

We have several reasons for proposing to require that an owner or shipper prepare, sign, and maintain for 1 year an owner-shipper certificate for each equine being transported. As discussed above, the certificates would include the name and address of the shipper and, if that person is not the owner of the equines, the name and address of the owner. The certificates would also include a description of the equine's physical characteristics and a description of the conveyance, including the license plate number. All of this information would likely be necessary for prosecution of persons found to be in violation of the regulations in proposed part 88.

This information would also be helpful in the traceback of any stolen equines. The USDA's FSIS has veterinary medical officers stationed at U.S. slaughtering facilities. Enforcement of the proposed regulations would primarily be carried out at the slaughtering facilities (only four currently slaughter equines) in a combined FSIS–APHIS effort. FSIS already conducts a program to identify stolen equines that arrive at slaughtering facilities. To assist USDA representatives in any investigations stemming from the shipment of equines to slaughtering facilities, we are proposing to require that the person who signs the owner-shipper certificate (either the shipper or the owner) maintain a copy of the certificate for 1 year following signature.

An important purpose of the proposed owner-shipper certificates is to certify the equine's fitness to travel. As such, we are proposing to require that the owner-shipper certificate indicate that the equine is able to bear weight on all four limbs, able to walk unassisted, not blind in both eyes, older than 6 months of age, and not likely to give birth during the trip. Any equine not meeting these five conditions is generally considered to be unfit for travel. Equines that cannot bear weight on all four limbs and equines that are unable to walk unassisted are likely to fall during transport by conveyance and could incur serious injury by being stepped on by other equines. Equines that are blind in both eyes are subject to many injuries during transit and pose serious danger to other equines on the conveyance and human handlers because blind equines are easily frightened. Equines 6 months of age or less being transported by conveyance are subject to injury because of their relatively diminutive size. Finally, any mare that gives birth can develop serious complications, and no mare should be subjected to giving birth on a conveyance filled with other equines, both for her well-being as well as the well-being of the foal.

We are proposing to require that persons shipping equines to slaughtering facilities describe anything unusual with regard to the physical condition of each equine, such as an old wound, as a means of disclaiming any physical conditions that were present on the equine prior to the commercial transportation to the slaughtering facility. With this information, a USDA representative could examine the equine upon arrival at the slaughtering facility, review the owner-shipper certificate, and determine whether an injury occurred during transit and whether it constituted a violation of the regulations. We are also proposing to require that persons shipping equines to slaughtering facilities indicate any special handling needs of any equines being transported.

The certificate would have to include the date, time, and place at which the equine was placed on the conveyance for movement to the slaughtering facility so that a USDA representative at the slaughtering facility could determine whether the equine had been on the conveyance for longer than 28 hours. Equines that have been on a conveyance for 28 hours would need to be offloaded and provided appropriate food, potable water, and the opportunity to rest, as previously discussed.

The proposed requirement regarding sufficient floor space on conveyances transporting equines to slaughtering facilities is self-explanatory; the proposed requirement regarding segregation of stallions and other aggressive equines on the conveyances was discussed previously in this document in the ''Rationale'' section for *§ 88.3—Standards for Conveyances.*

The proposed performance-based requirement regarding driving conveyances transporting equines to slaughtering facilities is designed to protect the equines from injury caused by poor driving habits. For example, drivers of conveyances transporting equines should accelerate and decelerate slowly and turn corners carefully because sudden starts or stops or turns taken too quickly can cause equines on board to lose balance and fall. As stated previously, we are working with USDA–AMS to develop educational materials regarding the safe transport of equines.

Our proposed requirement regarding observation of the equines not less than once every 6 hours is intended to help ensure that any equines that may have fallen or otherwise become physically distressed en route will not go unnoticed and unattended to for the entire journey to the slaughtering facility. As stated previously, we are proposing to require that veterinary assistance be provided as soon as possible to any equine in obvious physical distress.

Our proposed requirements regarding handling of equines and taking appropriate actions to alleviate the suffering of any equine are self-explanatory. We are proposing to prohibit the use of electric prods on equines in commercial transportation to slaughtering facilities. Although electric prods are frequently used to assist in moving cattle and swine, we believe that these devices cause undue pain and trauma when used on equines, which have much thinner skins than cattle or swine. However, we would not consider the use of an electric prod to be a violation of the regulations in proposed part 88 in situations in which an equine threatens human safety.

We are proposing to authorize USDA representatives to conduct examinations and inspections under proposed part 88 at any point during the commercial transportation of equines to a slaughtering facility so that regulated entities would know that they may be subject to inspection prior to arrival at the slaughtering facility. In addition, allowing USDA inspection of conveyances en route to slaughtering facilities offers better protection to the equines than conducting examinations and inspections only at these facilities. For any equine found to be suffering en route to a slaughtering facility, a USDA representative could require a shipper to provide veterinary assistance, including securing the services of a veterinary professional to treat an injured equine and perform euthanasia if necessary.

We believe that USDA authority under the statute extends, for domestic movement, from the point of loading the equines on the conveyance to offloading them at the slaughtering facility. For equines transported by conveyance from a point inside the United States to a slaughtering facility outside the United States, USDA regulation would end at the border, where the shipper would need to present the owner-shipper certificates. For equines transported by conveyance from a point outside the United States to a commercial facility in the United States for slaughter, USDA regulation would begin upon crossing the border. However, we would expect the owner-shipper certificates to be completed at the point of loading the equines (as would be required for domestic movement of equines to slaughter), so the proposed maximum 28-hour period for transport without offloading for food, water, and rest would begin at the point of loading the equines in the foreign country.

Proposed § 88.5—Requirements at a Slaughtering Facility

We are proposing to require that, upon arrival at a slaughtering facility, a shipper must: (1) Ensure that each equine has access to appropriate food and potable water after being offloaded from the conveyance; (2) present the owner-shipper certificates to a USDA representative; (3) allow a USDA official access to the equines for the purpose of examination; and (4) allow a USDA representative access to the animal cargo area of the conveyance for the purpose of inspection. In addition, as discussed above, shippers transporting equines to slaughtering facilities outside the United States would need to present the owner-shipper certificates to USDA representatives at the border.

Rationale

Our proposed requirement regarding offloading of the equines is self-explanatory; most equines being transported to slaughtering facilities have traveled great distances without access to food and water and need to be offloaded and provided access to appropriate food and potable water to maintain their well-being.

We are proposing to require that shippers arriving at a slaughtering facility present the owner-shipper certificates to a USDA representative and allow the USDA representative access to the equines and the animal cargo area of the conveyance so that he or she can assess the condition of the equines to determine whether any apparent violations of the regulations in proposed part 88 have occurred. We are further proposing to prevent a shipper from offloading a shipment of equines at a slaughtering facility and leaving the premises before a USDA representative can make the necessary examinations and inspections of the equines, the conveyance, and the owner-shipper certificates. We believe that such inspections and examinations would be necessary for effective enforcement of the proposed regulations. Finally, we are proposing to require that shippers transporting equines to slaughtering facilities outside of the United States present the owner-shipper certificates to USDA representatives at the border so that we can ensure the well-being of the equines as well as track the numbers of equines being shipped out of the country for slaughter elsewhere. When they deem it necessary, USDA representatives at the border would conduct inspections of conveyances carrying equines destined for slaughter outside the United States.

Proposed § 88.6—Violations and Penalties

We are proposing to state that the Secretary is authorized to assess civil penalties of up to $5,000 per violation for noncompliance with any of the regulations in proposed part 88. We are also proposing that each equine transported in violation of the regulations would be considered a separate violation.

Rationale

As stated previously, the statute authorizes the Secretary to establish and enforce appropriate and effective civil penalties. In considering appropriate amounts for civil penalties, we reviewed the legislative history of the statute and also drew on our experience as a Federal regulatory agency. We especially drew on our experience in enforcing the Animal Welfare Act as amended (7 U.S.C. 2131 *et seq.*) and the Horse Protection Act as amended (15 U.S.C. 1821–1831), two other statutes whose purpose is ensuring humane treatment of certain animals. In the statute's origins as a Senate bill, a maximum criminal penalty was set at $5,000. We believe that civil penalties up to $5,000 per violation would be appropriate and effective in deterring noncompliance with the proposed regulations as directed by Congress in the statute.

The proposed statement concerning each equine transported in violation of the regulations being a separate violation also derives from the statute's legislative history and our experience as a regulatory agency.

Adjudication of a violation of the regulations would be conducted pursuant to the Department's Uniform Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, found at 7 CFR part 1, subpart H (7 CFR 1.130–1.151), and the Supplemental Rules of Practice found at 9 CFR, part 70, subpart B (9 CFR 70.10). In the rule portion of this document, we are proposing to add the statute to the list of statutes in 9 CFR 70.1. The necessary amendment to 7 CFR 1.131 is being handled through a separate rulemaking action. The Rules of Practice establish, among other things, the procedures for filing a complaint and a response, settling a case, and holding a hearing.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order

12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis for this proposed rule, which is intended to fulfill a responsibility given to the Secretary of Agriculture in the 1996 Farm Bill. Sections 901–905 of the 1996 Farm Bill (7 U.S.C. 1901 note) authorize the Secretary of Agriculture, subject to the availability of appropriations, to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. In both fiscal years 1998 and 1999, $400,000 was made available to administer this law. The proposed regulations, which would appear as a new part in title 9 of the CFR, are designed to help ensure the humane transport of equines to slaughtering facilities. The proposed regulations would cover, among other things, food, water, and opportunity for rest; space on the conveyance; segregation of stallions and other aggressive equines; completion of an owner-shipper certificate; and prohibitions on the movement of certain types of equines as well as on the use of electric prods and conveyances with animal cargo spaces divided into more than one stacked level. Our discussion of the anticipated economic impact of this proposed rule on small entities also serves as our cost-benefit analysis under Executive Order 12866.

The proposed rule would pertain almost exclusively to the commercial transportation of slaughter horses because horses account for almost all equines slaughtered in the United States. Equines are generally slaughtered for their meat, which is sold for human consumption, primarily outside the United States. From 1995 through 1997, an average of 100,467 equines were slaughtered annually in federally inspected U.S. slaughtering facilities. At the current time, there are four slaughtering facilities that accept equines in the continental United States: Two are located in Texas (Ft. Worth and Kaufman), and the others are in Nebraska (North Platte) and Illinois (DeKalb). In 1996, the United States exported 38 million pounds of horse, ass, and mule meat, with a value of $64 million. Of the total volume exported in 1996, 29 million pounds, or 76 percent, was exported to Belgium and France. Slaughter equines represent a variety of types, and they come from a variety of sources, including working ranches, thoroughbred racing farms, and pet owners. Equines are usually slaughtered when they are unfit or unsuitable for riding or other purposes.

The ''path'' from source supplier (farmer, rancher, pet owner, etc.) to slaughtering facility can vary. However, the most common scenario and the one used for the purpose of this analysis is as follows: The source suppliers transport their equines to local auction markets, where the equines are sold to persons who purchase the equines for the specific purpose of selling them to a slaughtering facility. (Hereafter in this analysis, we will refer to persons who sell equines for slaughter as ''owners''; however, in some cases, the owners use agents to conduct some aspect of the business of purchasing the equines and transporting and selling them to slaughtering facilities. We will use the term ''owners'' to refer to either the actual owners or their agents.) The owners consider price lists published by the slaughtering facilities for equines (the price varies in relation to the weight of the equine and the quality of the meat), transportation costs, and profit requirements to establish the maximum prices that they will pay for equines at local auctions. Because the owners cannot usually purchase enough slaughter-quality equines at any one auction to make it economically feasible to ship the equines directly from the auction site to the slaughtering facility, the owners transport the equines back to their own farms or feedlots, usually nearby, where the equines are stored until such time as the owners can accumulate more equines from other auctions. Double-deck livestock trailers, which are the types most often used for transporting equines to slaughtering facilities, can carry up to about 45 equines each; single-deck trailers can carry up to about 38 equines each.

When enough equines have been accumulated to comprise a shipment, the owners transport the equines to the slaughtering facility. Although owners who ship 2,000 or more equines to slaughter per year are not uncommon, most owners ship far fewer than that number. In an estimated 75 percent of the cases, owners hire commercial shippers to move the equines to the slaughtering facilities; in the remaining estimated 25 percent of the cases, owners transport the equines to slaughter in their own conveyances. Therefore, as proposed, the regulations would apply both to owners of equines destined for slaughter and to commercial shippers who transport such equines to slaughtering facilities. We estimate that approximately 200 entities would be affected by the proposed rule. Based on the average number of equines slaughtered in the United States per year (approximately 100,000) and on the estimated number of potentially affected entities (approximately 200), the average number of equines transported annually to slaughter per affected entity would be 500.

The proposed rule would require that, for a period of not less than 6 consecutive hours prior to the equines being loaded on the conveyance, each equine be provided access to food and water and the opportunity to rest. As indicated above, the owners generally have possession of the equines immediately prior to their being loaded onto conveyances for transport to slaughtering facilities. In those cases where the owners hire commercial shippers, the latter do not take possession of the equines until they are loaded onto the conveyance. Furthermore, when commercial shippers are hired, they are normally not in the presence of the equines for the full 6-hour period prior to loading. For these reasons, it can be assumed that the owners, not commercial shippers, would be responsible for fulfilling the preloading requirements of the proposed rule. In addition, the owners are more likely than commercial shippers to have the facilities necessary to meet the preloading requirements.

This proposed requirement is unlikely to impose a hardship on affected entities. While in the possession of the owners, equines are usually housed on farms or in feedlots, where they have access to food, water, and rest. Owners have an incentive to provide equines awaiting transport to a slaughtering facility with food, water, and rest because malnourished equines have a reduced slaughter value and dead equines have no slaughter value. Furthermore, most equines are stored on farms or in feedlots for 6 consecutive hours or more because it usually takes at least that long for owners to accumulate enough equines to fill a conveyance. At worst, the proposed rule would result in owners having to keep their equines in a farm or feedlot for an additional 6 hours to fulfill the proposed preloading requirements for the last equines needed to fill a conveyance. This worst-case scenario assumes that the ''last-in'' equines have not had the required preloading services prior to their acquisition by the owners. If the last-in equines have had those services, then the owners would be able to load them onto the conveyance immediately. For example, owners might be able to stop at an auction en route to a slaughtering plant and pick up their last-in equines.

We cannot estimate the precise dollar impact of this proposed requirement because no hard data is available on the prevalence of slaughter equines receiving the proposed requirements for food, water, and rest prior to loading. However, for the reasons stated above, the impact should be minimal. Storing equines in feedlots costs about $2 per day per animal. (This amount is the typical rental rate for a pen, which includes food and water.) If an owner had to store a truckload of equines (assume 38) for a full day, the cost would be $76. The cost for storing 500 equines (the estimated average number of equines shipped annually to slaughter per affected entity) would be $1,000.

The proposed rule would require that owners or commercial shippers sign an owner-shipper certificate for each equine being transported to a slaughtering facility. Among other things, the owner-shipper certificate would include a statement that the equine has received the required preloading services. If, as a result of this proposed requirement, commercial shippers load fewer equines per conveyance, the shippers should not be affected because they typically charge owners a flat rate to transport equines to slaughtering facilities regardless of the number of equines on the conveyance. For owners who use their own vehicles for transportation, fewer equines per conveyance translates into increased costs. As an example, assume that it costs an owner $1,850 ($1.85 per mile—a representative rate for commercial shipment of slaughter equines—times 1,000 miles) to transport a truckload of equines in the person's own conveyance. Assume also that, as a result of the proposed rule, the owner could ship only 35 equines in a particular shipment, 3 fewer than the 38 that would have been shipped had the proposed rule not been in effect. Using that data, the owner's transportation costs on a per-equine basis for that particular shipment would increase by 8.6 percent, from $48.68 to $52.86. The owner would incur similar costs if the owner secured the services of a commercial shipper.

The proposed rule would require that any equine that has been on the conveyance for 28 consecutive hours or more without food, water, and the opportunity to rest be offloaded and, for at least 6 consecutive hours, provided with food, water, and the opportunity to rest. The proposed rule would also require that each equine be provided with enough space on the conveyance to ensure that no animal is crowded in a way likely to cause injury or discomfort. Finally, the proposed rule would require that stallions and other aggressive equines be segregated from each other and all other equines on the conveyance.

Available data suggest that the proposed ''28-hour rule'' should not pose a problem for the vast majority of slaughter equine transporters. Officials at two of the U.S. equine slaughtering facilities, including the largest facility, indicate that, barring unusual circumstances, the overwhelming majority of equines arrive at the slaughtering facilities in 28 hours or less. Indeed, there is reason to believe that few equines actually fit the ''worst-case'' scenario in terms of travel distance—equines transported from the east or west coasts to the slaughtering facilities, which are all located in the central part of the United States. Equines on the east coast, at least from the State of Maryland northward, as well as those on the west coast and in the States of Montana and Idaho, are usually transported to Canadian slaughtering facilities. (For example, the slaughtering plant at Massueville, Quebec, is about 100 miles from the port of entry at Champlain, NY. For transporters in the northeastern part of the United States, the Massueville plant is closer than any of the U.S. plants.) Furthermore, even for equines that do originate at east and west coast locations, the time spent on conveyances is reduced considerably by the common transport practice of using two different drivers on long trips. This practice allows the equines to be transported virtually nonstop because one person can drive while the other rests, thereby avoiding federally mandated rest periods that apply in a single-driver situation. Assuming an average speed of 55 mph and two different drivers, and allowing 1½ hours for loading and 2 hours for refueling and meal stops, even a trip as long as 1,300 miles would take only about 27 hours.

If equines do have to be offloaded for feeding, rest, etc., while en route to a slaughtering facility, transporters would incur additional costs. As stated previously, pens can generally be rented at a rate of about $2 per day per equine. (The rent for a 6-hour period is unknown but, presumably, it would be less than the full-day fee.) In addition to the pen rental fee, transporters would have to spend time unloading the equines. Also, they may have to: (1) Adjust routes and schedules to find pens to accommodate the equines; (2) wait while they are being serviced; and (3) reload them after they have been serviced. These activities would add to the cost of servicing equines at intermediate points.

The proposed rule would also require that, during transport, equines must be provided with enough space to ensure that they are not crowded in a way that is likely to cause injury or discomfort. One source of injury and discomfort, double-deck trailers, would be banned in 5 years. Overcrowding can also occur in single-deck (also called straight-deck) trailers, which are used to transport equines to a lesser extent than double-deck trailers. The proposed requirement concerning adequate space could translate into fewer equines per conveyance. As stated previously, commercial shippers typically charge owners a flat rate to transport their equines, so the possibility of fewer equines per shipment should not result in less revenue for commercial shippers. For owners, however, fewer equines per conveyance translates into increased costs, regardless of whether the owners hire commercial shippers or use their own vehicles for transportation.

The proposed requirement that aggressive equines be segregated during transport is not likely to have a significant impact. Available data suggests that such segregation is already common practice. Owners have an incentive to make sure that aggressive equines are segregated because equines that arrive at the slaughtering facilities injured as the result of biting and kicking en route command lower market values. The segregation of equines requires that transporters spend more time and effort during loading, but that added time and effort is considered to be relatively minor. Nor should most transporters have to buy special equipment, because livestock trailers usually come equipped with devices, such as swing gates, that permit animal segregation. As a final point in this regard, relatively few stallions are transported for slaughter. USDA personnel stationed at two of the slaughtering facilities estimate that no more than about 5 percent of the equines arriving for slaughter are stallions.

The proposed rule would require that an owner-shipper certificate be completed for each equine prior to departing for the slaughtering facility. The certificate must describe, among other things, the equine's physical characteristics (color, sex, permanent brands, etc.), and it must show the number of the animal's USDA backtag. It must also certify the equine's fitness to travel and note any special care and handling needs during transit (e.g., segregation of stallions). An equine would be fit to travel if it: (1) Can bear

weight on all four limbs; (2) can walk unassisted; (3) is not blind in both eyes; (4) is older than 6 months of age; and (5) is not likely to give birth in transit. Affected entities would not need the services of a veterinarian in order to make the fitness-to-travel determination. The proposed rule would require that either the owners or the commercial shippers sign the certificate and that the owner-shipper certificate accompany the equine to the slaughtering facility.

The proposed requirement for an owner-shipper certificate would create additional paperwork for both owners and commercial shippers. As with the other preloading services discussed above, it is reasonable to assume that the responsibility for providing the data on the certificate would generally rest with the owners, not the commercial shippers. The owners have possession of the equines prior to departing for the slaughtering facility and presumably are more qualified to provide the data required by the owner-shipper certificate. It is also reasonable to assume that the responsibility for obtaining and installing the USDA backtag would be theirs, not the commercial shippers. The owners would not incur a cost for obtaining the backtags, which are available free of charge from a variety of sources. The backtags are adhesive and are attached simply by sticking them on the equine's back, so owners would not incur installation costs.

The added administrative costs that owners would incur as a result of having to complete and sign the owner-shipper certificate is difficult to quantify. Assuming that it takes 5 minutes to complete each certificate, an owner who ships 500 equines to slaughter annually would have to spend about 42 hours per year complying with the proposed rule. Assuming a labor rate of $7 per hour, the 42 hours translates into added costs of about $300 per year. For reasons explained earlier, the added administrative costs for commercial shippers would likely be less than those for owners.

The proposed rule would allow the use of electric prods only in life-threatening situations and would prohibit the transport of equines to slaughter on conveyances divided into more than one level, such as double-deck trailers, 5 years after the final rule's publication date. The proposed restriction on the use of electric prods should not pose a burden because effective, low-cost substitutes are available for use in non-life-threatening situations. For example, fiberglass poles with flags attached, which cost only about $5 each, are considered to be an effective alternative to electric prods. Any current use of electric prods by transporters of slaughter equines probably derives from the traditional use of these devices to assist in moving other livestock, such as cattle and swine.

The retail cost of a new double-deck livestock trailer averages about $42,000; single-deck trailers retail for about $38,000 each. The cost varies depending largely on the model, type of construction, and optional features. The useful life of the trailers also varies, depending on such factors as the weight and type of animals hauled and the needed frequency of cleaning. It is not uncommon, however, for trailers of both types to provide 10 to 12 years' worth of useful service.

As discussed previously, double-deck trailers can carry more equines than single-deck trailers, and some affected entities would be negatively affected by the reduction in the numbers of equines that could be transported in a single conveyance. Upon publication of the final rule, shippers using floating-deck trailers to transport equines to slaughtering facilities would need to collapse the decks so that they create only one level. Otherwise, the proposed ban on transporting slaughter equines in conveyances divided into more than one stacked level should not impose a burden on the owners of double-deck trailers because these trailers can be, and are, also used to transport other commodities, including livestock other than equines and produce. In fact, it is estimated that double-deck trailers in general carry equines no more than about 10 percent of the time they are in use. If the proposed ban takes effect, commercial shippers who transport equines to slaughtering facilities should be able to use their double-deck trailers to transport other livestock and produce. Owners who use their own double-deck trailers to transport equines to slaughtering facilities would have to find another use for the equipment or trade for single-deck trailers. This situation should not pose a problem. Owners should be able to sell their serviceable trailers at fair market value to transporters of commodities other than equines. Furthermore, many of the double-deck trailers now in the service of owners would need to be retired in 5 years anyway.

In conclusion, we do not anticipate that any of the proposed requirements would have undue onerous impacts on any affected entities. We believe that many transporters of slaughter equines may already be in compliance with many of the proposed requirements. The proposed requirement for an owner-shipper certificate would affect all transporters of slaughter equines, but we have designed the proposed form to make its preparation as easy as possible. We do not believe that the completion and maintenance of these certificates would be unreasonably time-consuming or burdensome. As stated previously, the proposed ''28-hour rule'' should not pose a problem for the vast majority of slaughter equine transporters, and the proposed ban on double-deck trailers should have minimal effect because these trailers can be used for other purposes and many would need to be replaced prior to the ban becoming effective anyway.

At a minimum, the proposed rule would require that affected entities complete an owner-shipper certificate, an administrative task that they do not have to perform now. For an entity that transports 500 equines per year, the average for all potentially affected entities, the requirement regarding owner-shipper certificates would translate into added costs of about $300 annually. In a worst-case scenario, the proposed rule could add several thousand dollars to the annual operating costs of an entity that transports 500 equines per year. This worst-case scenario assumes that, at the current time, affected entities are engaging in little or no voluntary compliance with the proposed requirements.

Effect on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of proposed rules on small entities (i.e., businesses, organizations, and governmental jurisdictions). As discussed above, the entities that would be affected by the proposed rule are owners and commercial shippers who transport equines to slaughtering facilities.

As stated previously, we estimate that approximately 200 entities would be affected by the proposed rule. Although the sizes of these entities is unknown, it is reasonable to assume that most are small by U.S. Small Business Administration (SBA) standards. This assumption is based on composite data for providers of the same and similar services in the United States. In 1993, there were 30,046 U.S. firms in Standard Industrial Classification (SIC) 4213, a classification category comprising firms primarily engaged in ''over-the-road'' trucking services, including commercial shipping. The per-firm average gross receipts for all 30,046 firms that year was $2.6 million, well below the SBA's small-entity threshold of $18.5 million. Similarly, in 1993, there were 1,671 U.S. firms in SIC

5159, a classification category that includes horse dealers. Of the 1,671 firms, 97 percent had fewer than 100 employees, the SBA's small-entity threshold for those firms.

The proposed rule would have a negative economic impact on affected entities, large and small. As indicated above, operating costs would increase somewhere between about $300 and several thousand dollars annually for an entity that transports 500 equines per year. However, the available data suggests that, for most entities, the economic consequences would fall somewhere near the minimum point on the impact scale because, as stated previously, many are already in compliance with at least some of the proposed rule's provisions, such as stallion segregation. Because we do not have enough data to conclude that even a cost increase of as low as $300 annually would not be significant for most of the potentially affected entities, we welcome public comment on the potential economic impact of the proposal on small entities.

Alternatives Considered

The Regulatory Flexibility Act, at section 603(c), requires Federal agencies promulgating new regulations to consider alternatives that would lessen the impact of the proposed regulations on affected small entities. In developing the proposed rule, APHIS considered many alternatives, some of which are discussed below. As mentioned previously, in developing the proposed program to carry out the statute, APHIS established a working group that included participants both from within the agency as well as from other parts of USDA, including FSIS and AMS. In addition, to get appropriate public input, APHIS attended two meetings about the statute hosted by humane organizations and attended by representatives of the equine, auction, slaughter, and trucking industries and the research and veterinary communities.

APHIS had considered requiring that owners and shippers of equines destined for slaughter secure the services of a veterinarian to certify the equines' fitness for travel. However, as proposed, owners and shippers would be allowed to certify the equines' fitness to travel themselves. In addition, APHIS considered various alternatives with regard to the types of equines that would be prohibited from shipment. After much consideration, the agency is proposing to prohibit the shipment of equines that are unable to bear weight on all four limbs, unable to walk unassisted, blind in both eyes, less than 6 months of age, and likely to give birth during shipment. Agency officials believe that they must prohibit the shipment to slaughter of equines in these five categories to carry out congressional intent under the statute for ensuring the humane transport of equines for slaughter. In addition, the agency considered many allowable timeframes for equines to be on conveyances without access to food and water; the proposed 28-hour period is based on available data and input from interested and potentially affected parties. Finally, in regard to the prohibition on the transport of slaughter equines in any type of conveyance divided into more than one stacked level, the agency determined that such a ban is necessary to ensure the humane transport of equines to slaughtering facilities. However, the proposed rule would allow the use of double-deck trailers for a period of 5 years following publication of a final rule to lessen the impact of the proposed ban on affected entities.

Paragraph (c) of section 603 of the Regulatory Flexibility Act also requires that Federal agencies consider the use of performance-based rather than design-based standards. In keeping with this requirement and the direction provided in the conference report to employ performance-based rather than engineering-based standards to the extent possible, the requirements included in the proposed rule are primarily performance-based. As examples, the proposed rule's requirements for design of the conveyance, space allotted per equine on the conveyance, and manner of driving the conveyance are all performance-based.

This proposed rule contains information collection and recordkeeping requirements. These requirements are described in the section of this document entitled ''Paperwork Reduction Act.''

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–074–1. Please send a copy of your comments to: (1) Docket No. 98–074–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Implementing this proposed rule would require two information collection activities: The preparation of an owner-shipper certificate for each equine transported to slaughter and the collection of information concerning the business of any person found to be transporting equines to a slaughtering facility. The owner-shipper certificate would include, among other things, a description of the equine's physical characteristics and a description of the conveyance; certification of the equine's fitness to travel; and the date, time, and place at which the equine was placed on the conveyance for movement to the slaughtering facility. We believe this information would be necessary for enforcement of the proposed regulations. The collection of business information from persons found to be transporting equines to slaughtering facilities would enable us to determine whether a particular person is subject to the proposed regulations.

We are asking OMB to approve these information collection activities in connection with our efforts to ensure that horses being transported to slaughter are treated humanely.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's

functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Owners and shippers of slaughter horses.

Estimated annual number of respondents: 200.

Estimated annual number of responses per respondent: 500.

Estimated annual number of responses: 100,000.

Estimated total annual burden per respondent: 42 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 70

Administrative practice and procedure.

9 CFR Part 88

Animal welfare, Horses, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 70 and to add a new 9 CFR part 88 as follows:

PART 70—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

1. The authority citation for part 70 would be revised to read as follows:

Authority: 21 U.S.C. 111, 112, 114a, 114a–1, 115, 117, 120, 122, 123, 125–127, 134b, 134c, 134e, and 134f; 7 CFR 2.22, 2.80, 371.2(d).

2. In § 70.1, the list of statutory provisions would be amended by adding at the end of the list the following:

§ 70.1 Scope and applicability of rules of practice.

* * * * *

Sections 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note).

* * * * *

3. A new part 88 would be added to read as follows:

PART 88—COMMERCIAL TRANSPORTATION OF EQUINES FOR SLAUGHTER

Sec.

88.1 Definitions.
88.2 General information.
88.3 Standards for conveyances.
88.4 Requirements for transport.
88.5 Requirements at a slaughtering facility.
88.6 Violations and penalties.

Authority: 7 U.S.C. 1901, 7 CFR 2.22, 2.80, 371.2(d).

§ 88.1 Definitions.

APHIS. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Commercial transportation. Movement for profit via conveyance on any highway or public road.

Conveyance. Trucks, tractors, trailers, or semitrailers, or any combination of these, propelled or drawn by mechanical power.

Equine. Any member of the *Equidae* family, which includes horses, asses, mules, ponies, and zebras.

Euthanasia. The humane destruction of an animal by the use of an anesthetic agent or other means that causes painless loss of consciousness and subsequent death.

Owner. Any individual, partnership, corporation, or cooperative association that purchases equines for the purpose of sale to a slaughtering facility.

Owner-shipper certificate. VS Form 10–13, which requires the information specified by § 88.4(a)(3) of this part.

Secretary. The Secretary of Agriculture.

Shipper. Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of equines to slaughtering facilities more often than once a year, except any individual or other entity that transports equines to slaughtering facilities incidental to the principal activity of production agriculture.

Slaughtering facility. A commercial establishment that slaughters equines for any purpose.

Stallion. Any uncastrated male equine that is 1 year of age or older.

USDA. The U.S. Department of Agriculture.

USDA backtag. A backtag issued by APHIS that conforms to the eight-character alpha-numeric National Backtagging System and that provides unique identification for each animal.

USDA representative. Any employee of the USDA who is authorized by the Deputy Administrator for Veterinary Services of APHIS, USDA, to enforce this part.

§ 88.2 General information.

(a) State governments may enact and enforce regulations that are consistent with or that are more stringent than the regulations in this part.

(b) To determine whether an individual or other entity found to transport equines to a slaughtering facility is subject to the regulations in this part, a USDA representative may request of any individual or other entity information regarding the business of the individual or other entity that transported the equines. When such information is requested, the individual or other entity will provide the information within 30 days and in a format as may be specified by the USDA representative.

§ 88.3 Standards for conveyances.

(a) The animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must:

(1) Be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the equines being transported (e.g., provides adequate ventilation, contains no sharp protrusions, etc.);

(2) Include means of completely segregating each stallion and each aggressive equine on the conveyance so that no stallion or aggressive equine can come into contact with any of the other equines on the conveyance;

(3) Have sufficient interior height to allow each equine on the conveyance to stand with its head extended to the fullest normal postural height; and

(4) Be equipped with doors and ramps of sufficient size and location to provide for safe loading and unloading.

(b) Equines in commercial transportation to slaughtering facilities must not be transported in any conveyance that has the animal cargo space divided into two or more stacked levels, except that conveyances lacking the capability to convert from two or more stacked levels to one level may be used until [date 5 years from the date of publication of final rule]. Conveyances with collapsible floors (also known as ''floating decks'') must be configured to transport equines on one level only.

§ 88.4 Requirements for transport.

(a) Prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must:

(1) For a period of not less than 6 consecutive hours prior to the equines being loaded on the conveyance, provide each equine appropriate food (i.e, hay, grass, or other food that would allow an equine in transit to maintain well-being), potable water, and the opportunity to rest;

(2) Apply a USDA backtag [1] to each equine in the shipment;

(3) Complete and sign an owner-shipper certificate for each equine being transported. The owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility and must include the following information:

(i) The shipper's name and address and, if the shipper is not the owner of the equines, the owner's name and address;

(ii) A description of the conveyance, including the license plate number;

(iii) A description of the equine's physical characteristics, including such information as sex, coloring, distinguishing markings, permanent brands, and electronic means of identification, that could be used to identify the equine;

(iv) The number of the USDA backtag applied to the equine in accordance with paragraph (a)(2) of this section;

(v) A statement of fitness to travel, which will indicate that the equine is able to bear weight on all four limbs, able to walk unassisted, not blind in both eyes, older than 6 months of age, and not likely to give birth during the trip;

(vi) A description of anything unusual with regard to the physical condition of the equine, such as a wound or blindness in one eye, and any special handling needs;

(vii) The date, time, and place the equine was loaded on the conveyance; and

(viii) A statement that the equine was provided access to food, water, and rest prior to transport in accordance with paragraph (a)(1) of this section; and

(4) Load the equines on the conveyance so that:

(i) Each equine has enough floor space to ensure that no equine is crowded in a way likely to cause injury or discomfort, and

(ii) Each stallion and any aggressive equines are completely segregated so that no stallion or aggressive equine can come into contact with any other equine on the conveyance.

(b) During transit to the slaughtering facility, the shipper must:

(1) Drive in a manner to avoid causing injury to the equines;

(2) Observe the equines as frequently as circumstances allow, but not less than once every 6 hours, to check the physical condition of the equines and ensure that all requirements of this part are being followed. Veterinary assistance must be provided as soon as possible for any equines in obvious physical distress; and

(3) Offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours. If such offloading is required en route to the slaughtering facility, a shipper must prepare another owner-shipper certificate as required by paragraph (a)(2) of this section and record the date, time, and location where the offloading occurred. In this situation, both owner-shipper certificates would need to accompany the equine to the slaughtering facility.

(c) Handling of all equines in commercial transportation to a slaughtering facility shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma. Electric prods may not be used on equines in commercial transportation to a slaughtering facility for any purpose, including loading or offloading on the conveyance, except when human safety is threatened.

(d) At any point during the commercial transportation of equines to a slaughtering facility, a USDA representative may examine the equines, inspect the conveyance, or review the owner-shipper certificates required by paragraph (a)(3) of this section.

(e) At any time during the commercial transportation of equines to a slaughtering facility, a USDA representative may direct the shipper to take appropriate actions to alleviate the suffering of any equine. If deemed necessary by the USDA representative, such actions could include securing the services of a veterinary professional to treat an equine, including performing euthanasia if necessary.

(f) The individual or other entity who signs the owner-shipper certificate (either the owner or the shipper) must maintain a copy of the owner-shipper certificate for 1 year following the date of signature.

§ 88.5 Requirements at a slaughtering facility.

(a) Upon arrival at a slaughtering facility, the shipper must:

(1) Ensure that each equine has access to appropriate food and potable water after being offloaded;

(2) Present the owner-shipper certificates to a USDA representative;

(3) Allow a USDA representative access to the equines for the purpose of examination; and

(4) Allow a USDA representative access to the animal cargo area of the conveyance for the purpose of inspection.

(b) The shipper must not leave the premises of a slaughtering facility until the equines have been examined by a USDA representative.

(c) Any shipper transporting equines to slaughtering facilities outside of the United States must present the owner-shipper certificates to USDA representatives at the border.

§ 88.6 Violations and penalties.

(a) The Secretary is authorized to assess civil penalties of up to $5,000 per violation of any of the regulations in this part.

(b) Each equine transported in violation of the regulations will be considered a separate violation.

(Approved by the Office of Management and Budget under control number 0579–XXXX.)

Done in Washington, DC, this 13th day of May 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–12577 Filed 5–18–99; 8:45 am]

BILLING CODE 3410–34–P

[1] USDA backtags are available at recognized slaughtering establishments and specifically approved stockyards and from State representatives and APHIS representatives. A list of recognized slaughtering establishments and specifically approved stockyards may be obtained as indicated in § 78.1 of this chapter. The terms ''State representative'' and ''APHIS representative'' are defined in § 78.1 of this chapter.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100905–97]

RIN 1545–AU96

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes to eliminate the regulatory requirement that certain information be set forth on the face of a collateralized debt obligation (CDO) or regular interest in a Real Estate Mortgage Investment

Conduit (REMIC). Implementing the proposal should reduce the burden imposed on issuers of CDOs and regular interests without impairing the flow of tax information to either the holders of those instruments or the IRS. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by July 19, 1999. Outlines of topics to be discussed at the public hearing scheduled for September 13, 1999, at 10 a.m. must be received by August 23, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–100905–97), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–100905–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/reglist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kenneth Christman, (202) 622–3950; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Final regulations (TD 8366) imposing reporting requirements with regard to CDOs and REMIC regular interests were published in the **Federal Register** for September 30, 1991 (56 FR 49512, as corrected by 56 FR 51175). Among other things, those regulations compel the issuer of a CDO or REMIC regular interest to set forth certain information on the face of the instrument (legending). Several commentators have asked the IRS to reassess the need for this rule.

Explanation of Provisions

Section 1272(a)(6) of the Internal Revenue Code provides a special rule for calculating the accrual of original issue discount (OID) on REMIC regular interests and CDOs. Special rules are needed because the timing of payments on these instruments is often uncertain. Although CDOs and REMIC regular interests are issued with fixed maturity dates, they may be accelerated to the extent that obligations collateralizing them prepay.

Because the holder of a CDO or REMIC regular interest would not necessarily have the information needed to calculate OID under section 1272(a)(6), Congress added section 6049(d)(7) to require enhanced reporting for such instruments. In addition, Congress gave the IRS and Treasury specific authority to issue regulations carrying out that purpose. 2 H.R. Conf. Rep. 99th Cong. 2d Sess. II–237 (1986), 1986–3 (Vol. 4) C.B. 237.

The regulations issued under section 6049(d)(7) are comprehensive. Sections 1.6049–7(a) through 1.6049–7(f) establish a chain of reporting obligations that ensures essential tax information will flow to holders of CDOs and REMIC regular interests. The information made available includes the amount of a holder's OID accrued during the calendar year. Importantly, this information is updated annually.

In addition to the ongoing information reporting provided under §§ 1.6049–7(a) through 1.6049–7(f), section 1.6049–7(g) provides for certain information to be legended on the face of a CDO or REMIC certificate when first issued. The information includes the total amount of OID on the instrument, the issue date, the rate at which interest is payable (if any) as of the issue date, and the yield to maturity.

Legending appears to provide little practical benefit. Most CDOs and REMIC regular interests are held through book-entry systems, which means the legended information is rarely (if ever) reported to the holders. Even if the information were reported, it would be of little use. Holders who are entitled to have OID determined for them do not need the information. Holders who need or want to determine OID themselves cannot make the necessary section 1272(a)(6) calculations without acquiring additional information. Furthermore, legended information is available through other sources. It can be obtained from vendors of financial information or requested under other section 6049 regulations. For these reasons, the IRS and Treasury propose to rescind § 1.6049–7(g).

Comments are invited on these proposed regulations. In particular, any taxpayers that rely on legended information are asked to specify the items relied on and suggest other ways to provide those items (such as including them among the items that must be reported under §§ 1.6049–7(a) through 1.6049–7(f)).

Proposed Effective Date

The rescission of § 1.6049–7(g) is proposed to be effective on the date the regulations are published in the **Federal Register** as final regulations.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 13, 1999, beginning at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For further information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written or electronic comments and an

outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by August 23, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kenneth Christman, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.6049–7 [Amended]

Par. 2. In § 1.6049–7, paragraph (g) is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–12525 Filed 5–18–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0002b and WY–001–0003b; FRL–6344–3]

Approval and Promulgation of State Implementation Plans; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve two revisions to the Wyoming State Implementation Plan (SIP) regarding particulate matter. The SIP revisions include clarification and revisions to the particulate matter control requirements in section 25 of the Wyoming Air Quality Standards and Regulations (WAQSR) for the FMC Corporation in the Trona Industrial Area of Wyoming, and the addition of guidelines for best available control technology (BACT) in the minor source construction permitting requirements of section 21 of the WAQSR for large mining operations.

We are also revising 40 CFR 52.2620 to list subsections 21(a)(iv), 24(a)(xix), 24(b)(iv), and 24(b)(xii)(H) of the WAQSR in the ''Incorporation by reference'' section. We approved these subsections in previous SIP approvals (on November 29, 1994 and on November 3, 1995, respectively) but we inadvertently neglected to identify those subsections as incorporated into the SIP in the CFR.

In the Rules and Regulations section of this **Federal Register**, we approve the State's submittals as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the preamble of the direct final rule. If no adverse comments are submitted, we will not take further action on this proposed rule. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before June 18, 1999.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: May 7, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–12583 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300838; FRL–6074–3]

RIN 2070–AC18

Rhizobium inoculants; Proposed Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an exemption from the requirement of tolerances for residues of *Rhizobium* inoculants (pure strains of *Rhizobium spp.* bacteria eg. *Sinorhizobium, Bradyrhizobium & Rhizobium*) when used as inert ingredients in pesticide formulations applied to all leguminous food commodities. This would not include strains expressing rhizobitoxine or strains deliberately altered to expand the range of antibiotic resistance. EPA is proposing this regulation on its own initiative.

DATES: Written comments should be submitted to EPA on or before July 19, 1999.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VIII of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by

EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Edward Allen, Biological Pesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: 9th Floor, Crystal Mall #2, 1921, Jefferson Davis Hwy., Arlington, VA, (703) 308–8699; e-mail:allen.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA proposes that an exemption from the requirement of a tolerance be established for residues of *Rhizobium* inoculants when used as inert ingredients in pesticide formulations applied to all leguminous food commodities. EPA is proposing this regulation on its own initiative.

I. Electronic Availability

Electronic copies of this document and other available support documents may be obtained on the Internet from the EPA Home Page at the ''**Federal Register**—Environmental Documents'' entry for this document (http://www.epa.gov/fedrgstr/EPA–PEST/1999/).

II. Background and Statutory Authority

New section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement of a tolerance for a pesticide chemical residue on food only if EPA determines that the exemption is ''safe''. Section408(c)(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, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of 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'' and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fattyacids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity or lack of chemical activity. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, EPA considers the toxicity of the inert ingredient in conjunction with possible exposure to residues of the inert ingredient in food, drinking water, and other non-occupational exposures. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

V. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(c)(2)(B) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of the proposed action. EPA has sufficient data to assess the hazards of *Rhizobium* inoculants in or on all leguminous food commodities. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances are as follows:

The data available in the public literature, EPA's Biotechnology Science Advisory Committee's reports on genetically engineered *Rhizobium* species and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), EPA set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined that the inert ingredient will present minimal or no risk, EPA generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient.

A. Toxicological Profile

The inoculants that are the subject of this exemption are pure stains of bacteria in the genera *Rhizobium, Sinorhizobium or Bradyrhizobium* (hereafter referred to as *Rhizobium*). *Rhizobium* species are found naturally in soil and are agriculturally important as they form a symbiosis with the roots of leguminous plants such as green beans, alfalfa and soybeans. This symbiosis is a controlled bacterial infection of the root cortical cells and results in root nodules formation. These root nodules biologically fix atmospheric nitrogen into a form readily useable by plants.

There are no reports in the literature of these *Rhizobium* bacteria causing disease or injury to man or other animals (USEPA/OPPT ''Risk Assessment, Commercialization Request for P–92–403, *Sinorhizobium (Rhizobium) meliloti* RMBPC–2'', May 1997). There are reports of *Rhizobium* bacteria producing a toxin (rhizobitoxine) that can affect the growth of legume plants nodulated with these strains. It is unlikely that any *Rhizobium* inoculants that are the subject of this exemption would be developed which express rhizobitoxine due to the adverse effects they have on the host plant. However, EPA feels it is appropriate to exclude *Rhizobium* strains intentionally developed to express rhizobitoxine from this inert clearance because of possible additional human exposure to rhizobitoxine.

EPA believes that any intentional alteration in the range of antibiotic resistance of *Rhizobium* species should be considered for its impact on the proliferation of antibiotic resistance traits in clinically important pathogenic bacteria. It is common knowledge that all bacteria, including these *Rhizobium* species, have inherent resistance to certain antibiotics. It is also known that bacteria, especially clinical strains, have developed or acquired antibiotic resistance due to widespread use of antibioitcs. The exclusion of *Rhizobium* strains with altered antibiotic resistance from this tolerance exemption discourages the use of antibiotic

resistance genes, especially those genes with resistance to clincally important antibiotics. EPA therefore proposes to exclude any *Rhizobium* species with an intentionally expanded range of antibiotic resistance traits from this exemption.

B. Exposures and Risks

1. *From food and feed uses, drinking water, and non-dietary exposures.* For the purposes of assessing the potential dietary exposure under this exemption, EPA considered that under this exemption *Rhizobium* inoculants could be present in all raw and processed agricultural commodities and drinking water and that non-occupational, non-dietary exposure was possible. The intended use pattern as a seed or soil inoculant lessens the likelihood of contact with humans other than occupational exposure. The likelihood that a soil bacterium such as *Rhizobium* will enter drinking water in significant numbers is remote considering the natural filtration of the soil profile as water percolates to the water table and the fact that many water supplies are treated prior to distribution in municipal systems (USEPA/OPPT, Exposure Assessment for Commercialization of a Recombinant Strain of *Rhizobium meliloti*, RMBPC–2, December, 1994). Even if exposure occurred, the lack of reports of disease in man or animals indicates there is no risk for these exposures. Therefore, EPA concluded that, based on this inoculant's use, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable.

2. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' In the case of the *Rhizobium* inoculants, as limited, there is lack of toxicity to humans and other animal species as well as no information in the literature indicating a cumulative effect with any other compound. Therefore, a cumulative risk assessment is not necessary.

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

Based on this bacteria's toxicological profile, and its established use in common agricultural practices, EPA concludes that there is a reasonable certainty that no harm to the U.S. population will result from aggregate exposure to *Rhizobium* inoculants. EPA believes theses bacteria present no dietary risk under any reasonably foreseeable circumstances.

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

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 postnatal toxicity and the completeness of the data base unless EPA concludes 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 the use of margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low toxicity of these bacteria, EPA has not used a safety factor analysis in assessing a risk. For the same reasons the additional safety factor is unnecessary.

VI. Other Considerations

EPA proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, EPA has concluded that analytical methods are not required for enforcement purposes *Rhizobium* innoculants. There are no Codex tolerances or international tolerance exemptions for *Rhizobium* innoculants.

VII. Conclusion

Based on the information and data considered, EPA proposes that an exemption from the requirement of a tolerance be established as set forth in this document.

VIII. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300838] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300838]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This action proposes to establish an exemption from the tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this proposed 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).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

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

List of Subjects in 40 CFR Part 180

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

Dated: May 11, 1999.

Janet L. Andersen,

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

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient:

§ 180.1001 Rhizobium inoculants (eg. Sinorhizobium, Bradyrhizobium & Rhizobium); Exemption from the requirements of a tolerance.

* * * * *

(c) * * *

Inert ingredient	Limit	Uses
* * * *	* *	*
Rhizobium inoculants (eg. *Sinorhizobium, Bradyrhizobium & Rhizobium*)		All leguminous food commodities
* * * *	* *	*

* * * * *

(e) * * *

Inert ingredient	Limit	Uses
* * * *	* *	*
Rhizobium inoculants (eg. *Sinorhizobium, Bradyrhizobium & Rhizobium*)		All leguminous food commodities
* * * *	* *	*

[FR Doc. 99–12589 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–1998–3430; Notice 10] (formerly Docket 93–68)

RIN 2127–AG27

Defect and Noncompliance Reports; Defect and Noncompliance Notification

May 12, 1999.

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is seeking additional public comment with respect to its ongoing rulemaking to implement the provisions of Chapter 301 of Title 49 of the United States Code (U.S.C.) that require manufacturers of motor vehicles and items of motor vehicle equipment to notify their dealers when they or NHTSA decide that vehicles or items of equipment contain a defect related to motor vehicle safety or do not comply with a Federal motor vehicle safety standard. The amendment proposed herein would require a manufacturer to furnish dealers with notification of a safety-related defect or noncompliance in accordance with a schedule that is to be submitted to the agency with the manufacturer's defect or noncompliance report. The notification would have to be within a reasonable time after the manufacturer decides that the defect or noncompliance exists. However, if the agency finds that the public interest requires dealers to be notified at an earlier date than that proposed by the manufacturer, the manufacturer would be required to notify its dealers in accordance with the agency's order. The proposed amendment also sets forth the required content of the dealer notification and the manner in which such notification is to be accomplished.

DATES: Comments must be received on or before June 18, 1999.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Jonathan D. White, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5319, Washington, DC 20590. Telephone: (202) 366–5226; FAX: (202) 366–7882.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1993, NHTSA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing several amendments to its regulations implementing the provisions of 49 U.S.C. Chapter 301 concerning manufacturers' obligations to provide notification and remedy without charge for motor vehicles and items of motor vehicle equipment found to contain a defect related to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard (58 FR 50314). On April 5, 1995, the agency issued a final rule addressing most aspects of that NPRM (60 FR 17254), and on January 4, 1996, it amended several provisions of that final rule after receiving petitions for reconsideration (61 FR 274). However, NHTSA decided to delay issuance of the final rule on the subject of dealer notification because it had not resolved all the issues raised by the comments on that subject that had been submitted in response to the NPRM.

The agency has now fully considered those issues. However, because it has tentatively decided to revise its original proposal significantly, the agency has decided to issue a supplemental notice of proposed rulemaking to obtain comments on the new proposal.

Statutory Framework

Under 49 U.S.C. 30118(c), a manufacturer of motor vehicles or replacement equipment for motor vehicles must notify NHTSA and owners, purchasers, and dealers if it decides in good faith that a safety-related defect or noncompliance exists in its vehicles or items of equipment. This notification must be accomplished within a reasonable time after the manufacturer decides that the defect or noncompliance exists. 49 U.S.C. 30119(c)(2). Similarly, if NHTSA decides, pursuant to 49 U.S.C. 30118(b), that vehicles or equipment items contain a safety-related defect or noncompliance, the agency must order the manufacturer to notify owners, purchasers, and dealers of the defect or noncompliance by a date prescribed by NHTSA. 49 U.S.C. 30119(c)(1). Section 30119(d)(4) of Title 49 specifies that manufacturers are to notify their dealers ''by certified mail or quicker means if available.''

These statutory provisions were originally enacted in 1974. Soon afterwards, NHTSA promulgated regulations addressing the duty to notify the agency and to notify owners and purchasers. 49 CFR Parts 573 and 577. However, the agency did not issue regulations addressing dealer notification.

Under 49 U.S.C. 30120(i), which was enacted as part of the Intermodal Surface Transportation Efficiency Act of 1991, if a manufacturer has provided notification to a motor vehicle dealer that a new motor vehicle or new item of replacement equipment in the dealer's possession contains a safety-related defect or noncompliance, the dealer may sell or lease the vehicle or equipment item only if the defect or noncompliance has been remedied before delivery under the sale or lease. This section was recently amended to clarify that this requirement also applies to equipment dealers. See section 7106(a) of the Transportation Equity Act for the 21st Century, Pub. L. 105–178 (June 9, 1998).

Under 49 U.S.C. 30116, motor vehicle manufacturers and distributors who do not provide dealers with the parts to remedy a safety-related defect or noncompliance, and all manufacturers of motor vehicle equipment items that have been determined to contain such a defect or noncompliance, must offer to repurchase all such vehicles and equipment items that remain in distributor or dealer inventory at the price paid, plus transportation and other charges.

Heretofore, NHTSA has not adopted regulations addressing the provisions of section 30120(i) or section 30116.

Dealer Notification in the NPRM

With respect to dealer notification, the September 1993 NPRM proposed that manufacturers conducting a safety recall provide their dealers with a document that contained the information set forth in the report submitted to the agency pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports,'' within five working days after submitting the report to NHTSA. If any of the required information was not known at the time of the original notification, it would have to be sent to the dealers as soon as possible after it became known by the manufacturer. The NPRM also proposed recordkeeping requirements.

NHTSA received comments on the dealer notification proposals in that

NPRM from manufacturer and dealer associations, individual manufacturers, and Advocates for Highway and Auto Safety. After considering those comments, NHTSA prepared a draft of a final rule. Pursuant to the Paperwork Reduction Act, the agency published a **Federal Register** notice requesting public comment on the potential paperwork burdens associated with the proposed final rule. 62 FR 63598 (December 1, 1997). Although that notice did not set out the anticipated regulatory language, it described the general approach that the agency was planning to adopt in the final rule. Comments objecting to the paperwork burdens and criticizing the agency's approach were submitted by manufacturer and dealer associations. In addition, representatives of those associations met with agency officials during March 1998 to discuss these issues. Memoranda summarizing those meetings have been placed in the docket for this rulemaking.

NHTSA's Revised Proposal

After considering the information presented in all of the comments and at those meetings, the agency is now proposing a different regulatory approach. In lieu of the fixed five-day period for dealer notification contemplated in the NPRM, the agency is now proposing to require manufacturers to notify their dealers of safety defects and noncompliances in accordance with a schedule submitted to the agency with the manufacturer's Part 573 report. Such a schedule will be reviewable by NHTSA to assure that the notification will be within a reasonable time.

This decision to permit greater flexibility than originally proposed is based on NHTSA's recognition that the process of dealer notification has worked well for over 20 years, notwithstanding the absence of formal regulatory requirements. In conformity with the statutory duty to notify dealers within a ''reasonable time'' (49 U.S.C. 30119(c)(2)), manufacturers have generally notified their dealers of defects and noncompliances in a manner that has allowed repairs to be performed promptly, with minimal disruption of the dealers' operations.

Where manufacturers have concluded that a defect or noncompliance presented an immediate safety risk, they have notified their dealers as soon as the defect or noncompliance determination was made, and have directed the dealers to stop sales (and leases) until the problem is corrected. On occasion, however, NHTSA and a manufacturer have disagreed about when notification should occur or whether immediate notification and immediate cessation of sales is appropriate. For this reason, the agency needs to know the manufacturer's proposed schedule for dealer notification so it can assess the safety implications of that schedule. Therefore, NHTSA is proposing a new section 573.5(c)(8)(iii), which would require the manufacturer to include the estimated date of its dealer notification in its Part 573 defect or noncompliance report, in the same manner as section 573.5(c)(8)(ii) currently requires the submission of the manufacturer's proposed schedule for its owner notification and remedy campaign. In addition, to eliminate the possibility that any disagreements between NHTSA and the manufacturers concerning the notification date of dealers, NHTSA is proposing a new section 577.7(c)(1), requires manufacturers to comply with a NHTSA order to notify their dealers on a specific date, if the agency has found that notification at that time is in the public interest. In making such determinations, the agency will consider such factors as the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; availability of an interim remedial action by the owner; whether an initial dealer inspection would identify suspect vehicles or equipment items; the time frame in which the defect will manifest itself; whether there will be a delay in the availability of the remedy from the manufacturer; and, in those recalls where a delay is expected, the anticipated length of such delay.

The foregoing applies to recalls following defect and noncompliance determinations by the manufacturer, pursuant to 49 U.S.C. 30118(c). Consistent with 49 U.S.C. 30119(c)(1), NHTSA has proposed in section 577.7(d) that where a recall is ordered by the Administrator pursuant to 49 U.S.C. 30118(b), the notification to dealers must be given on or before the date prescribed in the Administrator's order.

NHTSA is aware that this proposal could be construed by some as a step back from the proposal in the NPRM, which would have required manufacturers to notify dealers of all recalls within five working days of notifying NHTSA. However, the agency now believes that such a requirement could have several perverse effects. First, it could encourage manufactures to delay notifying NHTSA of a defect or noncompliance determination until the remedy was developed and a sufficient number of repair parts stockpiled. This would be particularly prejudicial in cases where owners could take steps to minimize the safety risk associated with the defect during the time the remedy was being developed.

Second, the proposal in the NPRM could encourage dealers to create their own inspection and remedy procedures in order to be able to sell otherwise embargoed vehicles quickly if the manufacturer's remedy were not available. The agency believes that dealers would be less likely to do this if embargoes were only required in those recalls that involved serious, imminent safety problems, because of the obvious safety risk and potential financial liability.

Finally, the agency notes that in many recalls, the safety consequences of the defect are unlikely to arise until the vehicle has been in service for an extended period of time; e.g., where the problem is caused by corrosion or metal fatigue. In such recalls, where repair parts are scarce, the proposal in the NPRM could encourage dealers to use those parts to fix vehicles in inventory rather than vehicles in service, even though the vehicles in service would be more likely to experience a safety problem as a result of the defect.

Another proposed change from the original NPRM is that manufacturers would not be required to include in the notification to dealers all of the information required to be submitted to NHTSA in the manufacturer's Part 573 report. See 49 CFR 573.5(c). Rather, as set out in new proposed section 577.11(a), the notice to dealers would only have to include the following: a statement that identifies the notification as being part of a safety recall campaign, an identification of the vehicles or items of equipment covered by the recall, a description of the defect or noncompliance, and a brief evaluation of the risk to motor vehicle safety related to the defect or noncompliance. The notification would also have to include a complete description of the recall remedy and the estimated date on which the remedy will be available. Information required by this paragraph that is not available at the time of the dealer notification would have to be provided to dealers as it becomes available.

To help effectuate 49 U.S.C. 30120(i), new section 577.11(b) provides that the dealer notification would have to contain an advisory stating that dealers are prohibited by Federal law from selling or leasing a new motor vehicle or new item of replacement equipment covered by the notification until the defect or noncompliance is remedied. Similarly, to assist in the implementation of 49 U.S.C. 30116, new

section 577.11 (c) provides that, for equipment items, the notification must also inform the dealer of the manufacturer's offer to repurchase the defective or noncomplying equipment that remain in the dealer's inventory at the price paid plus transportation and other charges. NHTSA has tentatively concluded that such language is not necessary with respect to notifications regarding defects and noncompliances in vehicles, since vehicle manufacturers generally provide their dealers with parts needed to remedy the defect or noncompliance, thus obviating the duty to repurchase.

The NPRM did not propose to require manufacturers to include these advisories in the notification sent to dealers. However, the statutory provisions were referenced in the NPRM, and the proposed advisories were alluded to in the Paperwork Reduction Act notice. All interested persons will now have the opportunity to comment on these provisions.

The NPRM would have required manufacturers to maintain records to confirm that they notified their dealers of the defect or noncompliance and that the dealers received the notification. The agency has decided that it would be unduly burdensome, and perhaps impracticable, to require manufacturers to keep records reflecting that each dealer received the notification. Therefore, proposed new section 577.11(d) requires only that the manufacturer be able to verify that it has sent the notification to its dealers and the date of such notification.

In response to comments by an association of equipment manufacturers, NHTSA is proposing two provisions to ease the burden on those manufacturers. First, proposed section 577.7(c)(2)(ii) provides that if a manufacturer of replacement equipment or tires sells its products to a group of retailers or distributors through a central office, notification to that central office will be deemed to be notification to the entire group. Second, proposed section 577.7(c)(2)(iii) would allow manufacturers that provide their products to retail outlets through independent distributors to use that distribution network for dealer notification purposes, if the distributors agree to transmit the notification to all applicable retail dealers within five working days of their receipt of the manufacturer's notification. However, the manufacturer would bear the legal responsibility for ensuring that all of its dealers and retail outlets receive the required notification in a timely manner.

Finally, NHTSA is also amending sections 577.1, ''Scope,'' and 577.2, ''Purpose,'' to reflect the new dealer notification requirements added to Part 577.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures, and determined that it is not a ''significant regulatory action'' within the meaning of Sec. 3 of E.O. 12866 and is not ''significant'' within the meaning of the Department of Transportation regulatory policies and procedures.

Manufacturers are currently required by statute to notify their dealers of safety defects and noncompliances. 49 U.S.C. 30118(b) and (c). Such notification must be within a ''reasonable time.'' 49 U.S.C. 30119(c)(2). This final rule restates that requirement, adding only that in the event that NHTSA disagrees with the manufacturer's assessment of what time period is reasonable, the agency's determination will control.

The agency anticipates, based on past experience, that there will be few disagreements on this issue. In any event, an agency order directing the manufacturer to accelerate its dealer notification will not impose any additional costs directly on the manufacturer, since the notification would eventually have to be made anyway.

NHTSA recognizes that an embargo on dealer sales of defective or noncompliant vehicles and equipment imposes costs, and that these costs could be relatively high if a large number of vehicles or equipment items is affected or if there is a significant delay in developing and implementing a remedy for the defect or noncompliance. In the first instance, such costs would be borne by dealers, since they might have to maintain inventory that could not be sold. However, the ultimate burden would almost certainly be borne by the manufacturers, either through contractual provisions or pursuant to 49 U.S.C. 30116, which requires manufacturers to provide, among other things, ''reasonable reimbursement of at least one percent a month of the price paid prorated from the date of notice of noncompliance or defect . . . .''

To the extent that agency orders issued pursuant to this rule impose additional costs, those costs would be outweighed by the safety benefit of ensuring that dealers do not sell or lease new motor vehicles or new items of replacement equipment containing safety-related defects or noncompliances before the defect or noncompliance has been remedied, as required by 49 U.S.C. 30120(i). Moreover, any impacts are likely to be minimal, because manufacturers will have an incentive to develop and provide a remedy as soon as possible.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The proposed new regulatory requirements would apply directly only to manufacturers of motor vehicles and items of motor vehicle equipment, which for the most part are not small businesses. Moreover, manufacturers are already required by statute to notify their dealers of defects and noncompliances. The only effect of the regulation is to require that, in relatively rare cases, manufacturers will be required to send notification to dealers earlier than the manufacturer had proposed in its Part 573 Report. Since manufacturers will generally have all of the required information at the time the notification is required, and can submit other required information as it becomes available, there should be no additional direct burden on manufacturers associated with this rule.

As noted above, a notification that required an embargo on sales could have an adverse effect on dealers, which often are small businesses, in that the dealers would be prohibited from selling or leasing defective or noncompliant vehicles or equipment items that had not been remedied. However, for the reasons described above, the costs associated with such a delay would almost certainly be borne by the manufacturer. In any case, such costs are the result of requirements imposed by 49 U.S.C. 30120(i), not this rule. Moreover, any impacts are likely to be minimal, because manufacturers will have an incentive to develop and provide a remedy as soon as possible. Finally, any such impacts would be offset by the safety benefits associated with preventing the sale or lease of defective or noncompliant vehicles or equipment items.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has analyzed the environmental impacts of this rulemaking action and determined that implementation of this action would not have a significant impact on the quality of the human environment. The new notification requirements would not introduce any new or harmful matter into the environment.

4. Paperwork Reduction Act

This proposal contains provisions which are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The reporting requirements associated with this proposed rule are subject to approval by OMB in accordance with 44 U. S. C. Chapter 3500. The agency needs this information in order to avoid unreasonable delays in dealers' receiving notification that vehicles or equipment in their inventory contain safety-related defects or noncompliances requiring a remedy. The agency will use this information to take appropriate action in those cases where the manufacturer's estimated dealer notification date seems to be inappropriate in relation to the severity of the recalled defect or noncompliance condition. Manufacturers will need to provide the agency with the estimated dealer notification date for each recall that they conduct. Manufacturers will only have to make the necessary changes to the dealer notification letter one time, since these changes will be replicated in all subsequent dealer notifications. The respondents affected by this proposal are manufacturers of motor vehicles and motor vehicle equipment. The respondents do not need to complete any standardized forms in order to be in compliance with this proposal. The agency estimates that the total number of burden hours for all manufacturers affected by this proposal would be 250, with an average burden hour for each of 500 involved respondents of ½ hour. The agency estimates that the total cost burden for all manufacturers affected by this proposal would be $12,500 (250 burden hours × $50 per hour respondent labor cost), with an average cost burden for each of 500 involved respondents of $25.

For further information contact Mr. Walter Culbreath, Office of Information Resources Management, NAD–40, NHTSA, 400 Seventh Street, SW, Washington, DC 20590 (Telephone: 202–366–1566). Individuals and organizations may submit comments on the proposed information collection requirements by June 18, 1999, and should direct them to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590, referencing the docket notice numbers cited at the beginning of this notice.

Pursuant to the Paperwork Reduction Act of 1995, and OMB's regulation at 5 CFR 1320.5(b)(2), NHTSA informs the potential individuals and organizations who are to respond to the collection of information that they are not required to respond to the collection of information unless it displays a currently valid OMB control number. The proposed amendment requiring notification of NHTSA adds to an information collection requirement in 49 CFR part 573 that has already been approved by OMB. The OMB control number for that collection of information is 2127–0004. The proposed amendment of 49 CFR part 577 to require manufacturers to include certain information in the notification of defect or noncompliance sent to dealers is a new information collection requirement (since the Paperwork Reduction Act did not apply to such third-party information collections prior to 1995). Accordingly, it does not have an OMB control number. The agency intends to obtain a valid OMB control number prior to the promulgation of the final rule.

5. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

6. Executive Order 13084 (Consultation/Coordination with Indian Tribal Governments)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, and it has been determined that the proposed rulemaking would not significantly or uniquely affect Indian tribal governments.

7. Unfunded Mandates Reform

This proposed rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995 or under Executive Order 12875. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector; and is the least burdensome alternative that achieves the objective of the proposed rule.

8. Civil Justice Reform Act

The proposed rule would not have a retroactive or preemptive effect. Judicial review of the proposed rule would be obtainable under 5 U.S.C. section 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

List of Subjects

49 CFR Part 573

Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 577

Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed that Parts 573 and 577 of Title 49 of the Code of Federal Regulations be amended as follows:

PART 573—DEFECT AND NONCOMPLIANCE REPORTS

1. Section 573.5 would be amended by redesignating paragraphs (c)(8)(iii) and (c)(8)(iv) as paragraphs (c)(8)(iv) and (c)(8)(v), respectively, and by adding new paragraph (c)(8)(iii) to read as follows:

§ 573.5 Defect and noncompliance information report.

* * * * *

(c) * * *

(8) * * *

(iii) The estimated date on which it will send notifications to dealers that there is a safety-related defect or noncompliance. If a manufacturer subsequently becomes aware that such notification will be delayed by more than two weeks, it shall promptly advise the agency of the delay and the reasons therefor, and furnish a revised estimate.

* * * * *

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

2. Section 577.1 would be revised to read as follows:

§ 577.1 Scope.

This part sets forth requirements for notification to owners and dealers of motor vehicles and items of replacement equipment about a defect that relates to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard.

3. Section 577.2 would be amended by adding a new sentence at the end to read as follows:

§ 577.2 Purpose.

* * * It is also to ensure that dealers of motor vehicles and items of

replacement equipment are made aware of the existence of defects and noncompliances and of their rights and responsibilities with regard thereto.

4. Section 577.7 would be amended by adding new paragraphs (c) and (d) to read as follows:

§ 577.7 Time and manner of notification.

* * * * *

(c) The dealer notification required by § 577.11 shall—

(1) Be furnished within a reasonable time after the manufacturer decides that a defect that relates to motor vehicle safety or a noncompliance exists, in accordance with the schedule submitted to the agency pursuant to 49 CFR 573.5(c)(8)(iii). The manufacturer's proposed schedule may be reviewed by the Administrator. The Administrator may order a manufacturer to send the notification to dealers on a specific date where the Administrator finds, after consideration of available information, that such notification is in the public interest. The factors that the Administrator may consider include, but are not limited to, the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; whether a dealer inspection would identify vehicles or equipment items that contain the defect or noncompliance; whether there will be a delay in the availability of the remedy from the manufacturer; and, in those recalls where a delay is expected, the anticipated length of such delay.

(2) Be accomplished—

(i) In the case of a notification required to be sent by a motor vehicle manufacturer, by certified mail, verifiable electronic means, or other more expeditious and verifiable means to all dealers.

(ii) In the case of a notification required to be sent by a manufacturer of replacement equipment or tires, by certified mail, verifiable electronic means, or other more expeditious and verifiable means to all retailers, dealers, and purchasers of such equipment for purposes of re-sale. Where the manufacturer sold the recalled equipment to a group of retailers or distributors through a central office, notification to that central office will suffice for notification to the group.

(iii) In those cases where a manufacturer uses independent distributors to provide products and information to retail outlets, the manufacturer may satisfy its dealer notification responsibilities by providing the information required by this section to its distributors, if those distributors agree to transmit it to all applicable retail dealers within five additional working days. The manufacturer shall retain the legal responsibility for ensuring that its dealers receive the information in a timely manner.

(d) Notwithstanding paragraph (c)(1) of this section, where the recall is being conducted pursuant to an order issued by the Administrator under 49 U.S.C. 30118(b), the notification to dealers shall be given on or before the date prescribed in the Administrator's order.

5. A new section 577.11 would be added to read as follows:

§ 577.11 Dealer notification.

(a) The notification to dealers of a safety-related defect or noncompliance with a Federal motor vehicle safety standard shall contain a clear statement that identifies the notification as being part of a safety recall campaign, an identification of the vehicles or items of equipment covered by the recall, a description of the defect or noncompliance, and a brief evaluation of the risk to motor vehicle safety related to the defect or noncompliance. The notification shall also include a complete description of the recall remedy, and the estimated date on which the remedy will be available. Information required by this paragraph that is not available at the time of the dealer notification shall be provided to dealers as it becomes available.

(b) The notification shall also include an advisory stating that it is a violation of Federal law for a dealer to sell or lease new vehicles or new items of replacement equipment covered by the notification until the defect or noncompliance is remedied.

(c) For notifications of defects or noncompliances in items of motor vehicle equipment, the notification shall contain the manufacturer's offer to repurchase the items that remain in the dealer's inventory at the price paid by the dealer, plus transportation charges and reasonable reimbursement of at least one per cent a month prorated from the date of notification to the date of repurchase.

(d) The manufacturer must be able to verify that it sent the required notification to each of its dealers and the date of that notification.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 99–12616 Filed 5–18–99; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 64, No. 96
Wednesday, May 19, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: June 3, 1999 (8:30 a.m. to 5:30 p.m.).

Location: Ronald Reagan Building, Amphitheatre, 1300 Pennsylvania Avenue, NW, Washington, DC.

This meeting, entitled ''Whither Foreign Aid?'' will focus on foreign assistance in the new millennium. Leading development thinkers will discuss the political, economic, environmental, and other trends that influence the foreign aid program. Speakers and participants will explore how the lessons learned over the past 50 years, and current international trends, are certain to shape how foreign assistance will look in the years to come. The meeting will also feature the formal presentation to the public of the ACVFA's working paper ''USAID and Civil Society: Toward a Policy Framework.''

The meeting is free and open to the public. HOWEVER, NOTIFICATION BY JUNE 1, 1999 THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED. Persons wishing to attend the meeting must fax their name, organization and phone number to Lisa J. Harrison (703) 741–0567.

Dated: May 11, 1999.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 99–12536 Filed 5–18–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Patent Application Serial No. 09/247,219 filed on February 10, 1999, entitled ''Production of High Protein Concentrates'' is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to EnerGenetics International, Inc., of Nauvoo, Illinois, an exclusive license to S.N. 09/247,219.

DATES: Comments must be received on or before August 17, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, 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 EnerGenetics International, Inc., 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, within ninety (90) days from the date of this published Notice, 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. 99–12575 Filed 5–18–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–034–1]

Availability of an Environmental Assessment and Finding of No Significant Impact for Field Testing Marek's Disease—Newcastle Disease Vaccine, Serotypes 1 and 3, Live Marek's Disease Virus Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed live viral vaccine to protect poultry from Marek's disease and Newcastle disease. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing 14 days after the date of this notice, unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a veterinary biological product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and finding of no significant impact and the product meets all other requirements for licensure.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are available for public inspection at USDA, room 1141, South

Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Technical Writer-Editor, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone: (301) 734–5338; fax: (301) 734–4314; or e-mail: Jeanette.B.Greenberg@usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS'' authorization to ship the product for field testing.

In determining whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA). APHIS has concluded that field testing the unlicensed veterinary biological product will not significantly affect the quality of the human environment. Based on this finding of no significant impact (FONSI), we have determined that there is no need to prepare an environmental impact statement.

An EA and FONSI have been prepared by APHIS concerning the field testing of the following unlicensed veterinary biological product:

Requester: Tri Bio Laboratories, Inc.

Product: Marek's Disease-Newcastle Disease Vaccine, Serotypes 1 and 3, Live Marek's Disease Virus Vector.

Field test locations: Wisconsin, North Carolina, and California.

The above-mentioned vaccine is for use as an aid in the prevention of Marek's disease and Newcastle disease in chickens. In this vaccine, the live vector is Marek's disease serotype 3 virus, also known as turkey herpesvirus, a nonpathogenic virus in widespread use as a poultry vaccine since 1972. Genetic engineering procedures were used to insert into the vector virus two genes from Marek's disease serotype 1 virus and two genes from the Newcastle disease virus.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize shipment of the above product for the initiation of field tests 14 days from the date of this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA and FONSI that were generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and FONSI, APHIS does not intend to issue a separate EA to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 13th day of May 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–12576 Filed 5–18–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on June 3, 1999 in Brookings, Oregon at the Best Western Brookings Inn located at 1143 Chetco Avenue. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Northwest Forest Plan implementation monitoring; (2) Aquatic Conservation Strategy; (3) Public comment; and (4) Current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee Coordinator, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone (541) 858–2322.

Dated: May 12, 1999.

Charles J. Anderson,

Acting Designated Federal Official.

[FR Doc. 99–12521 Filed 5–18–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed disposals of excess commodities currently held in the National Defense Stockpile.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee seeks public comment on the potential market impact of Department of Defense proposed new material disposal of zirconium ore, from the Stockpile under the Fiscal Year 1999 Annual Materials Plan (AMP). The Committee also seeks public comment on the Department of Defense plan to increase its current disposal levels for Vegetable Tannin Extract (Quebracho) and Thorium Nitrate under the AMP.

DATES: Comments must be received by June 18, 1999.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; FAX (202) 501–0657.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S.

Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (as National Defense Stockpile Manager) maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. In making disposals and acquisitions of Stockpile materials, Defense is required by law to refrain from causing undue market disruption, while at the same time protecting the government against avoidable loss.

Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile . . . .'' The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State.

The Committee is now considering Defense's proposed new Stockpile material disposal level and revisions to current Stockpile material disposal levels under the FY 1999 AMP. The new Stockpile material listed in bold in Attachment 1 cannot be sold until Congress has approved its disposal. It is expected that Congress will soon grant disposal authority.

The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.'' In order for the Committee to obtain sufficient information to prepare its recommendations to Defense, the Committee hereby requests that interested parties provide comment on the potential market impact of the commodities identified in Attachment 1.

The attached AMP listing includes the proposed maximum disposal quantity for each material. These quantities are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by June 18, 1999 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Information that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 6883, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–0109. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: May 14, 1999.

Brad I. Botwin,

Acting Director, Strategic Industries and Economic Security.

Attachment 1

PROPOSED REVISIONS TO CURRENT FY 1999 AMP

[The material in ***bold*** and ***italic*** is under congressional consideration]

	Units	Current FY 1999 quantity	Revised FY 1999 quantity
Thorium Nitrate	Lb	1,000,000	7,091,891
VTE, Quebracho	LT	10,000	16,000
Zirconium ore (baddeleyite)	***SDT***	***0***	***17,383***

[FR Doc. 99–12612 Filed 5–18–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with sec. 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of May 1999, interested parties may request an administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period
Antidumping Duty Proceedings	
Argentina: Welded Carbon Steel Pipe & Tube, A–357–802	05/01/98–04/30/99
Brazil: Iron Construction Castings, A–351–503	05/01/98–04/30/99
Brazil: Malleable Cast Iron Pipe Fittings, A–351–505	05/01/98–04/30/99
Brazil: Frozen Concentrated Orange Juice, A–351–605	05/01/98–04/30/99
France: Antifriction Bearings, A–427–801	05/01/98–04/30/99
Germany: Antifriction Bearings, A–428–801	05/01/98–04/30/99
India: Welded Carbon Steel Pipes & Tubes, A–533–502	05/01/98–04/30/99
Italy: Antifriction Bearings, A–475–801	05/01/98–04/30/99
Japan: Antifriction Bearings, A–588–804	05/01/98–04/30/99
Japan: Gray Portland Cement and Cement Clinker, A–588–815	05/01/98–04/30/99
Japan: Polyvinyl Alcohol, A–588–836	05/01/98–04/30/99
People's Republic of China: Iron Construction Castings, A–570–502	05/01/98–04/30/99
People's Republic of China: Pure Magnesium, A–570–832	05/01/98–04/30/99
People's Republic of China: Polyvinyl Alcohol, A–570–842	05/01/98–04/30/99
Romania: Antifriction Bearings, A–485–801	05/01/98–04/30/99
Russia: Pure Magnesium, A–821–805	05/01/98–04/30/99
Singapore: Antifriction Bearings, A–559–801	05/01/98–04/30/99
South Korea: Malleable Cast Iron Pipe Fittings, A–580–507	05/01/98–04/30/99
South Korea: Dynamic Random Access Memory Semiconductors of 1 Megabit and Above, A–580–812	05/01/98–04/30/99
Sweden: Antifriction Bearings, A–401–801	05/01/98–04/30/99
Taiwan: Certain Circular Welded Carbon Steel Pipes and Tubes, A–583–008	05/01/98–04/30/99
Taiwan: Malleable Cast Iron Pipe Fittings, A–583–507	05/01/98–04/30/99
Taiwan: Polyvinyl Alcohol, A–583–824	05/01/98–04/30/99
Turkey: Welded Carbon Steel Pipe & Tube, A–489–501	05/01/98–04/30/99
Ukraine: Pure Magnesium, A–823–806	05/01/98–04/30/99
United Kingdom: Antifriction Bearings, A–412–801	05/01/98–04/30/99
Countervailing Duty Proceedings:	
Brazil: Iron Construction Castings, C–351–504	01/01/98–12/31/98
Sweden: Viscose Rayon Staple Fiber, C–401–056	01/01/98–12/31/98
Venezuela: Ferrosilicon, C–307–808	01/01/98–12/31/98
Suspension Agreements	
None.	

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by a exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Shelia Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of Initiation of

Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation for requests received by the last day of May 1999. If the Department does not receive, by the last day of May 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 13, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–12626 Filed 5–18–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 051399A]

Availability of a Final Supplemental Environmental Impact Statement on a Proposed Modification of Plum Creek Timber Company's Incidental Take Permit for Threatened and Endangered Species on portions of its lands in the Central Cascades, King, and Kittitas Counties, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of availability of a final supplemental environmental impact statement.

SUMMARY: This notice advises the public that the Final Supplemental Environmental Impact Statement (Supplement) is available for review. Plum Creek Timber Company has requested modification of their incidental take permit (PRT–808398) (Permit) to accommodate the new land base expected as a result of a legislated land exchange with the U.S. Forest Service. NMFS and FWS (Services) prepared the Supplement. The Final Environmental Impact Statement (Statement) associated with the original Habitat Conservation Plan (Plan) and Permit is not being re-opened or re-analyzed, and the decisions based on the original Statement are not being reconsidered. The Services herein announce the availability of the final Supplement for the proposed modification pursuant to the National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Publication of the Record of Decision will occur no sooner than June 18, 1999.

ADDRESSES: Individuals wishing copies of the final Supplement should contact William Vogel, FWS, or Dennis Carlson, NMFS, Pacific Northwest Habitat Conservation Plan Program, 510 Desmond Drive SE., Suite 102, Lacey, Washington 98503–1273; telephone (360) 753–9440 or (360) 753–5828 respectively. Copies may also be obtained by contacting Michael Collins, Project Leader, Plum Creek Timber Company, 999 Third Avenue, Suite 2300, Seattle, Washington 98104; or call (206) 467–3639. See **SUPPLEMENTARY INFORMATION** for other locations where the final Supplement and supporting documents may be obtained.

FOR FURTHER INFORMATION CONTACT: William Vogel, FWS, or Dennis Carlson, NMFS. Both are located at the office of the Pacific Northwest Habitat Conservation Plan Program, at the addresses and telephone numbers listed (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the final Supplement and supporting documents are also available at the following libraries:

Wenatchee Public Library, Attention: Sandy Purcell, 310 Douglas Street, Wenatchee, Washington 98801

University of Washington Library, Attention: Carolyn Aamot, Government Publications Department, 170 Suzzallo Library, Seattle, Washington 98195–2900

Seattle Public Library, Attention: Jeanette Voiland, Government Publications Department, 1000 Fourth Avenue, Seattle, Washington 98104

Evergreen State College, Attention: Lee Lyttle, Library Campus Parkway - L23100H, Olympia, Washington 98505

Central Washington University, Attention: Dr. Patrick McLaughlin, Library Collection Development, Ellensburg, Washington 98926

King County Library System, Attention: Cheryl Standley, Documents Department, 1111 110th Avenue Northeast, Bellevue, Washington 98004

The Plum Creek Plan for the central Cascades was accepted and the Permit was originally issued on June 27, 1996. Both apply to a 170,600–acre Project Area located within a 418,700–acre Planning Area. The Planning Area is located within east King County and west Kittitas County, Washington, and is bisected by U.S. Interstate–90. The Planning Area includes not only Plum Creek lands, but National Forest lands and lands of other ownerships.

The Permit allows Plum Creek to incidentally take threatened and endangered fish and wildlife while requiring implementation of a conservation plan with a habitat-based, prescriptive-management strategy designed to minimize and mitigate such incidental take. The Plan approved in 1996 contemplated that Plum Creek lands managed under the Plan and Permit would likely change as a result of future land exchanges with the United States. Consequently, the Plan and associated Implementation Agreement provide procedures and criteria for modification of the Plan to accommodate the exchange of lands. The Plan describes two scenarios for land exchanges with the United States whereby the biological integrity of the Plan would be either maintained or improved. One scenario exchanges Plum Creek-owned lands in the Planning Area for Government-owned lands outside of the Planning Area. Another scenario describes an exchange of Federal and Plum Creek lands so that within the Planning Area there is: (1) an increase in National Forest land managed as Late-Successional Reserves or Adaptive Management Areas under the Northwest Forest Plan; (2) reduced Federal ownership of lands managed as Matrix under the Forest Plan; and (3) there is a net decrease in harvestable area.

In October of 1998, House Resolution 4328 authorized and directed the consummation of the Interstate–90 Land Exchange. The potential land exchange would result in a transfer to the Forest Service of up to 50,000 acres of the 170,600–acre Project Area previously covered by Plum Creek's Permit and Plan, and the transfer of up to 10,200 acres of National Forest lands within the 418,700–acre Planning Area to Plum Creek. Plum Creek would also acquire additional lands outside the Planning Area which are not addressed in the final Supplement as these lands would not be included on the Permit. The authorized land exchange is a combination of the two scenarios

determined to be beneficial in the original Plan.

A draft Supplement was released on December 18, 1998 (63 FR 70155), and the 52-day comment period closed on February 8, 1999. The final Supplement contains summaries and responses to the comments received.

The final Supplement analyzes Plum Creek's proposal in order to determine the environmental impact (beneficial or adverse) that would result from implementation of the Plan modification, as compared to the original Federal Action (approval and implementation of the original Plan and issuance of a Permit). It does not address the Federal action of land exchange.

The final Supplement considers three alternatives, including the Proposed Action and the No-action Alternatives. Under the No-action Alternative, Plum Creek would continue to implement the existing Plan on the current land base. This alternative includes specific mitigation for wildlife whether or not those species are listed under the Endangered Species Act (ESA). The Proposed Action would allow the modification of the Plan to accommodate the new land base and would, therefore, apply the Plan standards to the newly acquired Plum Creek lands. The Northwest Forest Plan would apply to newly acquired National Forest lands. The Partial-Modification Alternative would allow the transfer of lands from Plum Creek to the Forest Service, but would not add the newly acquired Plum Creek lands to the Plan. Instead, take prohibitions under section 9 of the ESA would apply with respect to listed species, but no conservation would be required for other wildlife and special habitats.

Author: William O. Vogel, Pacific Northwest Habitat Conservation Plan Program.

Authority: 16 U.S.C. 1361–1407, 1531–1544, and 4201–4245.

Dated: May 11, 1999.

Thomas Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

Dated: May 13, 1999.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–12611 Filed 5–18–99; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

May 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward, carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 53880, published on October 7, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on May 19, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	411,423 dozen.
314	6,141,971 square meters.
331/631	4,117,857 dozen pairs.
333/633	21,477 dozen.
334/634	1,018,922 dozen.
335/835	223,410 dozen.
336/636/836	623,107 dozen.
338/339	1,807,112 dozen.
340/640	1,606,813 dozen.
341/641	2,143,130 dozen of which not more than 1,667, 069 dozen shall be in Category 341 and not more than 1,667,069 dozen shall be in Category 641.
342/642/842	879,425 dozen.
345/845	244,439 dozen.
347/348/847	1,865,019 dozen.
350/650	125,883 dozen.
351/651	508,718 dozen.
352/652	1,783,034 dozen.
359–C/659–C [2]	1,466,930 kilograms.
360	1,925,872 numbers.
363	14,940,909 numbers.
369–D [3]	52,668 kilograms.
369–S [4]	1,012,467 kilograms.
434	8,278 dozen.
435	17,739 dozen.
440	11,826 dozen.
611	7,128,959 square meters.
635	530,087 dozen.
638/639/838	1,145,685 dozen.
644	652,207 numbers.
645/646	144,821 dozen.
647/648	1,175,980 dozen.
840	253,210 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–12552 Filed 5–18–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend two 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 June 18, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency'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 Defense Logistics Agency proposes to amend two 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 changes to the systems of records 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 systems report. The record systems being amended are set forth below, as amended, published in their entirety.

Dated: May 13, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.01 DMDC

SYSTEM NAME:

Defense Outreach Referral System (DORS) *(February 9, 1996, 61 FR 4964).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access to data at all locations is restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.'

* * * * *

S322.01 DMDC

SYSTEM NAME:

Defense Outreach Referral System (DORS).

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Defense military and civilian personnel and their spouses; U.S. Coast Guard personnel and their spouses; and participating Federal department's and/or agencies' civilian employees and their spouses who have applied to take part in this job placement program.

Individuals covered under Pub. L. 102–484 and 103–337, who have applied for public employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of name, Social Security Number, correspondence address, branch of service, date of birth, separation status, travel availability, U.S. citizenship, occupational interests, geographic location work preferences, pay grade, rank, last unit of assignment, educational levels, dates of military or civilian service, language skills, flying status, security clearances, civilian and military occupation codes, and self reported personal comments for the purpose of providing prospective employers with a centralized system for locating potential employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, 1143, 1144, 2358; 31 U.S.C. 1535; Pub.L. 101–510, 102–484 and 103–337; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to facilitate the transition of current and former Defense military and their spouses; U.S. Coast Guard personnel and their spouses; and participating Federal department's and/or agencies' civilian employees and their spouses to private industry and public employment in the event of a downsizing of the Department of Defense and the Federal Government.

For former military members covered under Pub. L. 102–484 and Pub. L. 103–337, the information will be used to track the participants public employment and to verify the participant's public employment history for DoD and DoT retirement and pay eligibility.

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' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage.

RETRIEVABILITY:

Retrieved by Social Security Number or occupational or geographic preference of the individual.

SAFEGUARDS:

Access to data at all locations is restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this record system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The Military Services, DoD Components, the U.S. Coast Guard, participating Federal departments and/or agencies, and from the subject individual via application into the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.50 DMDC

SYSTEM NAME:

Defense Eligibility Records *(September 29, 1997, 62 FR 50912).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.'

* * * * *

SAFEGUARDS:

Delete the last sentence in the first paragraph. Delete last paragraph.

* * * * *

S322.50 DMDC

SYSTEM NAME:

Defense Eligibility Records.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Armed Forces and reserve personnel and their family members, retired Armed Forces personnel and their family members; surviving family members of deceased active duty or retired personnel; active duty and retired Coast Guard personnel and their family members; active duty and retired Public Health Service personnel (Commissioned Corps) and their family members; active duty and retired National Oceanic and Atmospheric Administration employees (Commissioned Corps) and their family members; and State Department employees employed in a foreign country and their family members; civilian employees of the Department of Defense; and any other individuals entitled to care under the health care program or to other DoD benefits and privileges; providers and potential providers of health care; and any individual who submits a health care claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer files containing beneficiary's name, Service or Social Security Number, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary or sponsor, date of birth of beneficiary, sex of beneficiary, branch of Service of sponsor, dates of beginning and ending eligibility, number of family members of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of sponsor, rank/pay grade of sponsor, index fingerprints and photographs of beneficiaries, blood test results, dental care eligibility codes and dental x-rays.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapters 53, 54, 55, 58, and 75; 10 U.S.C. 136; 31 U.S.C. 3512(c); 50 U.S.C. Chapter 23 (Internal Security); DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards; and to detect fraud and abuse of the benefit programs by claimants and providers.

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 the Department of Health and Human Services; Department of Veterans Affairs; Department of Commerce; Department of Transportation for the conduct of health care studies, for the planning and allocation of medical facilities and providers, for support of the DEERS enrollment process, and to identify individuals not entitled to health care. The data provided includes Social Security Number, name, age, sex, residence and demographic parameters of each Department's enrollees and family members.

To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose

of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

To each of the fifty states and the District of Columbia for the purpose of conducting an on going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

To provide dental care providers assurance of treatment eligibility.

The 'Blanket Routine Uses' published at the beginning of DLA'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:

Records are maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm which uses name, Social Security Number, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533 Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533 Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Individuals, personnel pay, and benefit systems of the military and civilian departments and agencies of the Defense Department, the Coast Guard, the Public Health Service, Department of Commerce, the National Oceanic and Atmospheric Administration, Department of Commerce, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–12535 Filed 5–18–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of Army, U.S. Army Corps of Engineers

Notice of Intent To Prepare and Notice of Preparation of a Joint Environmental Impact Statement and Environmental Impact Report for Master Plans for Flood Damage Reduction and Integrated Ecosystem Restoration in the Sacramento River Basin and in the San Joaquin River Basins, California

AGENCY: U.S. Army Corps of Engineers (Corps), Sacramento District, DOD.

ACTION: Notice of Intent.

SUMMARY: The action being taken is a feasibility-level investigation to formulate master plans for flood damage reduction and integrated ecosystem restoration in the Sacramento and San Joaquin River basins and develop a strategy for project implementation that will identify immediate and long-term implementation objectives for resolving flooding and interrelated ecosystem problems in the two basins. The need to formulate master plans for flood damage reduction and ecosystem restoration in these basins results from changed circumstances and new information. The study area encompasses the watersheds of the Sacramento and San Joaquin Rivers but concentrates on problems associated with the channels and floodplains of these rivers and their major tributaries. A wide array of measures will be investigated. A combined Environmental Impact Statement/Environmental Impact Report (EIS/EIR) will be prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act. The U.S. Army Corps of Engineers will serve as the Federal lead agency for the EIS with The Reclamation Board of the

State of California, the non-Federal sponsor, serving as the State lead agency for the EIR.

DATES: The public is asked to submit any issues (points of concern, debate, dispute or disagreement) regarding potential effects of the proposed action or alternatives by July 2, 1999. Through a series of scoping meetings, the Comprehensive Study will seek public input on alternatives, concerns, and issues to be addressed in the EIS/EIR. Scoping meetings are scheduled for June 1999, as follows: June 21 in Yuba City; June 23 in Red Bluff, June 24 in Sacramento, June 28 in Fresno, and June 29 in Modesto. Interested parties are requested to call or write to be included on the mailing list for specific meeting locations and times.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS/EIR can be answered by Tanis Toland, Comprehensive Study Team, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California, 95814–2922. Phone number—916–557–5140.

SUPPLEMENTARY INFORMATION:

1. Background

Federal construction of the first components of the present flood management system for the Sacramento River began in 1918. Since that time, a number of large projects have been constructed to comprise the present system. The flood management system for the San Joaquin River began to develop at about the same time and consists of a series of large federal projects constructed through the 1970's. However, development in the San Joaquin River basin was generally more piecemeal and less coordinated than development in the Sacramento River basin.

From 1900 to 1997, the Sacramento and San Joaquin River Basins experienced 13 large floods. The latest floods—in 1983, 1986, 1995, and 1997—caused extensive damages in both basins and raised questions about the adequacy of the current flood management systems and land use in the floodplains. The flood of 1997 was one of the most geographically extensive in California's long history of flooding. Along with the floods of 1983, 1986, and 1995, the flood of 1997 emphasized the urgent need for comprehensive flood management plans that would integrate flood management within each of the two river basins as well as preserve and restore the ecosystem. In response to the devastation of the 1997 flood, the Governor of California formed the Flood Emergency Action Team (FEAT). In its report, dated May 10, 1997, the FEAT recommended the development of a new master plan for improved flood management in the Central Valley of California. Also in response to the 1997 flood, the U.S. House of Representatives directed the Corps of Engineers to conduct a comprehensive assessment of the entire flood control system and develop ''comprehensive plans for flood control and environmental restoration.''

2. Public Involvement

a. In 1998, stakeholder focus groups were formed by the study management group to encourage public participation in problem identification. The many meetings and forums enabled diverse groups to share their perceptions of the problems; in turn, agency representatives were able to achieve a better understanding of the concerns of the public and other agencies. Ten local support group meetings were held between November 5 and December 1, 1998, in Fresno, Merced, Modesto, Sacramento, Knights Landing, Colusa, Marysville, Red Bluff, Willows, and Chico. The Corps and The Reclamation Board held an additional support group meeting with the California Environmental Water Caucus in February 1999. Information from these meetings, together with the agency's analysis of existing and new technical and scientific information, and legal requirements, were used in framing the problems, planning objectives, potential measures, and approach to formulating and implementing the master plans for flood damage reduction and integrated ecosystem restoration presented in this Notice of Intent.

b. Agency and stakeholder comments received during this period reflected a wide range of social perspectives. Participants largely agreed on broad principles but had many different perspectives on how the principles might be implemented. The wide variation in community responses confirmed the need to include local residents, as well as regional and national interests, in the design and refinement of measures, alternatives, and the master plans. The recommendations and suggestions received during meetings will be reviewed again during the scoping period.

3. Scope

a. The preliminary selection of problems for inclusion in the EIS/EIR was based on the following criteria: (1) New technical and scientific information is available about the extent, intensity, or duration of the problems, (2) geographic scale is broad, (3) public perception of flooding and/or interrelated environmental risk, as judged by the technical and science communities, indicate action should be taken now, and (4) the problems are not adequately addressed from a geographic standpoint by other programs.

b. A single EIS/EIR is proposed because: (1) Some problems may only be addressed at a system-wide scale, (2) the public, Indian Tribes, other governmental agencies, the Corps and The Reclamation Board need to consider ways to meet flood damage reduction and ecosystem restoration goals in an integrated, balanced, and system-wide scale, and (3) implementation can be made more efficient and effective.

c. Flood problems identified for action in this EIS/EIR are:

(1) *The flood management system lacks adequate capacity.* The flood management system was designed in the early 1900's based upon hydrologic information available at that time and does not have the capacity to convey peak floodflows recently experienced. In addition, since 1910, conditions such as levee subsidence, sediment transport, erosion, and deposition have changed.

(2) *Accurate information about flood risk is not available for parts of the system.* For many parts of the system, the level of flood protection is not known and may not be correlated to the value of property at risk of flooding.

(3) *The structural integrity of the flood management system is not reliable.* In some parts of the system, the structural integrity of the levees is not reliable.

(4) *System maintenance costs are high.* The cost to maintain the system is extremely high because erosive floodflows damage the levees, which must be continually protected, usually with rock riprap. In turn, the riprap may affect riparian habitat and aquatic habitat, and the costs to mitigate the loss of riparian habitat have risen dramatically.

(5) *Operating flexibility is limited.* There is little flexibility in operating the system to optimize flood protection because no system model for evaluating operational changes has been developed.

d. Ecosystem Problems identified for action in this EIS/EIR are:

(1) *Loss of natural hydrologic and geomorphic processes.* Confining floodflows in reservoirs and between levees has caused the loss of natural hydrologic and geomorphic processes.

(2) *Loss of fish and wildlife habitat.* Habitat for fish and wildlife has been lost or severely degraded as a result of loss of natural processes.

(3) *Mitigating for loss of habitat is difficult.* Mitigating for loss of habitat has been challenging because of funding constraints and impacts of mitigation measures to the structural integrity of the system and to the level of protection of the system (for instance, planting on the levees). Also, mitigation sites are sometimes either not available or are not suitable for creating habitat comparable to habitat at sites affected.

(4) *Ecosystem restoration opportunities are limited.* Restoration of habitats and critical ecosystems has been limited by the lack of natural stream processes.

(5) *Invasive nonnative species threaten native species.* Nonnative plants and animals threaten the survival of native species. Invasive nonnative plants can also decrease floodway capacity.

4. Purpose and Need for Action

a. The impacts of recent floods, together with changes in public values and priorities, and advances in scientific knowledge have led to the need for a comprehensive evaluation of the existing flood management systems and development of comprehensive master plans for flood damage reduction and integrated ecosystem restoration. The purpose of the proposed action is to develop and implement master plans to reduce flood damages and integrate ecosystem restoration in the Sacramento and San Joaquin River Basins.

b. Three general planning objectives guide this feasibility-level investigation:

(1) improve flood risk management throughout the system; (2) integrate protection and restoration of ecosystem into the flood damage reduction measures; and (3) resolve policy issues and address limiting institutional procedures.

5. Proposed Action

a. The proposed action, which is the development and implementation of master plans for flood damage reduction and integrated ecosystem restoration, responds to the needs identified above, the Governor's FEAT Report, direction from Congress, and concerns raised during stakeholder and agency focus group meetings.

b. The proposed action calls for analysis of flood damage and interrelated ecosystem restoration problems and potential solutions at the watershed and sub-watershed scale to: (1) Link decisions at the project scale to larger scale decisions, (2) coordinate the master plans with the efforts of other agencies and interagency efforts, like CALFED, (3) prioritize and establish appropriate implementation sequencing within each of the two basins, and (4) facilitate collaborative planning and implementation.

c. The proposed action will be implemented using a collaborative process to ensure coordination and consideration of the needs of other federal agencies, Indian Tribes, state and local governments and individuals. This involvement will help shape the master plans for flood damage reduction and integrated ecosystem restoration so that flood damages are reduced and ecosystem values are restored and maintained while taking into consideration other needs including local and regional economics, agriculture, water supply, and others. Implementation is proposed to be staged. Spin-off projects will be developed and implemented under existing authorities throughout the study. Early implementation projects will be identified and developed to feasibility-level and recommended for Congressional authorization and implementation in the Comprehensive Study Final Report. Full implementation of the master plans is expected to extend beyond the early implementation projects. The master plans would serve as a guide for future project development and for decisions about emergency response activities. The master plans will ensure that site-specific projects and actions are fully coordinated and integrated.

6. Alternatives

The feasibility-level report and EIS/EIR will address an array of measures and alternatives for reducing flood damages and restoring interrelated ecosystem values. Alternatives analyzed during the feasibility-level investigation will be a combination of one or more measures identified from many sources, including early public involvement. Additional measures may be added and existing measures will be refined during public scoping. Potential measures: creating or modifying storage capacity and/or reservoir releases or otherwise affecting flow regimes; setting back or raising levees; constructing backup levees; improving or creating bypass systems; managing floodway vegetation and sediment; creating meanderbelts; and managing vegetation within exiting floodways; protecting streambanks; strengthening, raising, or repairing levees, and controlling seepage; modifying existing buildings to reduce future damage; discouraging future development in the flood plains; and redirecting incompatible land use and development out of the floodway/floodplain and other miscellaneous floodplain management actions.

7. Proposed Scoping Process

a. This Notice of Intent initiates the scoping process whereby the Corps and The Reclamation Board will identify the scope of issues to be addressed in the EIS/EIR and identify the significant environmental issues related to the proposed action. The Corps and The Reclamation Board have initiated a process of involving concerned individuals, local, state, and Federal agencies.

b. Public comment is invited on the proposal to prepare the EIS/EIR and on the scope of issues to be included in the EIS/EIR.

c. The Corps and The Reclamation Board will consult, local, State and Federal agencies with regulatory or implementation responsibility for, or expertise with, the resources in the area of investigation. These include local planning and zoning jurisdictions, the State Historic Preservation Officer, California Department of Fish and Game, Department of Food and Agriculture, Department of Water Resources, California Environmental Protection Agency, Department of Parks and Recreation, Department of Boating and Waterways, Regional Water Quality Control Boards, Office of Emergency Services, State Lands Commission, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, National Resources Conservation Service, U.S. Bureau of Reclamation.

d. Community meetings with interested publics will be held during scoping, after release of the Draft EIS/EIR, and after release of the Final EIS/EIR/ Coordination with Federal and State agencies, Tribal governments, and local governments will occur throughout the scoping process.

e. In June 1999, community scoping workshops will be held in Yuba City, Red Bluff, Sacramento, Fresno, and Modesto. Specific locations, dates, and times of the meetings will be posted on the Internet at *www.spk.usace.army.mil/civ/ssj* and in the newspaper of record for each region. The purpose of these meetings is to explain the Notice of Intent and the Notice of Preparation, and to solicit suggestions, recommendations, and comments to help refine the issues, measures, and alternatives to be addressed in the EIS/EIR.

f. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft EIS/EIR. All interested parties should respond to this notice and

provide a current address if they wish to be notified of the draft EIS/EIR circulation.

8. Availability

The draft EIS/EIR is scheduled to be available for public review and comment in 2001.

9. Decision To Be Made and Responsible Official

The Commander, Sacramento District is the Corps NEPA official responsible for compliance with NEPA for actions within the District's boundaries. The Reclamation Board is responsible for CEQA actions for the Comprehensive Study. After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to the Assistant Secretary of the Army for Civil Works (ASA(CW)). After review, ASA(CW) will transmit the report to the Office of Management and Budget (OMB) requesting its views in relation to the programs of the President. After OMB provides its views, ASA(CW) will sign the record of decision (ROD) and transmit the report to Congress. The responsible officials are: COL Michael Walsh, District Engineer, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, CA 95814–2922; Ms. Barbara LaVake, President, The Reclamation Board of the State of California, 1416 Ninth Street, Sacramento, CA 95814.

10. Coordination With Other Agencies

While the U.S. Army Corps of Engineers is the lead Federal agency and The Reclamation Board of California is the lead State agency with responsibility to prepare this EIS/EIR, 17 State and Federal Agencies and the interagency CALFED program participate on the Executive Committee for this feasibility-level investigation. The Executive Committee provides broad study direction, assists in resolving emerging policy issues, and ensures that the study effort and its results are consistent and coordinated. State agencies participating on the Executive Committee are the Department of Water Resources, Department of Food and Agriculture, Department of Fish and Game, State Water Resources Control Board, Department of Parks and Recreation, Department of Boating and Waterways, State Lands Commission, and Office of Emergency Services. Federal agencies participating on the Executive Committee are U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, U.S. Bureau of Reclamation, Federal Emergency Management Agency, National Marine Fisheries Service, Natural Resources Conservation Service, U.S. Forest Service, U.S. Bureau of Land Management, and U.S. Geological Survey. The Environmental Protection Agency and Fish and Wildlife Service have regulatory responsibilities that could not efficiently be considered without direct involvement; guidance regarding formal consultation responsibilities under the Endangered Species Act will be provided by a Fish and Wildlife Service specialist who will participate as a member of the interdisciplinary team. Coordination with the California Department of Water Resources and the California Department of Fish and Game is necessary because some mission responsibilities overlap or are closely aligned with the flood and ecosystem management activities of the Corps and The Reclamation Board. Each agency will continue to participate as resources and competing demands permit. Other agencies, local and county governments will also be invited to participate, as appropriate.

11. Commenting

A draft EIS/EIR is expected to be available for public review and comment in 2001; and a final EIS/EIR in 2002. The comment period on the draft EIS/EIR will be 45 days from the date of availability published in the **Federal Register** by the Environmental Protection Agency.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address.

Dated: May 11, 1999.

Michael J. Walsh,

COL, EN, Commanding.

[FR Doc. 99–12619 Filed 5–18–99; 8:45 am]

BILLING CODE 3710–EZ–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.033]

Office of Postsecondary Education; Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the requirement that an institution must use at least five percent of the total amount of its Federal Work-Study (FWS) Federal funds granted for the 1999–2000 award year to compensate students employed in community service jobs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the statutory requirement that an institution must use at least five percent of its total FWS Federal funds granted for the 1999–2000 award year (July 1, 1999 through June 30, 2000) to compensate students employed in community service jobs.

DATES: *Closing Date for submitting a Waiver Request and any Supporting Information or Documents.* To request a waiver, you must mail or hand-deliver your waiver request and any supporting information or documents to the Department on or before June 18, 1999. The Department will also accept a waiver request submitted by facsimile transmission to Ms. Sandra Donelson at (202) 401–0387 or (202) 260–0522 by 4:30 p.m. (Eastern time) on June 18, 1999. If you mail or hand-deliver your waiver request, you must submit the waiver request to the Institutional Financial Management Division at one of the addresses indicated below.

ADDRESSES: *Waiver Request and any Supporting Information or Documents Delivered by Mail.* You must address the waiver request and any supporting information or documents that you send by mail to Ms. Sandra Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, DC 20026–0781.

You must show proof of mailing your waiver request. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If you send a waiver request through the U.S. Postal Service, the Secretary

does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. Please note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office. We encourage you to use certified or at least first-class mail. If you submit a waiver request after the closing date you will not receive a waiver.

Waiver Requests and any Supporting Information or Documents Delivered by Hand. You must take a waiver request and any supporting information or documents that you deliver by hand to Ms. Sandra Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, SW, Washington, DC.

We will accept hand-delivered waiver requests between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. If you hand-deliver a waiver request for the 1999–2000 award year, you must submit your request by 4:30 p.m. on June 18, 1999.

SUPPLEMENTARY INFORMATION: Under section 443(b)(2)(A) of the Higher Education Act of 1965, as amended (HEA), an institution must use at least five percent of the total amount of its FWS Federal funds granted for an award year to compensate students employed in community service. However, the Secretary may waive this requirement if the Secretary determines that enforcing it would cause hardship for students at the institution.

An appropriate institutional official must sign the waiver request and include, above the signature, the following statement: ''I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education.''

To receive a waiver, you must demonstrate that complying with the five percent requirement would cause hardship for students at your institution. To allow flexibility to consider factors that may be valid reasons for a waiver, the Secretary is not specifying the particular circumstances that would support granting a waiver. However, the Secretary does not foresee many instances in which a waiver will be granted. The fact that it may be difficult for an institution to comply with this provision of the HEA is not a basis for granting a waiver.

Applicable Regulations

The following regulations apply to the Federal Work-Study program:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Work-Study Programs, 34 CFR part 675.

(4) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(5) New Restrictions on Lobbying, 34 CFR part 82.

(6) Government Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(7) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: To receive information, contact Ms. Sandra Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, DC 20026–0781. Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

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Program Authority: 42 U.S.C. 2753.

Dated: May 14, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–12604 Filed 5–18–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.338]

Application for Grants Under the Reading Excellence Act

AGENCY: Department of Education.

ACTION: Notice to extend deadline for application for assistance under the Reading Excellence Act.

SUMMARY: The Secretary of Education announces the extension of the deadline for the Colorado State educational agency (SEA) to apply for a Fiscal Year 1999 new award under the Reading Excellence Act.

DATES: The new deadline for the Colorado SEA to submit its application will be May 21, 1999.

FOR FURTHER INFORMATION CONTACT: To obtain further information, contact Dr. Joseph C. Conaty, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C141, Washington, DC 20202–6200; telephone (202) 260–8228; or email reading__excellence@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The application package for the Reading Excellence Act, a competitive state grant program, was made available on April 3, 1999. The Department established the original closing date of May 7, 1999 on April 5, 1999 (64 FR 16574).

On May 6, 1999, the state of Colorado requested an extension of the deadline because the April 20, 1999, tragedy in Littleton, Colorado, prevented the SEA from working on its grant application.

In recognition of the unusual circumstances, the Secretary extends the deadline for the Colorado SEA application to May 21, 1999.

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Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf, you must have the Adobe Acrobat Reader Program, 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 toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 6661 et seq.

Dated: May 13, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–12606 Filed 5–18–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–209]

Application To Export Electric Energy; Cargill-Alliant, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Cargill-Alliant, LLC (C–A) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 18, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On April 6, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from C–A to transmit electric energy as a power marketer from the United States to Canada. C–A is a joint venture that is owned 50% by Cargill, Incorporated and 50% by WPL Holdings Commodities Trading, L.L.C. C–A does not own or control any electric generation or transmission facilities nor does it have a franchised service territory.

The electric energy C–A proposes to export will be surplus energy that is purchased from systems that do generate electric energy. C–A intends to export this energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Company, The Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power Company, and Vermont Electric Transmission Company. The construction of each of the international transmission facilities to be utilized by C–A, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the C–A application to export electric energy to Canada should be clearly marked with Docket EA–209. Additional copies are to be filed directly with Rodrigo R. Bustamante, Esq., Cargill-Alliant, LLC, 15407 McGinty Road West, Wayzata, Minnesota 55391–2399.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'' and then ''Electricity'' from the options menus.

Issued in Washington, D.C., on May 14, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–12630 Filed 5–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–211]

Application To Export Electric Energy; DTE Energy Trading, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: DTE Energy Trading, Inc. (DTE) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 18, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 5, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from DTE to transmit electric energy from the United States to Canada. DTE is a Michigan corporation and a wholly-owned subsidiary of DTE Energy Company. DTE also is an affiliate of The Detroit Edison Company, a public utility which also is a wholly-owned subsidiary of DTE Energy Company.

DTE does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. DTE operates as a marketer and broker of electric power at wholesale and arranges services in related areas. The electric energy which DTE proposes to export will be surplus energy purchased from electric utilities and Federal power marketing agencies within the United States.

DTE proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Company, The Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power Company, and Vermont Electric Transmission Company. The construction of each of the international transmission facilities to be utilized by DTE, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the DTE application to export electric energy to Canada should be clearly marked with Docket EA–211. Additional copies are to be filed directly with Raymond O. Sturdy, Jr., DTE Energy Company, 2000 Second Avenue, 688 WCB, Detroit, MI 48226 AND Thomas P. Weeks, DTE Energy Trading, Inc., 101 N. Main Suite 300, Ann Arbor, MI 48104.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'' and then ''Electricity'' from the options menus.

Issued in Washington, D.C., on May 14, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–12632 Filed 5–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

(Docket No. EA–206)

Application to Export Electric Energy; Frontera Generation Limited Partnership

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of application.

SUMMARY: Frontera Generation Limited Partnership (Frontera) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 18, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 10, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Frontera to transmit electric energy from the United States to Mexico. Frontera, and its general partner, CSW Frontera GP II, are wholly-owned subsidiaries of CSW Energy, Inc., a Texas corporation involved in the non-regulated generation and sale of electric power.

In related Docket PP–206 (64 FR 11457, March 9, 1999), Frontera applied to DOE for a Presidential permit to construct, connect, operate and maintain electric transmission facilities across the U.S. border with Mexico. In that docket, Frontera proposes to construct a double-circuit, 230,000-volt transmission line from its Rio Bravo Substation, near Mission, Texas, to the U.S. border with Mexico, where it will interconnect with similar facilities owned by the Comision Federal de Electricidad, the national electric utility of Mexico. It is these proposed cross-border facilities over which Frontera seeks authorization to export electricity to Mexico.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Frontera application to export electric energy to Mexico should be clearly marked with Docket EA–206. Additional copies are to be filed directly with Paul E. Graff, Vice President, CSW Frontera GP II, Inc., 1616 Woodall Rodgers Freeway, Dallas, TX 75202 and Carolyn Y. Thompson, Esq., Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005–2088.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, D.C., on May 14, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–12631 Filed 5–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 99–7 and C&E 99–8—Certification Notice—172]

Office of Fossil Energy; Notice of Filings of Coal Capability of SEI Texas, L.P. and LSP-Kendall Energy, LLC; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: SEI Texas, L.P. and LSP-Kendall Energy, LLC submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in acccordance with section 201(d).

Owner: SEI Texas, L.P. (C&E 99–7).

Operator: SEI Texas, L.P.

Location: Southwest of Whitney Dam in Bosque County, Texas.

Plant Configuration: Two simple cycle combustion turbines.

Capacity: 300 megawatts.

Fuel: Natural gas.

Purchasing Entities: Southern Company Energy Marketing.

In-Service Date: June 1, 2000.

Owner: LSP-Kendall Energy, LLC. (C&E 99–8).

Operator: LSP-Kendall Energy, LLC.

Location: The Village of Minooka in Kendall County, Illinois.

Plant Configuration: Combined cycle.

Capacity: 1,100 megawatts.

Fuel: Natural gas.

Purchasing Entities: Wholesale power purchasers.

In-Service Date: Summer of 2001.

Issued in Washington, D.C., May 7, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–12570 Filed 5–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER94–734–000, ER94–734–003, ER94–734–005, and ER94–734–006]

New Charleston Power I, L.P.; Notice of Filing

May 13, 1999.

Take notice that on March 3, 1999, New Charleston Power I, L.P., tendered for filing in compliance to the Federal Energy Regulatory Commission order issued March 1, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 24, 1999. Protest 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. 99–12556 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7481–090]

NYSD Limited Partnership; Notice of Effective Date of Withdrawal of Request for Rehearing

May 13, 1999.

On October 27, 1997, NYSD Limited Partnership (licensee) filed a timely request for rehearing of the September 30, 1997 order of the Acting Director, Office of Hydropower Licensing, modifying and approving a gaging and streamflow measurement plan filed by the licensee for its New York State Dam Project No. 7481, located on the Mohawk River, in Albany and Saratoga Counties, New York.

On April 19, 1999, the licensee withdrew its rehearing request. No one filed a motion in opposition to the withdrawal, and the Commission took no action to disallow it. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216, the withdrawal became effective on May 4, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12566 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Public Meeting

May 13, 1999.

Take notice that the Commission staff will hold a public meeting with Pacific Gas & Electric Company (PG&E), the applicant for the Mokelumne Hydroelectric Project No. 137, the U.S. Forest Service, and other interested parties to discuss alternatives for completing the processing of this relicense. This is a follow up to the meeting held on May 5, 1999.

The project is located on the Mokelumne River in Amador and Calaveras Counties, California. The meeting will be held on Wednesday, May 27, 1999, from 9:00 a.m. to 4:00 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696 so that they can get through

security. All interested persons are invited to attend the meeting.

For further information, please contact Robert Bell at (202) 219–2806.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12557 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–018]

Virginia Power and Electric Company; Notice of Commission Staff Meeting With North Carolina Power Company on Re-Licensing of the Roanoke Rapids and Gaston Hydropower Project

May 13, 1999.

Virginia Power Electric Company filed a License Application and a Draft Environmental Assessment (DEA) on January 28, 1999, for the Roanoke Rapids and Gaston Hydropower Project (No. 2009–018) located on the Roanoke River, North Carolina. The DEA was prepared in coordination with a group of representatives from various federal, state and local agencies, non-governmental organizations, and local interest groups.

Commission staff are currently reviewing these documents and will attend a meeting, as follows, to participate in settlement discussions being conducted by Virginia Power and Electric Company.

Meeting Date: May 13, 1999 from 9:00 am to 3:00 pm.

Location: Lakeland Arts Center, 411 Mosby Avenue, Littleton NC.

Interested parties are welcome to attend this meeting. For further information please contact the following individuals:

Wayne Dyok, Harza Engineering, 301–249–1772

Monte TerHaar, Federal Energy Regulatory Commission, 202–219–2768

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12560 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–367]

Duke Energy Corporation; Notice of Availability of Environmental Assessment

May 13, 1999.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of constructing 29 boat slips and excavating about 4,000 cubic yards of lake bottom within the Catawba-Wateree Hydroelectric Project boundary. Duke Energy Corporation, licensee for the project, proposes to grant an easement of 0.68 acre of land to Ashley Cove Homeowners Association for this purpose. The site of the proposed boat slips and excavation is in the Catawba Springs Township on Lake Norman in Lincoln County, North Carolina. The slips would be constructed to accommodate residents of Ashley Cove Subdivision.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12561 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6461–019]

City of Port Angeles, Washington; Notice of Availability of Draft Environmental Assessment

May 13, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to surrender the license for the existing Morse Creek Hydroelectric Project, located on Morse Creek in Clallam County, Washington, and has prepared a draft Environmental Assessment (EA) for the proposed action.

In the draft EA, Commission staff concludes that approval of the subject surrender of license would not produce any significant adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the draft EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The draft EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Dave Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix ''Morse Creek Project Surrender of License, Project No. 6461–019'' to all comments. For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12565 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

May 13, 1999.

a. Type of Filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2364.

c. Date Filed: April 26, 1999.

d. Submitted By: Madison Paper Industries—current licensee.

e. Name of Project: Abenaki Project.

f. Location: On the Kennebec River near the cities of Anson, Madison, and Starks, in Somerset County, Maine.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: Christopher Bean, Madison Paper Industries, P.O. Box 129, Main Street, Madison, ME 04950 (207) 696–3307.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, or (202) 219–2778.

j. Effective date of current license: May 1, 1954.

k. Expiration date of current license: April 30, 2004.

l. The project consists of the following existing facilities: (1) a 25-foot-high dam consisting of a 780-foot-long concrete spillway section including a 25-foot-wide log sluice and 3-foot-high flashboards; (2) an 830-foot-long forebay, trashrack, and headgate section; (3) a 32-acre reservoir at normal water surface elevation of 222.65 feet msl; (4) a powerhouse containing seven generating units with a total installed capacity of 16.977 MW; (5) a 3,400-foot-long transmission line; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12558 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

May 13, 1999.

a. Type of Filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2365.

c. Date Filed: April 26, 1999.

d. Submitted By: Madison Paper Industries—current licensee.

e. Name of Project: Anson Project.

f. Location: On the Kennebec River near the cities of Anson and Madison, in Somerest County, Maine.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: Christopher Bean, Madison Paper Industries, P.O. Box 129, Main Street, Madison, ME 04950 (207) 696–3307.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, or (202) 219–2778.

j. Effective date of current license: May 1, 1954.

k. Expiration date of current license: April 30, 2004.

l. The project consists of the following existing facilities: (1) a 630-foot-long dam consisting of three spillway sections and a 5.6-foot-high inflatable flashboard system; (2) a 40-foot-wide, 13.5-foot-high inflatable waste gate system; (3) a 250-foot-long forebay and trashrack; (4) a 698-acre reservoir at normal water surface elevation of 248.15 feet msl; (5) a powerhouse containing five generating units with a total installed capacity of 9.0 MW; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12559 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

May 13, 1999.

a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 2153.

c. Date filed: April 26, 1999.

d. Submitted By: United Water Conservation District, current licensee.

e. Name of Project: Santa Felicia.

f. Location: On the Piru Creek, in Ventura County, California.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's Regulations.

h. Effective date of original license: May 1, 1954.

i. Expiration date of original license: April 30, 2004.

j. The project consists of: (1) the 270-foot-high Santa Felicia Dam; (2) a reservoir with a storage capacity of 100,000 acre-feet and normal maximum water surface elevation of 1,055 feet mean sea level; (3) a powerhouse with an installed capacity of 1,434 kilowatts; and (4) other appurtenances.

k. Pursuant to 18 CFR 16.7, information on the project is available at: United Water Conservation District, 106 North 8th Street; Santa Paula, CA 93060. Attention: Frederick J. Gientke, General Manager.

l. FERC contact: Héctor Pérez, hector.perez@ferc.fed.us, (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12562 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

May 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Application for an Amendment of License to Revise the Project Boundary.

b. Project No.: 2320–005 & 2320–016.

c. Date Filed: April 15, 1999.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Middle Raquette River Hydroelectric Project.

f. Location: On Higley Development in the Town of Colton, in St. Lawrence County, New York. The project will not affect any federal or tribal lands.

g. Filed Pursuant to: 18 CFR 4.200.

h. Applicant Contact: Mr. Michael W. Murphy, Esq., Law Department, A–3, Niagara Mohawk Power Corporation, Syracuse, New York 13202, (315) 428–6941.

i. FERC Contact: Any questions on this notice should be addressed to Mohamad Fayyad at 202–219–2665, or e-mail address: mohamad.fayyad@ferc.fed.us.

j. Deadline for filing comments and/or motions: June 21, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number and sub-dockets (2320–005 and 2320–016) on any comments or motions filed.

k. Description of Filing: Niagara Mohawk Power Corporation (NMPC) proposes to remove two parcels of land, presently included within the project boundary. NMPC says the two parcels of lands are not needed for project operation. The parcels are designated Area 1 (5.15 acres) and Area 2 (about 19 acres), which have existing cottage/camp development. NMPC says the removal of the two parcels of land will

be consistent with existing and planned use for cottage/camp purposes.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12563 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

May 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Surrender of License.

b. Project No: 6759–016.

c. Date Filed: March 29, 1999.

d. Application: Aquenergy Systems, Inc.

e. Name of Project: Apalache.

f. Location: On the South Tyger River, in Spartanburg County, South Carolina in the Town of Greer. The project does not utilize federal or tribal lands.

g. Filed pursuant to: 18 CFR 4.200.

h. Applicant Contact: Ms. Beth Harris, Project Engineer/Manager, Regulatory Services, CHI Energy, Inc., P.O. Box 8597, Greenville, SC 29604, (864) 281–9630.

i. FERC Contact: Any questions on this notice should be addressed to Tom Papsidero at (202) 291–2715, or e-mail address: Thomas.Papsidero@ferc.fed.us.

j. Deadline for filing comments and/or motions: June 21, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (6759–016) on any comments or motions filed.

k. Description of Surrender: Aquenergy Systems, Inc., a South Carolina corporation, requests to surrender the license for this constructed project for economic reasons.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Project No. 6759–016.

Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12564 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

May 13, 1999.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Minor License.

b. Project No.: P–11730–000.

c. Date Filed: April 21, 1999.

d. Applicant: Black River Limited Partnership.

e. Name of Project: Alverno Hydroelectric Project.

f. Location: On the Black River in the Townships of Aloha, Benton, and Grant, in Cheboygan County, Michigan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Frank O. Christie, President, Franklin Hydro, Inc., 8 East Main Street, Malone, New York 12953, (518) 483–1961.

i. FERC Contact: Any questions on this notice should be addressed to John Costello, E-mail address john.costello@ferc.fed.us (202) 219–2914.

j. Deadline for filing additional study requests: July 14, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time.

l. Description of Project: The constructed project consists of a 360-foot-long earth filled dam with a power plant located on the right riverbank and a gated spillway near the left bank. The project impoundment extends approximately 2.5 miles upstream. The powerhouse contains 2 horizontal turbine/generator sets.

m. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at the Cheboygan Public Library, 107 South Ball Street, Cheboygan, Michigan.

n. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12567 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

May 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No: 309–029.

c. Date Filed: April 26, 1999.

d. Applicants: Pennsylvania Electric Company (transferor) and Sithe Piney LLC (transferee).

e. Name of Project: Piney.

f. Location: On the Clarion River, in Clarion County, Pennsylvania. The project does not utilize federal or tribal lands.

g. Filed pursuant to: 18 CFR § 4.200.

h. Applicants Contacts: For transferor—Mr. Timothy N. Atherton, Senior Attorney, GPU Service, Inc., 1001 Broad Street, Johnstown, PA 15907, (814) 533–8397 and Mr. William J. Madden, Jr., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502, (202) 371–5700.

For transferee—Mr. Richard J. Cronin, III, Sithe Piney LLC, c/o Sithe Energies, Inc., 450 Lexington Avenue, New York, NY 10017 and Mr. David L. Schwartz, Latheam & Watkins, 1001 Pennsylvania Avenue, NW, Suite 1300, Washington, DC 20004.

i. FERC Contact: Any questions on this notice should be addressed to Tom Papsidero to (202) 219–2715, or e-mail address: Thomas.Papsidero@ferc.fed.us.

j. Deadline for filing comments and/or motions: June 21, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (309–029) on any comments or motions filed.

k. Description of Transfer: Pennsylvania Electric Company, a subsidiary of GPU, Inc., requests to transfer the license to Sithe Piney LLC as part of GPU's effort to divest its generating facilities.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commissions' Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the

Applicant specified in the particular applications.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12569 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–000]

Stingray Pipeline Company; Notice of Informal Settlement Conference

May 13, 1999.

Take notice that an informal settlement conference in this proceeding will be convened on Wednesday, May 19, 1999, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Dawn Martin at (202) 208–0661.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–12568 Filed 5–18–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6345–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NSPS, Calciners and Dryers in Mineral Industries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS subpart UUU, OMB Control Number 2060–0251, expiration date 06/30/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0746.04.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart UUU (OMB Control No. 2060–0251; EPA ICR No.0746.04) expiring 06/30/99. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standard (NSPS) for Calciners and Dryers in Mineral Industries were proposed on April 23, 1986 and promulgated on September 28, 1992. These standards apply to new, modified and reconstructed calciners and dryers at mineral processing plants that process or produce any of the following minerals and their concentrates or any mixture of which the majority is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite. Particulate matter is the pollutant regulated under this subpart.

There are several exceptions to applicability. Feed and product conveyors are not considered part of the affected facility. Facilities subject to NSPS subpart LL, Metallic Mineral Processing Plants are not subject to this standard. There are additional processes and process units at mineral processing plants listed at 60.730(b) which are not subject to the provisions of this subpart.

Owners or operators of the affected facilities must make one-time only reports including notifications of start up, scheduling and results of the initial performance test, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the demonstration of the continuous monitoring system (CMS). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Performance tests are needed as these are the Agency's records of a source's initial capability to comply with emissions standards and note the operating conditions under which compliance was achieved. These notifications, reports and records are required, in general, of all sources subject to NSPS.

The monitoring requirements are outlined in section 60.734. They are dependant on the type of dryers or calciner. Specific calciners and dryers are required to install, calibrate, maintain, and operate a continuous monitoring system. Semiannual reports of excess emissions are required.

This information is being collected to assure compliance with 40 CFR part 60, subpart UUU. Any owner or operator subject to the provisions of this part will maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, (as specified in 60.735, Recordkeeping and Reporting). All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

Approximately 150 sources are currently subject to the standard, and approximately 5 sources a year become subject.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published in FR Vol. 63 No. 172 on September 4, 1998. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Calciners and Dryers in Mineral Industries.

Estimated Number of Respondents: 155.

Frequency of Response: Semi-annually.

Estimated Total Annual Hour Burden: 5,939 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $117,500.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.0746.04 and OMB Control No. 2060–0251 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 13, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–12586 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6345–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS, Sulfuric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS subpart H, Sulfuric Acid Plants, OMB Control Number: 2060–0041 and expiration date: 06/30/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1057.08.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart H, Sulfuric Acid Plants (OMB Control No. 2060–0041; EPA ICR No. 1057.08) expiring 06/30/99. This is a request for extension of a currently approved collection.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 60.80, subpart H, New Source Performance Standards for Sulfuric Acid Plants. This information notifies the Agency when a source becomes subject to the regulations, and informs the Agency that the source is in compliance when it begins operation. The Agency is informed of the sources' compliance status by semiannual reports. The calibration and maintenance requirements aid in a source remaining in compliance.

In the Administrator's judgement, SO_2 and acid mist emissions from the manufacture of sulfuric acid cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111 of the Clean Air Act.

The control of SO_2 and acid mist requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. Sulfur dioxide and acid mist emissions from sulfuric acid plants result from the burning of sulfur or sulfur-bearing feed stocks to form SO_2, catalytic oxidation of SO_2 to SO_3, and absorption of SO_2 in a strong acid stream. These standards rely on the capture of SO_2 and acid mist by venting to a control device.

Owners or operators of Sulfuric Acid Plants subject to the NSPS are required to make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous emission monitoring systems (CEMS); notification of the date of the initial performance test; and the results of the initial performance test. After the initial recordkeeping and reporting requirements, semiannual reports are required if there has been any exceeding of control device operating parameters.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notification, reports and records are required, in general, of all sources subject to NSPS.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 01/05/99; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 117 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or Operators of Sulfuric Acid Plants.

Estimated Number of Respondents: 106.

Frequency of Response: 2.

Estimated Total Annual Hour Burden: 24,823 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $477,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1057.08 and OMB Control No. 2060–0041 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 13, 1999.

Joseph Retzer,

Director,

Regulatory Information Division.

[FR Doc. 99–12587 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100142; FRL–6080–2]

Armstrong Data Services; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Armstrong Data Services has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP) and EPA, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Armstrong Data Services consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable Armstrong Data Services to fulfill the obligations of the contract.

DATES: Armstrong Data Services will be given access to this information no sooner than May 24, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Schmitt, Information Security Officer Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 703, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5484; e-mail: schmitt.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W5–0024, Delivery Order Number 246, Armstrong Data Services will provide technical support to EPA's Office of Pesticide Programs in the development of activities related to preparation and issuance of reregistration eligibility documents and product-specific reregistration. This contract involves no subcontractors. The Office of Pesticide Programs has determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Armstrong Data Services prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA *Information Security Manual.* In addition, Armstrong Data Services is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Delivery Order Project Officer for this contract in the EPA Office of Pesticide Programs.

All information supplied to Armstrong Data Services by EPA for use in connection with this contract will be returned to EPA when Armstrong Data Services have completed its work.

List of Subjects

Environmental protection, Transfer of data.

Dated: May 7, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–12483 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–60054; FRL–6072–8]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt

requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Harold Day, Office of Compliance (2225A), Agriculture and Ecosystem Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 564–4133.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

Sureco Incorporated
Suite 200
9555 James Avenue South
Bloomington, MN 55431
SUBJECT: Suspension of Registration of Pesticide Product(s) Containing Rotenone for Failure to Comply with the Rotenone Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice Dated March 30, 1998

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Reregistration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance (2225A),
Agriculture and Ecosystems Division,

U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another Section 4 Data Requirements Notice or Section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Francisca Liem at (202) 564–2365.

Sincerely yours,

Director, Agriculture and Ecosystems Division, Office of Compliance

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

Table A-List of Products

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Hi-Yield Chemical Company	03491100021	Rotenone	Hi-Yield Rotenone 100 Insecticide Dust	3/1/99
Riverdale Chemical Co	00022800248	Rotenone	Riverdale Rotenone Garden Dust Or Spray	3/1/99
Sphere Corp	06607000001	Rotenone	True Stop Insecticide	3/1/99
Sureco Incorporated	00076900857	Rotenone	Science Red Arrow Insect Spray	3/1/99
Voluntary Purchasing Group, Inc.	00740100433	Rotenone	3 Way Dust Garden Insecticide	3/1/99

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

Table B-List of Requirements

Active Ingredient	Registrant Affected	Requirement Name	Original Due–Date
Rotenone	Hi-Yield Chemical Company	30-Day Response	4/30/98
		Confidential Statement of Formula (CSF) Form	4/30/98
		Hydrolysis (Guideline Reference No: 161-1)	4/30/98
		Photodegradation - Water (Guideline Reference No: 161-2)	4/30/98
		Photodegradation - Soil (Guideline Reference No: 161-3)	4/30/98
		Aerobic Aquatic Metabolism (Guideline Reference No: 162-4)	4/30/98
		Leaching and Adsorption/Desorption (Guideline Reference No: 163-1)	4/30/98
		Soil Field Dissipation (Guideline Reference No: 164-1)	4/30/98
		Aquatic Field Dissipation (Sediment) (Guideline Reference No: 164-2)	4/30/98
		Rotational crops - confined (Guideline Reference No: 165-1)	4/30/98
		Irrigated crops (Guideline Reference No: 165-3)	4/30/98

Table B-List of Requirements—Continued

Active Ingredient	Registrant Affected	Requirement Name	Original Due–Date
		Nature of Residue - Plants (Guideline Reference No: 171-4(a))	4/30/98
		Nature of Residue - Livestock (Guideline Reference No: 171-4(b))	4/30/98
		Residue Analytical Method - Plants (Guideline Reference No: 171-4(c))	4/30/98
		Residue Analytical Method - Animals (Guideline Reference No: 171-4(d))	4/30/98
		Storage Stability (Guideline Reference No: 171-4(e))	4/30/98
		Magnitude of Residue - Meat/Milk/Poultry/Eggs (Guideline Reference No: 171-4(j))	4/30/98
		Crop field trials (Guideline Reference No: 171-4(k))	4/30/98
		Magnitude of residue in processed foods/feeds (Guideline Reference No: 171-4(l))	4/30/98
	Riverdale Chemical Company	30-Day Response	4/30/98
		Confidential Statement of Formula (CSF) Form	4/30/98
		Hydrolysis (Guideline Reference No: 161-1)	4/30/98
		Photodegradation - Water (Guideline Reference No: 161-2)	4/30/98
		Photodegradation - Soil (Guideline Reference No: 161-3)	4/30/98
		Aerobic Aquatic Metabolism (Guideline Reference No: 162-4)	4/30/98
		Leaching and Adsorption/Desorption (Guideline Reference No: 163-1)	4/30/98
		Soil Field Dissipation (Guideline Reference No: 164-1)	4/30/98
		Aquatic Field Dissipation (Sediment) (Guideline Reference No: 164-2)	4/30/98
		Rotational crops - confined (Guideline Reference No: 165-1)	4/30/98
		Irrigated crops (Guideline Reference No: 165-3)	4/30/98
		Nature of Residue - Plants (Guideline Reference No: 171-4(a))	4/30/98
		Nature of Residue - Livestock (Guideline Reference No: 171-4(b))	4/30/98
		Residue Analytical Method - Plants (Guideline Reference No: 171-4(c))	4/30/98
		Residue Analytical Method - Animals (Guideline Reference No: 171-4(d))	4/30/98
		Storage Stability (Guideline Reference No: 171-4(e))	4/30/98
		Magnitude of Residue - Meat/Milk/Poultry/Eggs (Guideline Reference No: 171-4(j))	4/30/98
		Crop field trials (Guideline Reference No: 171-4(k))	4/30/98
		Magnitude of residue in processed foods/feeds (Guideline Reference No: 171-4(l))	4/30/98
Rotenone	Sphere Corp	30-Day Response	4/30/98
		Confidential Statement of Formula (CSF) Form	4/30/98
		Hydrolysis (Guideline Reference No: 161-1)	4/30/98
		Photodegradation - Water (Guideline Reference No: 161-2)	4/30/98
		Photodegradation - Soil (Guideline Reference No: 161-3)	4/30/98
		Aerobic Aquatic Metabolism (Guideline Reference No: 162-4)	4/30/98
		Leaching and Adsorption/Desorption (Guideline Reference No: 163-1)	4/30/98
		Soil Field Dissipation (Guideline Reference No: 164-1)	4/30/98
		Aquatic Field Dissipation (Sediment) (Guideline Reference No: 164-2)	4/30/98
		Rotational crops - confined (Guideline Reference No: 165-1)	4/30/98
		Irrigated crops (Guideline Reference No: 165-3)	4/30/98
		Nature of Residue - Plants (Guideline Reference No: 171-4(a))	4/30/98
		Nature of Residue - Livestock (Guideline Reference No: 171-4(b))	4/30/98
		Residue Analytical Method - Plants (Guideline Reference No: 171-4(c))	4/30/98
		Residue Analytical Method - Animals (Guideline Reference No: 171-4(d))	4/30/98
		Storage Stability (Guideline Reference No: 171-4(e))	4/30/98
		Magnitude of Residue - Meat/Milk/Poultry/Eggs (Guideline Reference No: 171-4(j))	4/30/98
		Crop field trials (Guideline Reference No: 171-4(k))	4/30/98
		Magnitude of residue in processed foods/feeds (Guideline Reference No: 171-4(l))	4/30/98
Rotenone	Sureco Incorporated	30-Day Response (Guideline Reference No: *)	4/30/98
		Confidential Statement of Formula (CSF) Form	4/30/98
		Hydrolysis (Guideline Reference No: 161-1)	4/30/98
		Photodegradation - Water (Guideline Reference No: 161-2)	4/30/98
		Photodegradation - Soil (Guideline Reference No: 161-3)	4/30/98
		Aerobic Aquatic Metabolism (Guideline Reference No: 162-4)	4/30/98
		Leaching and Adsorption/Desorption (Guideline Reference No: 163-1)	4/30/98
		Soil Field Dissipation (Guideline Reference No: 164-1)	4/30/98
		Aquatic Field Dissipation (Sediment) (Guideline Reference No: 164-2)	4/30/98
		Rotational crops - confined (Guideline Reference No: 165-1)	4/30/98
		Irrigated crops (Guideline Reference No: 165-3)	4/30/98
		Nature of Residue - Plants (Guideline Reference No: 171-4(a))	4/30/98
		Nature of Residue - Livestock (Guideline Reference No: 171-4(b))	4/30/98
		Residue Analytical Method - Plants (Guideline Reference No: 171-4(c))	4/30/98
		Residue Analytical Method - Animals (Guideline Reference No: 171-4(d))	4/30/98
		Storage Stability (Guideline Reference No: 171-4(e))	4/30/98
		Magnitude of Residue - Meat/Milk/Poultry/Eggs (Guideline Reference No: 171-4(j))	4/30/98

Table B-List of Requirements—Continued

Active Ingredient	Registrant Affected	Requirement Name	Original Due–Date
		Crop field trials (Guideline Reference No: 171-4(k))	4/30/98
		Magnitude of residue in processed foods/feeds (Guideline Reference No: 171-4(l))	4/30/98
Rotenone	Voluntary Purchasing Group, Inc.	30-Day Response (Guideline Reference No: *)	4/30/98
		Hydrolysis (Guideline Reference No: 161-1)	4/30/98
		Photodegradation - Water (Guideline Reference No: 161-2)	4/30/98
		Photodegradation - Soil (Guideline Reference No: 161-3)	4/30/98
		Aerobic Aquatic Metabolism (Guideline Reference No: 162-4)	4/30/98
		Leaching and Adsorption/Desorption (Guideline Reference No: 163-1)	4/30/98
		Soil Field Dissipation (Guideline Reference No: 164-1)	4/30/98
		Aquatic Field Dissipation (Sediment) (Guideline Reference No: 164-2)	4/30/98
		Rotational crops - confined (Guideline Reference No: 165-1)	4/30/98
		Irrigated crops (Guideline Reference No: 165-3)	4/30/98
		Nature of Residue - Plants (Guideline Reference No: 171-4(a))	4/30/98
		Nature of Residue - Livestock (Guideline Reference No: 171-4(b))	4/30/98
		Residue Analytical Method - Plants (Guideline Reference No: 171-4(c))	4/30/98
		Residue Analytical Method - Animals (Guideline Reference No: 171-4(d))	4/30/98
		Storage Stability (Guideline Reference No: 171-4(e))	4/30/98
		Magnitude of Residue - Meat/Milk/Poultry/Eggs (Guideline Reference No: 171-4(j))	4/30/98
		Crop field trials (Guideline Reference No: 171-4(k))	4/30/98
		Magnitude of residue in processed foods/feeds (Guideline Reference No: 171-4(l))	4/30/98

IV. Attachment III Suspension Report—Explanatory Appendix

This Explanatory Appendix provides a discussion of the basis for the Notice of Intent to Suspend issued herewith. Rotenone

In October 1988, the Agency issued the Rotenone Registration Standard which included a Data Call-In Notice affecting your Rotenone product registration(s). That Notice required that you select options as to how you were going to satisfy data requirements to maintain in effect your product registration(s). You sought and were granted a Generic Data Exemption (GDE) based on your response to the Rotenone Registration Standard. Two registrants previously committed to produce the generic data for Rotenone. Those registrants subsequently notified the Agency that they have decided not to support any terrestrial crop uses.

On March 30, 1998, the Agency sent a letter to all Rotenone registrants requiring them to elect options for supporting the terrestrial crop uses of Rotenone. You received this letter on April 6, 1998, as evidenced by a return receipt green card.

The letter sent you on March 30, 1998, required that you respond to the Agency within 30 days following your receipt of the letter on your selection of options to satisfy data requirements for the terrestrial crop uses of Rotenone, among those identified in the letter. To date, the Agency has not received a response from you despite additional attempts to contact your company by telephone.

Failure to satisfy the outstanding data requirements is a basis for suspension under (3)(c)(2)(b) of FIFRA. Since you have not satisfied the data requirements either by submission of the data or a selection of another appropriate option, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: May 10, 1999.

J. Richard Colbert,

Director, Agriculture and Ecosystems Division, Office of Compliance.

[FR Doc. 99–12592 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34131C; FRL–6082–3]

Organophosphate Pesticide: Azinphos-Methyl; Availability of Revised Risk Assessments and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, azinphos-methyl. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34131C, must be received by EPA on or before July 19, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by

EPA, it is imperative that you identify docket control number OPP–34131C in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply To Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on azinphos-methyl, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control number OPP–34131C. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

C. By Telephone

If you need additional information about this action, you may also contact the person identified in the ''FOR FURTHER INFORMATION'' section.

III. How Can I Respond To This Action?

A. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–34131C in the subject line on the first page of your response.

1. *By mail.* Submit comments 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.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34131C. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

IV. What Action is EPA Taking in This Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, azinphos-methyl. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public

through this notice provide information on the revisions that were made to the azinphos-methyl preliminary risk assessments, which where released to the public August 10, 1998 (63 FR 43175) (FRL–6024–3), and January 15, 1999 (64 FR 2644) (FRL–6056–9), through notices in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for azinphos-methyl. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific azinphos-methyl use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commentors may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commentors may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. Although revisions to the ecological risk assessment are not yet complete, EPA welcomes suggestions for reducing environmental exposure. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before July 19, 1999 at the addresses given under the ''ADDRESSES'' section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

Dated: May 13, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–12591 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34184; FRL 6073–8]

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 June 18, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Thomas C. Harris, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Room 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–9423; e-mail: harris.thomas@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 18 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 June 18, 1999 to discuss withdrawal of the applications for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete from Label
279–3134	Questor MUP Insecticide	Chlorpyrifos	Pest Control Indoors (Indoor): Indoor broadcast use; total release foggers for indoor residential and non-residential (except greenhouse) use; coating products intended for large surface areas such as floors, walls, and ceilings inside residential dwellings, offices, schools, or health care institutions including but not limited to houses, apartments, nursing homes, and patient rooms in hospitals. Pets and Domestic Animals (Indoor): Animal dips, sprays, shampoos, dusts. Aquatic Uses (Aquatic Food Crop/Aquatic Non-Food): Any aquatic use including mosquito larvicide. Pest Control Indoors or Outdoors (Domestic Indoor or Outdoor): Paint additives, application in sewer manholes.

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
432–570	UltraTEC Insecticide with SBP-1382 / Chlorpyrifos Transparent Emulsion Concentrate 1.6%–16%	Resmethrin Chlorpyrifos	Do.
432–571	UltraTEC Insecticide with SBP-1382 / Chloropyrifos Transparent Emulsion Concentrate 3.2%-16%	Resmethrin Chlorpyrifos	Do.
432–615	Crossfire-D TEC with Chlorpyrifos/ Esbiothrin 25% – 2.5% Transparent Emulsion Concentrate	Chlorpyrifos *d-trans*-allethrin	Do.
432–692	UltraTEC Insecticide with SBP–1382 / Chlorpyrifos Transparent Emulsion Concentrate 3.2% – 16% LO	Resmethrin Chlorpyrifos	Do.
432–718	SBP–1382 / Chlorpyrifos Transparent Emulsion Concentrate 3.2% – 16% LO	Resmethrin Chlorpyrifos	Do.
769–690	DFC-4 Formulators Concentrate	Chlorpyrifos	Do.
1021–1215	Pyrocide Intermediate 7129	Pyrethrins Piperonyl butoxide *N*-Octyl bicycloheptene dicarboximide. Chlorpyrifos	Do.
1021–1220	D-TRANS Intermediate 1957	*d-trans* allethrin Piperonyl butoxide *N*-Octyl bicycloheptene dicarboximide. Chlorpyrifos	Do.
1021–1221	Pyrocide Intermediate 7130	Pyrethrins Piperonyl butoxide *N*-Octyl bicycloheptene dicarboximide. Chlorpyrifos	Do.
1021–1434	Esbiol Intermediate 2235	S-Bioallethrin *N*-Octyl bicycloheptene dicarboximide. Chlorpyrifos	Do.
1021–1438	D-TRANS Intermediate 2247	*d-trans* allethrin *N*-Octyl bicycloheptene dicarboximide. Chlorpyrifos	Do.
1021–1444	Multicide Intermediate 2253	*d*-phenothrin *N*-Octyl bicycloheptene dicarboximide. Chlorpyrifos	Do.
1021–1506	D-TRANS Intermediate 2321	*d-trans* allethrin *N*-Octyl bicycloheptene dicarboximide. Chlorpyrifos	Do.

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
4816–447	P-D 5 Residual Insecticide Intermediate	Pyrethrins Piperonyl Butoxide ..... Chlorpyrifos	Do.
4816–622	Pyrenone Dursban Aqueous Base	Pyrethrins Piperonyl Butoxide ..... Chlorpyrifos	Do.
4816–634	Pyrenone Dursban W-B	Pyrethrins Piperonyl Butoxide ..... Chlorpyrifos	Do.
4816–638	Pyrenone Dursban Aqueous Base II	Pyrethrins Piperonyl Butoxide ..... Chlorpyrifos	Do.

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
279	FMC Corporation, Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103
432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645
769	SureCo, Inc., An Indirect Subsidiary of Verdant Brands, Inc., 9555 James Ave., South, Suite 200, Bloomington, MN 55431
1021	McLaughlin Gormley King Company, 8810 Tenth Avenue North, Minneapolis, MN 55427
4816	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 12 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: May 5, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–12481 Filed 5–18–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[PF–873; FRL–6079–8]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–873, must be received on or before June 18, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:.Sidney Jackson, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7610; e-mail:jackson. sidney@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the

petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–873] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

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

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–873) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petitions is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petitions was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petitions summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional Research Project No. 4

PP 6E4629, 6E4760, 8E4993, 8E5009, 9E5084, 9E5069, and 9E5064

EPA has received pesticide petitions (6E4629, 6E4760, 8E4993, 8E5009, 9E5084, 9E5069, and 9E5064) from Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P. O. Box 231, Rutgers University, New Brunswick, NJ 08903 and FMC Corporation, Agricultural Group, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide bifenthrin, 2-methyl-(1,1'-biphenyl)-3-yl methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2 dimethylcyclopropane carboxylate in or on the raw agricultural commodities (RAC):

1. PP 6E4629 proposes the establishment of a tolerance for artichoke at 1 part per million (ppm).
2. PP 6E4760 proposes the establishment of a tolerance for crop group 9 cucurbit vegetables at 0.4 ppm.
3. PP 8E4993 proposes the establishment of a tolerance for crop subgroup 6B edible-podded legume vegetables at 0.2 ppm.
4. PP 8E5009 proposes the establishment of a tolerance for eggplant at 0.05 ppm.
5. PP 9E5084 proposes the establishment of a tolerance for rapeseed including, canola and crambe seed, at 0.05 ppm.
6. PP 9E5069 proposes the establishment of a tolerance for crop subgroup 5A Head and Stem Brassica, excluding cabbage, at 0.6 ppm and cabbage at 4.0 ppm.
7. PP 9E5064 proposes the establishment of a tolerance for crop subgroup 6B, succulent shelled peas and beans at 0.5 ppm.

2. FMC Corporation

PP 8F5014

EPA has received a pesticide petition (8F5014) from FMC Corporation, Agricultural Group, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide bifenthrin in or on the raw agricultural commodity: sweet corn at 0.05 ppm and proposes to amend the existing tolerance for corn forage from 2.0 to 3.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of bifenthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled bifenthrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method*. The practical analytical method for detecting and measuring levels of bifenthrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances Gas Chromatography with Electron Capture Detection (GC/ECD) analytical method P-2132M.

3. *Magnitude of residues*. Field bifenthrin residue trials for each commodity, unless otherwise noted, were conducted according to approved protocol that include 5 applications of the active ingredient (a.i.) at a rate of 0.1 pounds (lbs.) a.i./ acre(A).

Field residue trials have been conducted at the maximum label rate for lima bean and succulent shelled peas. Results from these trials demonstrate that the proposed bifenthrin tolerance of 0.05 ppm for subgroup 6B succulent shelled peas and beans will not be exceeded when the product is applied following the proposed use directions.

Field residue trials meeting EPA study requirements have been conducted at the maximum label rate for the crop canola. Results from these trials demonstrate that the proposed bifenthrin tolerance of 0.05 ppm for rapeseed (including canola and crambe) will not be exceeded when the product is applied following the proposed use directions.

Residues of bifenthrin in or on artichoke were evaluated in two field trials where artichokes were treated with bifenthrin at the rates of 0.1 lb a.i./A or 0.2 lb a.i./A. Samples were taken 5 days after the last treatment. Artichokes treated at the rate of 0.1 lb a.i./A had residues as high as 0.67 ppm. Artichokes treated at the rate of 0.2 lb a.i./A had residues as high as 0.62 ppm.

Residue levels of bifenthrin in eggplant were evaluated in field trails after two treatments at a rate of 0.1 lbs. a.i./A and samples taken 7 days after the last application. No detectable residues

above the test method's limit of quantitation (L0Q) (0.05 ppm) were found in any of the test samples.

Field residue trials conducted for the cucurbit vegetable group included a total of three foliar applications of bifenthrin at 0.1 lb a.i./A to cucumber, cantaloupe and summer squash. The first foliar application was applied prebloom; the second application was applied post bloom; the third application was made post bloom 7 to 10 days after the second application, except in one instance. In some trials, fruit were harvested 0, 3 and 7 or 8 days after the last application. In all cases, the maximum residue found did not exceed the proposed tolerance of 0.4 ppm.

For the head and stem brassica crop subgroup (5A), IR-4 proposed that EPA establish a tolerance for bifenthrin on commodities, excluding cabbage, at 0.6 ppm, and that a separate tolerance for cabbage be established at 4.0 ppm. Samples were collected 6-8 days after the last application for the analysis of residues. Residues up to 0.56 ppm bifenthrin were found in broccoli and up to 0.19 ppm were found in cauliflower samples. Treated cabbage sampled showed residues as high as 3.09 ppm in heads with wrapper leaves. The tolerance proposal for bifenthrin on cabbage is based on residue data for cabbage with wrapper leaves.

Field residue trials were conducted at the maximum label rate for the crop subgroup edible-podded legume vegetables. Results from these trails demonstrate that the proposed bifenthrin tolerance of 0.2 ppm (crop subgroup edible-podded legume vegetables) and 0.5 ppm (crop subgroup succulent shelled pea) will not be exceeded when the product is applied following the proposed use directions.

B. Toxicological Profile

1. *Acute toxicity*. For the purposes of assessing acute dietary risk, FMC has used the maternal no-observed adverse effect level (NOAEL) of 1.0 milligrams/kilogram/day (mg/kg/day) from the oral developmental toxicity study in rats. The maternal lowest-observed adverse effect level (LOAEL) of this study of 2.0 mg/kg/day was based on tremors from day 7-17 of dosing. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity*. The following genotoxicity tests were conducted on bifenthrin and all yielded negative results including: gene mutation in *Salmonella* (Ames); chromosomal aberrations in Chinese hamster ovary and rat bone marrow cells; hypoxanthine guanine phophoribosyl transferase (HGPRT) locus mutation in mouse lymphoma cells; and unscheduled DNA synthesis in rat hepatocytes.

3. *Reproductive and developmental toxicity*—i. In the rat reproduction study, parental toxicity occurred (decreased bwt) at 5 mg/kg/day with a NOAEL of 3 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day highest dose tested (HDT). See discussion of developmental toxicity studies in section E.2 of this unit.

ii. *Postnatal sensitivity*. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

4. *Subchronic toxicity* The maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats is also used for short- and intermediate-term margin of exposure (MOE) calculations (as well as acute, discussed in (1) above). The maternal LOAEL of this study of 2.0 mg/kg/day was based on tremors from day 7-17 of dosing.

5. *Chronic toxicity*—i. The reference dose (RfD) has been established at 0.015 mg/kg/day. This RfD is based on a 1-year oral feeding study in dogs with a NOAEL of 1.5 mg/kg/day, based on intermittent tremors observed at the LOAEL of 3.0 mg/kg/day; an uncertainty factor of 100 is used.

ii. Bifenthrin is classified as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice; assignment of a Q* has not been recommended.

6. *Animal metabolism*. The metabolism of bifenthrin in animals is adequately understood. Metabolism studies in rats with single doses demonstrated that about 90% of the parent compound and its hydroxylated metabolites are excreted.

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of bifenthrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption*. To date, no special studies investigating potential estrogenic or other endocrine effects of bifenthrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, FMC Corporation concludes that there is no evidence to suggest that bifenthrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Tolerances have been established for the residues of bifenthrin, in or on a variety of raw agricultural commodities including: hops; strawberries; corn grain, forage, and fodder; cottonseed; and livestock commodities of cattle, goats, hogs, horses, sheep, poultry, eggs and milk. Pending tolerances for artichokes, the crop group cucurbit vegetables, the crop subgroup edible-podded legume vegetables and subgroup succulent shelled pea and bean, eggplant, citrus, raspberries, sweet corn, canola, and the subgroup head and stem brassica also exist. For the purposes of assessing the potential dietary exposure for the existing and pending tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

ii. *Acute exposure and risk*. Acute dietary exposure 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. For the purposes of assessing acute dietary risk for bifenthrin, the maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats was used. The maternal LOAEL of this study of 2.0 mg/kg/day was based on tremors from day 7-17 of dosing. This acute dietary endpoint was used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the MOEs are greater than the EPA standard of 100 for all subpopulations. The 99.9th percentile of exposure for the overall U.S. population was estimated to be 0.005278 mg/kg/day (MOE of 189). The 99.9th percentile of exposure for all infants < 1-year old was estimated to be 0.006255 mg/kg/day (MOE of 159). The 99.9th percentile of exposure for nursing infants < 1-year old was estimated to be 0.004280 mg/kg/day (MOE of 233). The 99.9th percentile of exposure for non-nursing infants < 1-year old was estimated to be 0.005812 mg/kg/day (MOE of 172). The 99.9th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) was estimated to be 0.009578 mg/kg/day (MOE of 104). Therefore, FMC concludes that the acute dietary risk of

bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iii. *Chronic exposure and risk*. The acceptable RfD is 0.015 mg/kg/day, based on a NOAEL of 1.5 mg/kg/day from the chronic dog study and an uncertainty factor of 100. The endpoint effect of concern were tremors in both sexes of dogs at the L0AEL of 3.0 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for bifenthrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000356 mg/kg bwt/day and utilize 2.4% of the RfD for the overall U. S. population. The ARC for children 7-12 years old and children 1-6 years old (subgroups most highly exposed) are estimated to be 0.000558 mg/kg bwt/day and 0.001008 mg/kg bwt/day and utilizes 3.7% and 6.7% of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iv. *Drinking water*. Laboratory and field data have demonstrated that bifenthrin is immobile in soil and will not leach into ground water. Other data show that bifenthrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero < 0.001 parts per billion (ppb). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

v. *Non-dietary exposure*. Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application and chronic dietary aggregate exposures associated with bifenthrin products used for residential flea infestation control and agricultural/commercial applications. The aggregate analysis conservatively assumes that a person is concurrently exposed to the same active ingredient via the use of consumer or professional flea infestation control products and to chronic level residues in the diet. In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose (summed across inhalation and incidental ingestion routes) for each relevant product use category (i.e., lawn care) and receptor subpopulation (i.e., adults, children 1-6 years and infants < 1-year) are compared to the systemic absorbed dose NOAEL for bifenthrin to provide estimates of the MOEs. Based on the toxicity endpoints selected by EPA for bifenthrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOAEL for estimating MOEs.

In the case of potential aggregate health risks, the above mentioned conservative point estimates of inhalation and incidental ingestion non-dietary exposure (expressed as systemic absorbed dose) are combined with estimates (arithmetic mean values) of chronic average dietary (oral) absorbed doses. These aggregate absorbed dose estimates are also provided for adults, children 1-6 years and infants < 1-year. The combined or aggregated absorbed dose estimates (summed across non-dietary and chronic dietary) are then compared with the systemic absorbed dose NOAEL to provide estimates of aggregate MOEs.

The non-dietary and aggregate (non-dietary + chronic dietary) MOEs for bifenthrin indicate a substantial degree of safety. The total non-dietary (inhalation + incidental ingestion) MOEs for post-application exposure for the lawn care product evaluated was estimated to be > 194,000 for adults, 52,400 for children 1-6 years old and 56,700 for infants < 1-year. The aggregate MOE (inhalation + incidental oral + chronic dietary, summed across all product use categories) was estimated to be 2,664 for adults, 653 for children 1-6 years old and 1,042 for infants (< 1-year). It can be concluded that the potential non-dietary and aggregate (non-dietary + chronic dietary) exposures for bifenthrin are associated with substantial margins of safety.

D. Cumulative Effects

In consideration of potential cumulative effects of bifenthrin and other substances that may have a common mechanism of toxicity, FMC Corporation concludes that there are currently no available data or other reliable information indicating that any toxic effects produced by bifenthrin would be cumulative with those of other chemical compounds, thus only the potential risks of bifenthrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for EPA to consider concerning potential cumulative effects of bifenthrin consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL-5734-6) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population*. The established RfD is 0.015 mg/kg/day, based on a NOAEL of 1.5 mg/kg/day from the chronic dog study and an uncertainty factor of 100. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the ARC for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000356 mg/kg bwt/day and utilize 2.4% of the RfD for the overall U.S. population. The ARC for children 7-12 years old and children 1-6 years old (subgroups most highly exposed) are estimated to be 0.000558 mg/kg bwt/day and 0.001008 mg/kg bwt/day and utilizes 3.7% and 6.7% of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of bifenthrin, as estimated by the aggregate risk assessment, would not exceed the Agency's level of concern.

For the overall U.S. population, the calculated MOE at the 95th percentile

was estimated to be 719; 386 at the 99th percentile; and 189 at the 99.9th percentile. For all infants < 1-year old, the calculated MOE at the 95th percentile was estimated to be 531; 186 at the 99th percentile; and 159 at the 99.9th percentile. For nursing infants < 1-year old, the calculated MOE at the 95th percentile was estimated to be 1,478; 528 at the 99th percentile; and 233 at the 99.9th percentile. For non-nursing infants < 1-year old, the calculated MOE at the 95th percentile was estimated to be 470; 189 at the 99th percentile; and 172 at the 99.9th percentile. For the most highly exposed population subgroup, children 1-6 years old, the calculated MOE at the 95th percentile was estimated to be 347; 225 at the 99th percentile; and 104 at the 99.9th percentile. Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to bifenthrin.

2. *Infants and children*—i. *General*. In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproductive study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. The Federal Food, Drug, and Cosmetic Act (FFDCA) section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base.

ii. *Developmental toxicity studies*. In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOAEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOAEL of 4 mg/kg/day. In the rat developmental study, the maternal NOAEL was 1 mg/kg/day, based on tremors at the LOAEL of 2 mg/kg/day. The developmental (pup) NOAEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOAEL (2 mg/kg/day). There were 5/23 (22%) litters affected (5/141 fetuses since each litter only had one affected fetus) in the 2 mg/kg/day group, compared with zero in the control, 1, and 0.5 mg/kg/day groups.

According to recent data (1992-1994) for this strain of rat, incidence of distended ureter averaged 11% with a maximum incidence of 90%.

iii. *Reproductive toxicity study*. In the rat reproduction study, parental toxicity occurred as decreased bwt at 5.0 mg/kg/day with a NOAEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day HDT.

iii. *Pre- and postnatal sensitivity*-a. *Pre-natal*. Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Postnatal*. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

c. *Conclusion*. Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized less than 10% of the RfD for either the entire U.S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of residues of bifenthrin in or on the subject commodities.

[FR Doc. 99–12482 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–AR; FRL–6078–1]

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Arkansas's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for a public hearing.

SUMMARY: On March 29, 1999, the State of Arkansas submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Arkansas's application, and provides a 45–day public comment period and an opportunity to request a public hearing on the application. Arkansas has provided a certification that their program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established.

DATES: The State program became effective March 29, 1999. Submit comments on the authorization application on or before July 6, 1999. Public hearing requests must be submitted on or before June 2, 1999.

If a public hearing is requested and granted, the hearing will be held on May 21, 1999, 1:30 p.m., at the Arkansas Department of Environmental Quality, Administration Building, 8003 National Drive, Little Rock, Arkansas. If a public hearing is not requested, this meeting time and place will be canceled. Therefore, individuals are advised to verify the status of the public hearing by contacting Jeffrey Robinson (name, telephone number, and address are provided in the ''FOR FURTHER INFORMATION CONTACT'' section of this notice) after June 2, 1999 and before the May 21, 1999 public hearing date.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number ''PB–402404–AR'' (in duplicate) to: Environmental Protection Agency, Region VI, 6PD–T, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Comments, data, and requests for public hearing may also be submitted electronically to steele.eva@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Jeffrey Robinson, Regional Lead Coordinator, Environmental Protection Agency, Region VI, 6PD-T, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733. Telephone: 214–665–7577, e-mail address: robinson.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes EPA to promulgate final regulations governing lead-based paint activities. Lead-based paint activities is defined in section 402(b) of TSCA and authorizes EPA to regulate lead-based paint activities in target housing, public buildings built prior to 1978, commercial buildings, bridges and other structures or superstructures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. On August 31, 1998, EPA instituted the Federal program in States or Indian Country without an authorized program, as provided by section 404(h) of TSCA.

States and Indian Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Indian Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdraws the authorization.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Arkansas's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. Arkansas has provided a self-certification letter from the Governor and Attorney General that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established in Arkansas.

II. State Program Description Summary

The Arkansas lead-based paint program is administered by the Lead-Based Paint Section of the Arkansas Department of Environmental Quality (ADEQ). The lead-based paint program duties include enforcement, compliance assistance, inspections, certification, licensing, and public education.

The Arkansas Lead-Based Paint Hazard Rules are modeled after the Federal lead-based paint activities rules found at 40 CFR part 745, subpart L. The rules are applicable to lead-based paint activities performed in target housing and child-occupied facilities. ADEQ has developed a program that ensures that lead-based paint activities conducted in target housing or child-occupied facilities in the State of Arkansas are performed by trained and certified individuals who are employed by licensed lead-based paint firms. The Act also ensures that the individuals are trained by lead-based paint training provders who teach the curriculum outlined in 40 CFR part 745 and that the trained providers receive review and approval prior to receiving a license and are audited to maintain a standard of instruction. Finally, the Act ensures that certified individuals, as well as licensed firms, perform lead-based paint activities according to work practice standards approved by 40 CFR part 745.

All training program providers are required to receive licensing prior to providing, offering, or claiming to provide lead-based paint activities courses or refresher courses in the State of Arkansas in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. Programs that have been accredited and or licensed by another State or agency must apply for and receive licensing from ADEQ before conducting or advertising a training course in Arkansas. ADEQ has the authority to audit training programs at any reasonable time.

All individuals must apply for certification and all firms must apply for licensing prior to conducting lead-based paint activities in the State of Arkansas. The appropriate certification exam must be taken every 3 years for certain disciplines. Persons holding a valid certification issued by another State or Agency must apply for and receive certification from ADEQ. Firms that perform lead-based paint services must be licensed by ADEQ and must employ properly certified employees.

ADEQ has developed work practice standards modeled after the requirements at 40 CFR 745.227. ADEQ must be notified in advance of the start of an abatement project and an abatement notification fee must be paid. ADEQ has the authority to inspect or investigate the practices of any person involved in lead-based paint activities in target housing and child-occupied facilities. Only laboratories accredited by the National Lead Laboratory Accreditation Program (NLLAP) recognized by EPA may conduct required analyses, but x-ray fluorescence may be used for on-site lead detection.

Arkansas has submitted information in the application addressing the required program elements for State lead-based paint activities programs pursuant to 40 CFR 745.325. In addition, Arkansas has submitted information detailing their lead-based paint compliance and enforcement programs as required by 40 CFR 745.327. At this time, Arkansas is not seeking authorization of a pre-

renovation notification program pursuant to 40 CFR 745.326.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB–402404–AR.'' Copies of this notice, the State of Arkansas's authorization application, and all comments received on the application are available for inspection in the Region VI office, from 7:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region VI Library, Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, TX.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

steele.eva@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB–402404–AR.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to 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 action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action 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 action.

C. Executive Order 13084

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

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

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

Dated: April 27, 1999.

Gerald Fontenot,

Acting Division Director, Multimedia Planning and Permitting, Region VI.

[FR Doc. 99–12590 Filed 5–18–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

Meetings; Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, May 25, 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.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–12794 Filed 5–17–99; 3:17 pm]

BILLING CODE 6715–01–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 June 2, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Patricia Jean Taylor, Casper, Wyoming; to acquire voting shares of Stockton Bancshares, Inc., Stockton, Kansas, and thereby indirectly acquire voting shares of The Stockton National Bank, Stockton, Kansas.

Board of Governors of the Federal Reserve System, May 13, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–12524 Filed 5–18–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Robert A. Olson, Orono, Minnesota; to acquire voting shares of St. Stephen BanGroup, Inc., Minneapolis, Minnesota, and thereby indirectly acquire voting shares of St. Stephen State Bank, St. Stephen, Minnesota.

2. Dan L. Rorvig, McVille, North Dakota; Teresa L. Rorvig, McVille, North Dakota; and Jason W. McCardle, Aneta, North Dakota; to acquire voting shares of McVille Financial Services, Inc., McVille, North Dakota, and thereby indirectly acquire voting shares of McVille State Bank, McVille, North Dakota.

Board of Governors of the Federal Reserve System, May 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12573 Filed 5–18–99; 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 June 11, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Capitol Bancorp, Ltd., Lansing, Michigan; to acquire Sun Community Bancorp Limited, Phoenix, Arizona, and Nevada Community Bancorp Limited, Las Vegas, Nevada, and thereby indirectly acquire Desert Community Bank, Las Vegas, Nevada.

2. Capitol Bancorp, Ltd., Lansing, Michigan, and Indiana Community Bancorp Ltd., Goshen, Indiana; to acquire 51 percent of the voting shares of Elkhart Community Bank, Elkhart, Indiana.

In connection with this application, Indiana Community Bancorp, Ltd., has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, May 13, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–12523 Filed 5–18–99; 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 June 14, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Apex Mortgage Company, Edmond, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Edmond Bank and Trust, Edmond, Oklahoma (a *de novo* bank in organization).

Board of Governors of the Federal Reserve System, May 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12572 Filed 5-18-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Banque Federative du Credit Mutuel and Compagnie Financiere de CIC et de l'Union Europeenne, both of Paris, France; to engage *de novo* through its subsidiary, CIC Eurosecurities, Inc., New York, New York, in providing brokerage services as agent for the account of customers, with respect to all types of securities, including options on securities and options on securities indices, traded on U.S. and non-U.S. securities exchanges and over-the-counter, pursuant to § 225.28(b)(7)(i) of Regulation Y; buying and selling in the secondary market all types of securities on the order of customers as a ''riskless principal,'' pursuant to § 225.28(b)(7)(ii) of Regulation Y; acting as an introducing broker as agent for the account of customers with respect to futures contracts and options on futures contracts, including futures contracts on stock indices, solely for hedging purposes and as an incident to these customers' purchases of securities, pursuant to § 225.28(b)(7)(iv) of Regulation Y; acting as agent for the private placement of securities, pursuant to § 225.28(b)(7)(iii) of Regulation Y; and acting as a ''conduit'' or ''intermediary'' for CFCICUE's proprietary trading desk in Paris in arranging with U.S. institutional counterparties for loans of securities to or from CFCICUE, pursuant to §§ 225.28(b)(7)(i) and 225.28(b)(7)(v) of Regulation Y. *See also*, Stichting Prioriteit ABN AMRO Holding et al., 81 Fed. Res. Bull. 182 (1995); Saban, S.A., 78 Fed. Res. Bull. 955 (1992); Canadian Imperial Bank of Conunerce, 74 Fed. Res. Bull. 571 (1988); and The Chase Manhattan Corporation, 69 Fed. Res. Bull. 725 (1983). These activities will be conducted worldwide.

2. J.P. Morgan & Co., Incorporated, New York, New York; to acquire through its wholly-owned subsidiary, J.P. Morgan Capital Corporation, New York, New York, shares of the series B Convertible Preferred Stock, an approximate 11 percent ownership interest of PeopleFirst.com Inc., San Diego, California, and thereby engage in extending credit and servicing loans, and activities related to extending credit, pursuant to §§ 225.28(b)(1) and 225.28(b)(2) of Regulation Y, respectively.

Board of Governors of the Federal Reserve System, May 13, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–12522 Filed 5–18–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, May 24, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12646 Filed 5–14–99; 4:40 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

NAME: Mine Safety and Health Research Advisory Committee (MSHRAC).

TIME AND DATE: 9 a.m.–4 p.m., June 10, 1999.

PLACE: Spokane Research Laboratory, 315 East Montgomery Avenue, Spokane, Washington 99207.

STATUS: Open to the public, limited only by space available. The meeting room accommodates approximately 50 people.

PURPOSE: The Committee is charged with advising the Secretary; the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; and the Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), section 102(b)(2).

MATTERS TO BE DISCUSSED: Agenda items include Deputy Director's comments; Associate Director-Mining comments; Mining Request for Applications (RFA) History/Review; Diesel Partnership Discussion; Feedback on Mining RFA; Spokane Research Laboratory Mine Injury and Disease Prevention Branch Overview; Mine Emergency Preparedness and Response Subcommittee; Achieving Organizational Excellence; and future activities of the Committee.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Larry Grayson, Ph.D., Executive Secretary, MSHRAC, NIOSH, CDC, 200 Independence Avenue, SW, Room 715–H, Humphrey Building, Washington, DC 20201, telephone 202/401–2192, fax 202/260–4464.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 13, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–12544 Filed 5–18–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

NAME: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

TIME AND DATE: 9 a.m.–4 p.m., June 8, 1999.

PLACE: The Washington Court, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

PURPOSE: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

MATTERS TO BE DISCUSSED: Agenda items include a report from the Director of NIOSH; National Occupational Research Agenda (NORA) update; Feedback on Medical Surveillance Report; Evaluation of NIOSH Internet Activities; The Changing Nature of Work; Flock Workers' Lung; Surveillance Activities; and future activities of the Board.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Bryan D. Hardin, Ph.D., Executive Secretary, BSC, NIOSH, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–3773, fax 404/639–2170, e-mail: bdh1@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 13, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–12543 Filed 5–18–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0615]

Determination of Regulatory Review Period for Purposes of Patent Extension; Neumega®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Neumega® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis

for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product Neumega® (interleukin-11). Neumega® is indicated for the prevention of severe thrombocytopenia and the reduction of the need for platelet transfusions following myelosuppressive chemotherapy in patients with nonmyeloid malignancies who are at high risk of severe thrombocytopenia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Neumega® (U.S. Patent No. 5,215,895) from Genetics Institute, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 28, 1998, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of Neumega® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Neumega® is 1,854 days. Of this time, 1,513 days occurred during the testing phase of the regulatory review period, while 341 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: October 30, 1992. The applicant claims October 25, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 30, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 505 of the act*: December 20, 1996. FDA has verified the applicant's claim that the product license application (PLA) for Neumega® (PLA 96–1433) was initially submitted on December 20, 1996.

3. *The date the application was approved*: November 25, 1997. FDA has verified the applicant's claim that PLA 96–1433 was approved on November 25, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 542 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 19, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 15, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–12527 Filed 5–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0612]

Determination of Regulatory Review Period for Purposes of Patent Extension; Trovan

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Trovan and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and

Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Trovan (trovafloxacin mesylate). Trovan is indicated for the treatment of infections caused by susceptible strains of microorganisms. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Trovan (U.S. Patent No. 5,164,402) from Pfizer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 28, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Trovan represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Trovan is 1,967 days. Of this time, 1,613 days occurred during the testing phase of the regulatory review period, while 354 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: August 1, 1992. The applicant claims July 2, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 1, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 30, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Trovan (NDA 20–759) was initially submitted on December 30, 1996.

3. *The date the application was approved*: December 18, 1997. FDA has verified the applicant's claim that NDA 20–759 was approved on December 18, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 761 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 19, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 15, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–12526 Filed 5–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0779]

Determination of Regulatory Review Period for Purposes of Patent Extension; Monostrut™ Cardiac Valve Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Monostrut™ Cardiac Valve Prosthesis and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration,5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Monostrut™ Cardiac Valve Prosthesis. Monostrut™ Cardiac Valve Prosthesis is indicated for the replacement of malfunctioning native or prosthetic mitral (sizes 27, 29, 31, and 33 millimeters (mm)) or aortic (sizes 21, 23, 25, 27, 29, 31, and 33 mm) heart valves. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Monostrut™ Cardiac Valve Prosthesis (U.S. Patent No. 4,343,049) from Alliance Medical Products Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this

patent's eligibility for patent term restoration. In a letter dated September 29, 1998, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period, and that the approval of Monostrut™ Cardiac Valve Prosthesis represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Monostrut™ Cardiac Valve Prosthesis is 5,620 days. Of this time, 1,729 days occurred during the testing phase of the regulatory review period, while 3,891 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: May 14, 1982. FDA has verified the applicant's claim that the date the investigational device exemption required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective May 14, 1982.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: February 5, 1987. The applicant claims May 8, 1986, as the date the premarket approval application (PMA) for Monostrut™ Cardiac Valve Prosthesis (PMA P970002) was initially submitted. However, FDA records indicate that PMA P970002 was submitted on February 5, 1987.

3. *The date the application was approved*: September 30, 1997. FDA has verified the applicant's claim that PMA P970002 was approved on September 30, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 19, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 15, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–12528 Filed 5–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–2001]

Memorandum of Understanding Between the Food and Drug Administration and the United States Department of Agriculture

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the FDA and the United States Department of Agriculture, Food Safety and Inspection Service. The purpose of the MOU is to facilitate an exchange of information between the agencies about establishments and operations that are subject to the jurisdiction of both agencies.

DATES: The agreement became effective February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Gary L. Pierce, Office of Regulatory Affairs (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5655.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20. 108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: May 11, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

BILLING CODE 4160–01–F

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MOU 225-99-2001

MEMORANDUM OF UNDERSTANDING

Between The

FOOD SAFETY AND INSPECTION SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

And The

FOOD AND DRUG ADMINISTRATION
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. PURPOSE

This agreement between the Food and Drug Administration, Department of Health and Human Services (FDA) and the Food Safety and Inspection Service, United States Department of Agriculture (FSIS), is intended to facilitate an exchange of information between the agencies about establishments and operations that are subject to the jurisdiction of both agencies. This exchange of information will permit more efficient use of both agencies' resources and will contribute to improved public health protection.

II. BACKGROUND

In a May 1997 Report to the President entitled "Food Safety From Farm to Table - A National Food-Safety Initiative," the agencies primarily responsible for food safety made several recommendations to improve public health protection from foodborne illness. Several recommendations addressed the issues of increasing cooperation among agencies and, more specifically, of ensuring that the resources and experience of FDA and FSIS are used as efficiently as possible to avoid duplication of efforts.

To advance the purposes of the President's Food Safety Initiative, FDA and FSIS have re-evaluated a previous Memorandum of Understanding on coordination of inspectional efforts signed by FSIS on July 14, 1983 and by FDA on July 25, 1983. The agencies have determined that changes in inspectional activities, available resources, and food safety hazards necessitate updating that agreement. Therefore, FDA and FSIS have entered into this Memorandum of Understanding to address today's public health needs.

III. STATUTORY AUTHORITIES

FSIS is responsible for implementing and enforcing the Federal Meat Inspection Act (21 U.S.C.

601, *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451, *et seq.*), and parts of the Egg Products Inspection Act (21 U.S.C. 1031, *et. seq.*). In carrying out its responsibilities under these acts, FSIS places inspectors in meat and poultry slaughterhouses and in meat, poultry, and egg processing plants. FSIS also conducts inspections of warehouses, transporters, retail stores, restaurants, and other places where meat, poultry, and egg products are handled and stored. In addition, FSIS conducts voluntary inspections under the Agriculture Marketing Act (7 U.S.C. 1621, *et seq.*).

FDA is responsible for implementing and enforcing the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301, *et seq.*), the Public Health Service Act (42 U.S.C. 201, *et. seq*), the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et. seq),* and parts of the Egg Products Inspection Act. In carrying out its responsibilities under these acts, FDA conducts inspections of establishments that manufacture, process, pack, or hold foods, with the exception of certain establishments that are regulated exclusively by FSIS. FDA also inspects vehicles and other conveyances, such as boats, trains, and airplanes, in which foods are transported or held in interstate commerce.

Nothing in this agreement shall lessen the responsibilities or authorities of FSIS or FDA under their statutory authorities.

IV. SUBSTANCE OF AGREEMENT

1. List of District Level Contacts

The agencies agree to develop, maintain, and annually update a list of their districts and of persons to contact at the district management level. In addition to the annual updates to these lists, each district agrees to promptly inform its counterpart district of any change in the contact person for that district. The agencies also agree to develop and maintain a list of the district offices responsible for each state and territory. Each agency agrees to promptly inform the other agency of any changes in the jurisdiction of district offices or in the field organization of the agency. These lists are to be distributed to the district managers of both FSIS and FDA.

2. List of Dual Jurisdiction Establishments

The agencies agree to develop, maintain, and annually update a list of dual jurisdiction establishments (hereinafter "DJEs"), that is, establishments that prepare, pack, hold, or otherwise handle both foods regulated by FSIS and foods regulated by FDA. This list is to be organized by state and territory and will be distributed to the district managers of both FSIS and FDA. When updating this list, each agency agrees to identify all DJEs that have discontinued operations that are under its jurisdiction.

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3. System of Communication

The district offices of each agency agree to promptly report to their counterpart district offices certain findings, as set forth in paragraphs 5, 6, and 7, relating to DJEs. The district office receiving the report agrees to respond with information regarding any planned or completed follow-up action relating to the reported information. District management of both agencies are encouraged to initiate contact and to meet annually, or as frequently as necessary, to facilitate the exchange of information about establishments and foods prepared, packed, held, or otherwise handled by these establishments. The agencies agree to work together to develop, put in place, and maintain a system of electronic communication at the district level to facilitate the exchange of information about the DJEs.

4. Notification of Periodic Inspection

Each agency agrees to attempt to notify the appropriate contact identified in paragraph 1 of this section prior to conducting an inspection of a DJE that is not under continuous FSIS inspection. In addition, FDA agrees to attempt to notify the FSIS inspector prior to inspecting a DJE that is under continuous inspection and to invite the FSIS inspector to accompany the FDA investigator on the inspection.

5. Findings Involving DJEs That Are To Be Reported By Both Agencies

The district office of each agency is to notify its counterpart district office of the following findings in a DJE:

a. Foods implicated in outbreaks of foodborne illness, injuries, or adverse reactions.

b. Foods found to be contaminated or mislabeled such that there is a reasonable probability that the use of or exposure to such products will cause serious adverse health consequences. Hazards that constitute contamination or mislabeling covered under this paragraph are attached as Appendix A.

c. A processing condition or failure that is likely to result in food contamination leading to outbreaks of foodborne illness, injuries, or adverse reactions.

d. Foods that have been recalled.

e. Reports of tampering or threats of tampering.

f. A food handler diagnosed as having a communicable disease that is likely to result in food contamination or outbreaks of foodborne illness (e.g., hepatitis).

g. Convictions of a DJE, or any officer or key employee of a DJE, for any felony or more

than one misdemeanor involving the DJE or any food prepared, packed, held, or otherwise handled in the DJE.

h. Convictions of an establishment preparing, packing, holding, or otherwise handling meat, poultry or egg products solely under state regulation and foods regulated by FDA, or any officer or key employee of such an establishment, for any felony or more than one misdemeanor involving the establishment or any food prepared, packed, held, or otherwise handled in the establishment.

6. Additional Findings Involving DJEs That Are To Be Reported By FSIS to FDA

In addition to the findings in paragraph 5, the FSIS district office is to notify its counterpart district office of FDA of the following finding in a DJE:

a. FSIS action to withhold the mark of inspection or to suspend or withdraw the grant of inspection.

7. Additional Findings Involving DJEs That Are To Be Reported By FDA to FSIS

In addition to the findings in paragraph 5, the FDA district office is to notify its counterpart district office of FSIS of the following findings:

a. Any other processing condition in a DJE that could render foods bearing a USDA mark of mandatory or voluntary inspection adulterated or mislabeled.

b. Reason to believe that an FDA-regulated ingredient that would adulterate a meat, poultry, or egg product if used in it has been sent to or received by an FSIS-regulated establishment.

8. Follow-Up Action

a. The agency receiving notification of a finding listed in paragraphs 5, 6, or 7 agrees to evaluate it and take appropriate action.

b. For all reported findings listed in paragraphs 5, 6, or 7, the agency receiving the notification agrees to track and use the information in program evaluation, work planning, and consideration of whether action against the establishment is warranted.

c. The agency receiving the notification of a finding listed in paragraphs 5, 6, or 7 agrees to respond to the notification within 30 days by communicating the disposition of the notification to the notifying agency at the district management level, including, if appropriate, any and all actions planned and taken by the agency receiving notification. In addition, the agencies agree to explore the feasibility of granting each other access to

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appropriate computer monitoring systems to permit interagency tracking of findings listed in paragraphs 5, 6, or 7.

9. Information Sharing and Confidentiality

To promote increased cooperation and efficient use of enforcement resources, each agency agrees to share information for enforcement purposes upon request by the other agency, to the extent permitted by applicable law. All non-public information shared between the two agencies pursuant to this agreement is subject to all applicable limitations established by statute or regulation on interagency sharing of information. The current policies and procedures for sharing such information are attached as Appendix B.

10. Training

The agencies agree to develop and provide appropriate training in the inspectional techniques and processes of each agency as the agencies determine is necessary to ensure that the contacts for each agency have an appropriate understanding of the workings of the other agency. This understanding will help ensure the successful implementation of this agreement. The agencies agree to develop and initiate the training as quickly as possible. The district managers of both agencies are encouraged to evaluate training needs during annual meetings, or as frequently as necessary, to determine whether additional training is warranted.

11. Joint Enforcement Activities

The agencies agree to establish a group to explore the feasibility of joint enforcement activities. This group is to report its findings and recommendations by March 1, 1999 to the Commissioner of FDA and the Administrator of FSIS.

12. Re-evaluation of the Agreement

The agencies agree to re-evaluate the effectiveness of this agreement after it has been in effect for one year. The agencies also agree to explore the feasibility of expanding their cooperative activities after one year, or sooner if the agencies agree that it is appropriate to do so.

V. PERIOD OF AGREEMENT

The agencies agree to begin implementing this agreement within 30 days from execution by both parties. This agreement will be effective indefinitely. It may be modified by mutual consent or terminated by either party upon 30 days' written notice to the other.

VI. PREVIOUS AGREEMENTS

This agreement supersedes the Memorandum of Understanding on coordination of inspectional

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efforts signed by FSIS on July 14, 1983 and by FDA on July 25, 1983. This MOU does not modify any other existing agreements between USDA and FDA.

VII. NAME AND ADDRESS OF PARTICIPATING AGENCIES

Food Safety and Inspection Service
1400 Independence Ave., S.W.
Washington, DC 20250-3700

Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

VIII. LIAISON OFFICERS

For FSIS:
John McCutcheon
Associate Deputy Administrator,
Office of Field Operations
Food Safety Inspection Service
1400 Independence Ave., S.W.
Washington, DC 20250-3700
(202) 720-5190

For FDA:
Gary Pierce
Director, Division of Emergency and
Investigational Operations
Food and Drug Administration
5600 Fishers Lane (HFC-130)
Rockville, MD 20857
(301) 827-5655

APPROVED AND ACCEPTED FOR THE FOOD SAFETY INSPECTION SERVICE

By: _____
Thomas J. Billy

Title: Administrator, FSIS

Date: FEB 23 1999

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

By: _____
Michael A. Friedman, M.D.

Title: Deputy Commissioner
For Operations, FDA

Date: FEB 23 1999

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Appendix A
Findings That Constitute Contamination or Mislabeling Under Section IV, 5, b.

The following findings of contamination or mislabeling should be reported by FSIS to FDA under section IV, 5, b:

1. pathogenic organisms

2. undeclared allergens (e.g., peanuts, peanut butter, peanut flour, hydrolyzed peanut protein, pecans, walnuts, hazelnuts, filberts, cashews, Brazil nuts, eggs, egg whites, egg yolk, egg albumen, powdered eggs, shrimp, crab, crayfish, lobster, oysters, clams, scallops, mussels, almonds, pistachios, cow milk, cream, dry milk, whey, other proteins from cow's milk, soy, soybeans, soy protein, soy flour, corn, corn flour, corn meal, fish, oats, wheat);

3. undeclared color additives FD&C Yellow No. 5 and FD&C Yellow No. 6; and

4. undeclared sulfites.

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Appendix B
Policies and Procedures for Information Sharing

Under this MOU, neither FDA nor FSIS will disclose to each other confidential commercial or trade secret information. The information FDA and FSIS disclose to each other under this MOU may include other information exempt from public disclosure, such as information compiled for law enforcement purposes and predecisional information.

To promote the sharing of information for enforcement purposes, while ensuring that both agencies protect information exempt from public disclosure, FDA and FSIS agree to comply with the following conditions:

1. The agency that shares information ("the information-sharing agency") shall include a transmittal letter along with any non-electronic agency records exchanged that are exempt from public disclosure. A model transmittal letter is attached. The first page of each document provided shall be stamped "CONFIDENTIAL [name of information-sharing agency] DOCUMENTS: DO NOT DISCLOSE WITHOUT WRITTEN PERMISSION OF [name of information-sharing agency]." Electronic records, such as e-mails, that are exchanged and that contain information exempt from public disclosure shall include the following statement: "This e-mail contains information exempt from public disclosure that is being shared in accordance with the Memorandum of Understanding dated January 22, 1999, between FDA and FSIS regarding dual-jurisdiction establishments. This information may not be further disclosed without prior written permission from the agency that provided it."

2. The agency that receives the information ("the recipient agency") shall not disclose any shared information designated by the information-sharing agency as exempt from public disclosure to any person or entity outside the recipient agency, including the Department of Justice or a court, without first requesting and obtaining the written permission of the information-sharing agency. The information-sharing agency will not withhold permission to disclose information pursuant to a court order, provided that the recipient agency notifies the information-sharing agency upon receipt of the order as provided in paragraph 4.

3. The recipient agency shall notify the information-sharing agency upon receipt of any request from a third party for shared information designated by the information sharing agency as exempt from public disclosure. In addition to its ordinary English meaning, the term "request" includes Freedom of Information Act requests, Congressional inquiries, and attempts to obtain information by compulsory process, including, but not limited to, subpoenas and discovery requests.

4. The recipient agency shall notify the information-sharing agency upon receipt of any judicial order that compels the release of shared information designated by the information-sharing agency as exempt from public disclosure so that the information-sharing agency may take appropriate measures, such as filing a motion with the court that issued the order or filing an appeal.

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Model Transmittal Letter

This letter accompanies agency records that are being shared in accordance with the Memorandum of Understanding dated January 22, 1999, between FDA and FSIS regarding dual-jurisdiction establishments. These agency records contain information exempt from public disclosure and may not be further disclosed without prior written permission from the agency that provided them.

[FR Doc. 99–12530 Filed 5–18–99; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–2000]

Memorandum of Understanding Between the Food and Drug Administration and the Ministry of Maritime Affairs and Fisheries of the Republic of Korea

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Ministry of Maritime Affairs and Fisheries of the Republic of Korea. The purpose of the MOU is to ensure that fresh, frozen molluscan shellfish that are imported from Korea are safe and wholesome.

DATES: The agreement became effective October 28, 1998.

FOR FURTHER INFORMATION CONTACT: Scott R. Rippey, Office of Seafood (HFS–415), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3174.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: May 11, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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225-99-2000

MEMORANDUM OF UNDERSTANDING

between the

FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OF THE
UNITED STATES OF AMERICA

and the

MINISTRY OF MARITIME AFFAIRS AND FISHERIES
OF THE
REPUBLIC OF KOREA

CONCERNING THE SANITARY CONTROL OF FRESH FROZEN MOLLUSCAN SHELLFISH DESTINED FOR EXPORTATION FROM KOREA TO THE UNITED STATES

The Food and Drug Administration (FDA) of the Department of Health and Human Services and the Ministry of Maritime Affairs and Fisheries (MOMAF) of the Republic of Korea;

Desiring to continue the 1987 Memorandum of Understanding Concerning the Sanitary Control of Fresh Frozen Molluscan Shellfish Destined for Exportation from Korea to the United States between the Government of the United States of America and the Government of the Republic of Korea;

Recognizing that since 1967 both the Government of the United States and the Government of Korea have undertaken technical consultations on the development of an effective oyster production program in Korea and that in 1970 the FDA endorsed the Korean Shellfish Sanitation Program (KSSP) and concluded that the Korean program met or exceeded U.S. National Shellfish Sanitation Program (NSSP) guidelines and that the Korean Government can fulfill its responsibilities as a member of the National Shellfish Sanitation Program;

Understanding that on November 24, 1972, the Government of the United States signed the Shellfish Sanitation Agreement with the Government of Korea in which both governments agreed to cooperate in seeking to assure that fresh frozen molluscan shellfish are safe and wholesome and that in 1987 both governments affirmed their intention to continue the 1972 agreement by signing a Memorandum of Understanding between FDA and the Korean National Fisheries Administration Concerning the Sanitary Control of Fresh Frozen Molluscan Shellfish Destined for Exportation from Korea to the United States;

Recognizing that in 1996, the Korean National Fisheries Administration was reorganized into the new MOMAF and the shellfish program was then placed under the direction of the Fisheries Policy Bureau within MOMAF and that the sanitary control of shellfish in interstate commerce in the United States continues to be administered by FDA in cooperation with state agencies under the NSSP;

Acknowledging that this agreement will permit MOMAF to certify Korean firms and shippers of fresh frozen shellfish and to have these firms and shippers listed on FDA's "Interstate Certified Shellfish Shippers List" (ICSSL) and FDA and U.S. state authorities will recognize shellfish from such shipments as having been certified under the NSSP;

Recognizing that this agreement will assist in assuring that fresh frozen molluscan shellfish exported from the Republic of Korea and offered for import into the United States continue to be safe and wholesome and are harvested, processed, transported, and labeled in accordance with the sanitation principles of the U.S. NSSP and the requirements of the U.S. Federal Food, Drug, and Cosmetic Act, the U.S. Public Health Service Act, the U.S. Fair Packaging and Labeling Act, and the Korean Ministry of Maritime Affairs and Fisheries Ordinance Number 53;

Have agreed as follows:

I. SUBSTANCE OF MEMORANDUM OF UNDERSTANDING

A. DEFINITIONS

1. **Central file.** The "central file" is the location where the enforcement agency stores and maintains program information, data, and reports.

2. **Enforcement agency.** The "enforcement agency" is the Ministry of Maritime Affairs and Fisheries, which has regulatory authority in Korea over the production, harvesting, processing, transportation, classification, and export of certified shellfish to the United States under the terms of this memorandum.

3. **A Lot of Shucked Shellfish.** A "lot" is a collection of shellfish of no more than one day's harvest from a single defined growing area, produced under conditions as nearly uniform as possible, with the shucked shellfish product placed in containers designated by a common container code or marking.

4. **Marine biotoxins.** Poisonous compounds accumulated by shellfish feeding upon toxic microorganisms . The poisons may come from dinoflagellates, e.g. *Alexandrium* spp., (formerly *Protogonyaulax* spp., *Gonyaulax catenella, Gonyaulax tamarensis*), and *Gymnodinium breve* (formerly *Ptychodiscus brevis*).

5. **Shellfish.** All edible species of oysters, clams, mussels, and scallops — except when the final scallop product is the adductor muscle only; either shucked or in the shell, fresh or frozen, whole or in part.

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B. MOMAF RESPONSIBILITIES

MOMAF will:

1. Maintain the legal, administrative, and sanitation controls over shellfish exported by Korean firms that are required by the NSSP and the KSSP. These controls include:

(a) Classifying shellfish harvesting areas based upon comprehensive sanitation surveys;

(b) Preparing sanitation survey reports and maintaining survey data in a central file;

(c) Updating survey data annually and periodically reviewing the classification status of each harvest area;

(d) Assuring that only shellfish harvested from approved areas that meet NSSP-KSSP approved water quality and marine biotoxin standards are exported to the U.S.;

(e) Evaluating laboratory practices used to test shellfish and seawater at least annually and encouraging participation in FDA's voluntary Quality Assurance Program. The Quality Assurance Program includes examination of standardized laboratory specimens supplied by FDA.

2. Inspect firms processing fresh frozen shellfish for export to the U.S. to ensure compliance with NSSP/KSSP controls.

3. Certify on an annual basis those firms that wish to process and to export fresh or frozen shellfish to the U.S. that comply with NSSP/KSSP requirements and notify FDA of the name, location, and certification number of those firms on Form FD-3038, "Interstate Shellfish Dealers Certification".

4. Cancel the certificate of any firm that does not comply with the requirements of NSSP/KSSP, that obtains shellfish from non-approved areas, or that ships shellfish that do not conform to appropriate program standards.

5. Ensure that all containers of each lot of fresh frozen shellfish certified for export are identified with the shipping firm's address, certification number, and lot number or code, as specified by the NSSP Guide for the Control of Molluscan Shellfish, and including other information required by the U.S. Federal Food, Drug, and Cosmetic Act, the U.S. Public Health Service Act, and U.S. Fair Packaging and Labeling Act.

6. Maintain a central file of program records including but not limited to sanitation survey reports, inspection reports, laboratory evaluation reports, and enforcement actions. MOMAF will make these records available to FDA upon request.

7. Responsibilities for the management of various components of the KSSP may be delegated to subagencies or administrative units of MOMAF..

8. Provide FDA with an annual status report describing current or potential new public health problems affecting shellfish intended for export to the United States. The report should present information on the level of conformity with NSSP requirements enforced by the MOMAF and a summary of the analysis of

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water and shellfish data to substantiate new designated area classifications as specified in the NSSP Guide for the Control of Molluscan Shellfish.

9. Make travel arrangements in the Republic of Korea for, and conduct joint inspections with, FDA evaluation officers at FDA's request. Meet transportation expenses in the Republic of Korea for FDA officials making inspections in accordance with this memorandum.

C. FDA RESPONSIBILITIES

FDA will:

1. Recognize the Republic of Korea as a participant in the NSSP with full rights to participate in the Interstate Shellfish Sanitation Conference, cooperative research programs, seminars, training courses, and other NSSP activities; to make recommendations for changes or improvements in the procedures, methods, standards, and guidelines of the NSSP; and to have MOMAF certify Korean firms for inclusion in FDA's ICSSL.

2. Publish the names, locations, and certification numbers of Korean shellfish shipping firms certified by MOMAF in the monthly publication of the ICSSL upon receipt of Form FD-3038.

3. Provide limited training and technical assistance to enforcement agency personnel in shellfish sanitation program administration, laboratory procedures, and growing area classification procedures upon request of MOMAF and subject to availability of funds for such purposes.

4. Inform MOMAF of the reasons for any detentions of certified frozen shellfish shipments from Korea which have been carried out under FDA's authority. Additional information that FDA will provide will include, but not necessarily be limited to:

(a) Commodity identification;

(b) Commodity code, lot, and certification number;

(c) Name and address of the shipper;

(d) Sampling procedures;

(e) Methods of analysis and confirmation; and

(f) Administrative guidelines.

5. Participate with MOMAF in joint evaluations of the shellfish sanitation program as it pertains to certifying firms. Joint evaluations normally will be conducted periodically to ascertain the level of conformity with the requirements of the NSSP and with the responsibilities specified in this memorandum. FDA will pay round trip transportation expenses between the United States and Korea and the per diem of the members of the FDA evaluation team while in Korea.

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D. SHARED RESPONSIBILITIES

MOMAF and FDA will:

1. Exchange information through designated liaison officers concerning significant proposed and final changes in program operations and procedures including:

(a) Methods and procedures for sampling;

(b) Methods of analysis;

(c) Methods of confirmation;

(d) Administrative guidelines, tolerances, specification standards, and nomenclature;

(e) Reference standards; and

(f) Inspection procedures.

2. Provide written notification to the other party of any changes in liaison officers. Changing liaison officers will not otherwise constitute a change in the provisions of this memorandum.

3. Facilitate the exchange of information between MOMAF and the U.S. federal and state agencies concerned with the introduction and proliferation of exotic organism that might be carried by Korean shellfish.

E. OTHER PROVISIONS

The working language for documents exchanged under this memorandum shall be English.

V. LIAISON OFFICES

A. Liaison Offices for MOMAF:

Ministry of Maritime Affairs and Fisheries
826-14 Yoksam Dong Kangnam Ku
135-080, Seoul, Korea

and

First Secretary for Maritime Affairs and Fisheries
Embassy of the Republic of Korea,
2450 Massachusetts Avenue
Washington, D.C. 20008 U.S.A.
Telephone: (202) 939-5676.

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B. Liaison Office for FDA:

Director, Office of Seafood
Center for Food Safety and Applied Nutrition
Food and Drug Administration,
200 C Street, SW.
Washington, D.C. 20204 U.S.A.
Telephone: (202) 418-3133

IV. ENTRY INTO FORCE

This Memorandum enters into force upon signature for a period of five years. It may be extended or amended by written agreement of both parties. It may be terminated by either party upon a 30-day advance written notice to the other party's liaison office.

FOR THE MINISTRY OF MARITIME AFFAIRS AND FISHERIES OF THE REPUBLIC OF KOREA:

By: Hyuck Choi

Title: Minister for Economic Affairs
Embassy of Korea

Date: October 28, 1998

Place: Washington D.C.

FOR THE FOOD AND DRUG ADMINISTRATION OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA:

By: Sharon Smith Holston

Title: Deputy Commissioner for External Affairs
Food and Drug Administration

Date: October 28, 1998

Place: Rockville, Maryland

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ANNEX

REFERENCES

1. U.S. Department of Health and Human Services (formerly U.S. Department of Health, Education, and Welfare), Public Health Service, National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, 1997 Revision.

2. Association of Official Analytical Chemists, Official Methods of Analysis, 16th Edition; 4th Revision, Association of Official Analytical Chemists, Inc., 111 North 19th Street, Suite 210, Arlington, VA 22209, U.S.A., 1998.

3. Food and Drug Administration, "Interstate Certified Shellfish Shippers List," published monthly and distributed to food control officials and other interested persons by FDA, Center for Food Safety and Applied Nutrition, Division of Cooperative Programs (HFS-625), 200 C Street, SW., Washington, D.C. 20204.

4. Federal Food, Drug, and Cosmetic Act, 1938, as amended, U.S. Code, Title 21.

5. Public Health Service Act, as amended, U.S. Code, Title 42.

6. Fair Packaging and Labeling Act, Public Law 89-755, approved November 3, 1966.

7. American Public Health Association, Recommended Procedures for the Examination of Seawater and Shellfish, 4th Ed., 1970, APHA, Inc., 1015 15th Street, NW, Washington, D.C. 20036.

8. Food and Drug Administration, "Fish and Fishery Products" regulations, 21 CFR Part 123.

9. Food and Drug Administration "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food," regulations, 21 CFR Part 110.

10. Food and Drug Administration, "Fish and Shellfish" regulations, 21 CFR Part 161.

11. Food and Drug Administration, "Specific Administrative Decisions Regarding Interstate Shipments," "Shellfish," 21 CFR 1240.60.

12. Food and Drug Administration, "Food Service Sanitation on Land and Air Conveyances, and Vessels," "Special Food Requirements," 21 CFR 1250.26

13. 1972 and 1987 Shellfish Sanitation Agreement between Government of the United States of America and the Government of the Republic of Korea.

[FR Doc. 99–12529 Filed 5–18–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Endangered Species Permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by June 18, 1999.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: David Dell, Telephone: 404/679-7313; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Dr. Caryn C. Vaughn, Oklahoma Biological Survey, Norman, Oklahoma, TE011464–0.

The applicant requests authorization to take (capture, identify, release, and retain selected voucher specimens for taxonomic research) the threatened leopard darter, *Percina pantherina,* and Arkansas fatmucket, *Lampsilis powelli;* and the endangered Ouachita rock-pocketbook, *Arkansia wheeleri,* pink mucket pearlymussel, *Lampsilis abrupta,* speckled pocketbook, *Lampsilis streckeri,* and winged mapleleaf mussel, *Quadrula fragosa,* throughout the species' ranges in Arkansas and Oklahoma for the purpose of enhancement of survival of the species.

Applicant: Patrick Rakes and John R. Shute, Conservation Fisheries, Inc., Knoxville, Tennessee, TE011542–0.

The applicant requests authorization to take (capture and retain for captiv propagation) fourteen species of threatened and endangered fish native to the southern Appalachian region and the Atlantic coastal plain in North Carolina, Tennessee, Kentucky, and Alabama. The proposed activities will enhance survival of the species by providing specimens for restocking in historically known habitat, and to provide specimens for pollutant toxicity trials and taxonomic research.

Dated: May 12, 1999.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 99–12545 Filed 5–18–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. the quality, utility, and clarity of the information to be collected; and

4. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB approval number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake prediction to earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected performances.

Bureau form number: None.

Frequency: Annual proposals, annual or final reports.

Description of respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual responses: 320.

Annual burden hours: 11,400 hours.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: May 7, 1999.

P. Patrick Leahy,

Chief Geologist.

[FR Doc. 99–12614 Filed 5–18–99; 8:45 am]

BILLING CODE 4310–7Y–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–067–07–3120–00]

Notice of Intent To Amend the Judith-Valley-Phillips Resource Management Plan; Petroleum and Fergus Counties, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will amend the Judith-Valley-Phillips Resource Management Plan (RMP) with respect to management of public lands in Petroleum and Fergus Counties. The BLM proposes exchanging 2755 acres of Federal surface estate in Petroleum and Fergus Counties for approximately 2000 acres of private surface estate in Petroleum County. The Federal land is legally described as:

T. 12 N., R. 30 E.
  Sec. 10: All
T. 12 N., R. 28 E.
  Sec. 10: SW¼NE¼, SE¼NW¼, W½NW¼, SW¼, W½SE¼
  Sec. 11: W½
  Sec. 14: N½N½, S½N½
T. 15 N., R. 26 E.
  Sec. 2: W½SW¼, E½SW¼, SE¼
  Sec. 11: NW¼NE¼, E½NW¼, NE¼SW¼, S½SW¼, SE¼
  Sec. 12: NW¼SW¼
T. 18 N., R. 23 E.
  Sec. 12: E½E½
  Sec. 13: NE¼NE¼
T. 18 N., R. 24 E.
  Sec. 7: Lot 1, NW¼NE¼, NE¼NW¼

Disposal of the Federal lands was not analyzed in the Judith-Valley-Phillips Resource Management Plan (RMP) and associated Environmental Impact Statement. Disposal of Federal land requires that the specific tract be identified in the land use plan with the criteria to be met for exchange and discussion of how the criteria have been satisfied. This will be part of the plan amendment and environmental assessment. The Lewistown Field Office, Bureau of Land Management will prepare an environmental assessment to analyze the effects of disposal.

DATES: Comments and recommendations on this notice to amend the Judith-Valley-Phillips RMP should be received on or before June 18, 1999.

ADDRESSES: Comments should be sent to David L. Mari, Field Manager, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160.

FOR FURTHER INFORMATION CONTACT: Loretta Park, Realty Specialist, 406–538–1910.

Dated: May 5, 1999.

David L. Mari,

Field Manager.

[FR Doc. 99–12537 Filed 5–18–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Preserve; Intention To Issue Concession Permits

AGENCY: National Park Service, DOI.

ACTION: Notice.

SUMMARY: Under the authority of section 404(11)(B) of the National Park Service Concessions Management Improvement Act of 1998 (Pub. L. 105–391), the National Park Service intends to award noncompetitively six concession permits at Wrangell-St. Elias National Preserve. The proposed permits will authorize hunting guide services within Wrangell-St. Elias National Preserve and will be for a term of approximately 4 years from February 1, 1999, through November 30, 2003. The National Park Service proposes to award these six permits to the following individuals: Terry Overly, Dick Gunlogson, Tom Vaden, Ray MuNutt, Urban Rahoi and Kirk Ellis.

SUPPLEMENTARY INFORMATION: These six operations were included in a prospectus for seventeen hunting guides at Wrangell-St. Elias National Preserve that was issued in October 1997. Because these six operations contain overlaps with other guide areas, the offerors were told that they would be required to developed a cooperative joint use agreement before the six permits could be issued, to prevent reoccurrence of problems within the overlapping guide areas. Offers in response to the prospectus were evaluated in March 1998. Seventeen guides were selected and all signed the permits proposed by the park. The National Park Service executed eleven of the permits. The remaining six permits, which contain overlapping guide areas, were not executed by the National Park Service pending the development of cooperative joint use agreements, which could not be finalized until late November 1998. By that time, the National Park Service Concessions Management Improvement Act of 1998 had been passed, and the park could not sign the permits for the remaining six guides.

Section 404(11)(B) of the National Park Service Concessions Management Improvement Act of 1998 authorizes the Secretary to issue, without public solicitation, concession contracts in extraordinary circumstances where compelling and equitable considerations require the award of a concession contract to a particular party in the public interest. Although these six permits were awarded as a result of a competitive process under the Concession Policies Act of 1965 (Pub. L. 89–249), they were not competed under the requirements of the new law. There are no inconsistencies between the terms and conditions of the proposed permits and the National Park Service Concessions Management Improvement Act of 1998. Keeping all of the permits the same will facilitate permit administration at the park level. More importantly, it will maintain consistency of guide services throughout the Preserve. Further, there is an issue of equity in that the execution of these six permits was delayed because of an administrative requirement imposed by the National Park Service. The National Park Service believes that this situation constitutes an extraordinary circumstance where compelling and equitable considerations require the award of a concession contract to a particular party in the public interest.

DATED: The proposed permits will be awarded on or before June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 ''C'' Street, NW, Washington, DC 20240 (202) 565–1219.

Dated: May 5, 1999.

Robert G. Stanton,

Director, National Park Service.

[FR Doc. 99–12539 Filed 5–18–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, June 7, 1999.

The Commission was established pursuant to Pub. L. 99–420, sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 10:00 AM to consider the following agenda:

1. Review and approval of minutes from the meeting held February 8, 1999
2. Committee reports
   Land Conservation
   Education
   Park Use
   Science
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda and date of next Commission meeting

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: May 12, 1999.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 99–12540 Filed 5–18–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On May 6, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 F.R. 29372, 29374 (May 29, 1998).

With regard to brass sheet and strip from Canada and the Netherlands, the Commission found that both the domestic interested party group response and the respondent interested party group responses to its notice of institution [2] were adequate and voted to conduct full reviews.

With regard to brass sheet and strip from Brazil, France, Germany, Italy, Japan, Korea, and Sweden, the Commission found that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate.[3] The Commission also found that other circumstances warranted conducting full reviews.[4]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 10, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12597 Filed 5–18–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The investigation numbers are as follows: Brazil (701–TA–269 (Review) and 731–TA–311 (Review)), Canada (731-TA–312 (Review)), France (701–TA–270 (Review) and 731–TA–313 (Review)), Germany (731–TA–317 (Review)), Italy (731–TA–314 (Review)), Japan (731–TA–379 (Review)), Korea (731–TA-315 (Review)), the Netherlands (731–TA–380 (Review)), and Sweden (731–TA–316 (Review)).

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on Feb. 1, 1999 (64 FR 4892).

[3] Commissioner Askey found that the respondent interested party group response with respect to Sweden was adequate.

[4] Commissioner Crawford dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–403]

Assessment of the Economic Effects on the United States of China's Accession to the WTO

AGENCY: United States International Trade Commission.

ACTION: Revised completion date.

SUMMARY: On May 5, 1999, the Commission received a request from the United States Trade Representative (USTR) regarding its report, *Assessment of the Economic Effects on the United States of China's Accession to the WTO* (Inv. No. 332–403).

The USTR requested that the ITC incorporate comparative static analysis of China's tariff offer made in April 1999. The USTR also extended the Commission's date for submitting the report to June 15, 1999.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Arona Butcher, Office of Economics (202–205–3301). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background:

The U.S. International Trade Commission instituted investigation 332–403, *Assessment of the Economic Effects on the United States of China's Accession to the WTO,* on January 19, 1999 following receipt on December 21, 1998 of a request under sec. 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) from the USTR. Further information on the scope of the investigation is available in the ITC's notice of investigation, dated January 20, 1999, which may be obtained from the ITC Internet server (http://www.usitc.gov) or by contacting the Office of the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436 or at 202–205–1802.

By order of the Commission.

Issued: May 11, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12600 Filed 5–18–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Certain Cooking Ware From China, Korea, Mexico, and Taiwan [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on certain cooking ware from China, Korea, Mexico, and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on certain cooking ware from China, Korea, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On May 6, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to certain cooking ware from Korea and Mexico, the Commission found that both the domestic interested party group response and the respondent interested party group responses to its notice of institution [2] were adequate and voted to conduct full reviews.

With regard to certain cooking ware from China and Taiwan, the Commission found that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[3]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 11, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12598 Filed 5–18–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The porcelain-on-steel cooking ware investigation numbers are as follows: China (731–TA–298 (Review)), Mexico (701–TA–265 (Review) and 731–TA–297 (Review)), and Taiwan (731–TA–299 (Review)). The top-of-the-stove stainless steel cooking ware investigation numbers are as follows: Korea (701–TA–267 (Review) and 731–TA–304 (Review)) and Taiwan (701–TA–268 (Review) and 731–TA–305 (Review)).

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on Feb. 1, 1999 (64 FR 4896).

[3] Commissioner Crawford dissenting.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–392]

Certain Digital Satellite System (DSS) Receivers and Components Thereof; Notice of Commission Decision To Terminate the Investigation and To Vacate Portions of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant complainant's motion to terminate the investigation, to grant complainant's motion to vacate the final initial determination (ID) of the presiding administrative law judge (ALJ) on the issues of invalidity for anticipation and for lack of enablement, and to deny the motion to vacate in all other respects.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: This investigation was instituted on December 18, 1996, based on a complaint filed by Personalized Media Communications, LLC (PMC). 61 FR 66695–96. The respondents are DirectTV, Inc., United Satellite Broadcasting Co., Hughes Network Systems, Hitachi Home Electronics (America), Inc., Thomson Consumer Electronics, Inc., Toshiba America Consumer Products, Inc., and Matsushita Electric Corporation of America. The complaint alleges, inter alia, that respondents engaged in unlawful activities in violation of section 337 through the unlicensed importation and sale of goods infringing claim 1–7 of U.S. Letters Patent 5,335,277.

On October 20, 1997, the presiding ALJ issued a final ID in which he concluded that the asserted claims were invalid as indefinite under 35 U.S.C. 112 ¶2, that the asserted claims were invalid as not enabled under 35 U.S.C. 112 ¶1, that claim 7 is invalid as anticipated under 35 U.S.C. 102, and that no asserted claim was infringed. The Commission adopted the ALJ's claim constructions, his finding of invalidity for indefiniteness, and his finding of no infringement, but took no position on the other invalidity findings.

The Commission's determination was appealed to the U.S. Court of Appeals for the Federal Circuit, and on November 24, 1998, the Federal Circuit issued its opinion on appeal. The Court's mandate issued on February 26, 1999. The Court upheld the Commission as to three of the four claims at issue on appeal. The Court reversed the Commission with respect to its

determination that claim 7 of U.S. Letters Patent 5,335,277 is invalid for indefiniteness. The Court also vacated the Commission's determination that claim 7 is not infringed by the accused devices and remanded for further consideration by the Commission.

On March 26, 1999, complainant PMC filed a motion to terminate the investigation and vacate the ID. On April 5, 1999, several respondents filed a brief in opposition, in which the balance of the respondents joined. The Commission's Office of Unfair Import Investigations filed a response on April 7, 1999.

The Commission determined to grant the complainant's motion to terminate the investigation. The Commission further determined to grant complainant's motion to vacate the ID, but only with respect to the findings of invalidity for anticipation and lack of enablement, as to which findings the Commission took no position. The Commission determined to deny the motion to vacate in all other respects.

This action is taken under the authority of the Administrative Procedure Act (5 U.S.C. 500 *et. seq.*), section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), and section 210.41 of the Commission's Rules of Practice and Procedure (19 CFR. 210.41).

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

Issued: May 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12602 Filed 5–18–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–794–796 (Final)]

Certain Emulsion Styrene-Butadiene Rubber From Brazil, Korea, and Mexico

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil, Korea, or Mexico of certain emulsion styrene-butadiene rubber, provided for in subheading 4002.19.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective April 1, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by Ameripol Synpol Corp. of Akron, OH, and DSM Copolymer of Baton Rouge, LA. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain emulsion styrene-butadiene rubber from Brazil, Korea, and Mexico were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing 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 November 25, 1998 (63 FR 65219). The hearing was held in Washington, DC, on March 30, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 11, 1999. The views of the Commission are contained in USITC Publication 3190 (May 1999), entitled Certain Emulsion Styrene-butadiene Rubber from Brazil, Korea, and Mexico: Investigations Nos. 731–TA–794–796 (Final).

Issued: May 11, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12599 Filed 5–18–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Bragg dissenting. Chairman Bragg determines that an industry in the United States is materially injured by reason of the subject imports.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–411]

Certain Organic Photo-Conductor Drums and Products Containing the Same; Notice of Commission Determination To Affirm an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the initial determination (ID) of the presiding administrative law judge (ALJ) terminating the above-captioned investigation on the basis of complainants' withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 4, 1998, based on a complaint filed by Mitsubishi Chemical Corporation of Japan and Mitsubishi Chemical Corporation America of White Plains, New York (collectively, Mitsubishi). 58 FR 30513. Twelve firms were named as respondents.

On December 4, 1998, Mitsubishi filed an unopposed motion to terminate the investigation based on withdrawal of its complaint with prejudice. By that date, only respondents Dainippon Ink and Chemicals of Japan and DIC Trading (USA) of Fort Lee, New Jersey (collectively, DIC) remained in the investigation. Some of the respondents had been terminated based on consent order agreements with Mitsubishi or had had the complaint withdrawn as to them. Others had entered into agreements with Mitsubishi to be terminated from the investigation that had not yet been acted upon by the ALJ. On December 7, 1998, the presiding ALJ issued an ID granting complainants' motion.

No petitions for review of the ID's determination to terminate the investigation were filed. However, on

February 17, 1999, the Commission determined, on its own motion, to review the consistency of the ALJ's termination of the investigation with Commission policy regarding termination of investigations ''with prejudice.''

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.45, 19 CFR § 210.45.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

Issued: May 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12601 Filed 5–18–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–653 (Review)]

Sebacic Acid From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission unanimously determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on sebacic acid from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 2, 1998 (63 FR 66567) and determined on March 5, 1999 that it would conduct an expedited review (64 FR 12353, March 12, 1999). The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 10, 1999. The views of the Commission are contained in USITC Publication 3189 (May 1999), entitled Sebacic Acid from China: Investigation No. 731–TA–653 (Review).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Issued: May 10, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12596 Filed 5–18–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,359; TA–W–35,359A; TA–W–35,359B; TA–W–35,359C; and TA–W–35,359D]

American Fracmaster, Midland, Texas; and Operating in the State of Texas (Except Midland); Shreveport, Louisiana; El Dorado, Arkansas; Hobbs, New Mexico; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 1, 1999, applicable to all workers of American Fracmaster, Midland, Texas. The notice was published in the **Federal Register** on February 25, 1999 (64 FR 9354).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at American Fracmaster operating at various locations in the State of Texas (except Midland), Shreveport, Louisiana, El Dorado, Arkansas and Hobbs, New Mexico. The workers provide oilfield services such as acidizing and fracturing.

The intent of the Department's certification is to include all workers of American Fracmaster adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of American Fracmaster operating at various locations in the State of Texas (except Midland), Shreveport, Louisiana, El Dorado, Arkansas and Hobbs, New Mexico.

The amended notice applicable to TA–W–35,359 is hereby issued as follows:

All workers of American Fracmaster, Midland, Texas (TA–W–35,359), operating at various locations in the State of Texas (except Midland) (TA–W–35,359A), Shreveport, Louisiana (TA–W–35,359B), El Dorado, Arkansas (TA–W–35,359C) and Hobbs, New Mexico (TA–W–35,359D) who became totally or partially separated from employment on or after November 3, 1997 through February 1, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12640 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,999]

Emhart Glass Machinery, a Division of Black & Decker Corporation; Windsor, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 12, 1999 in response to a worker petition which was filed on behalf of workers at Emhart Glass Machinery, a division of Black & Decker Corporation, Windsor, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12635 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Assistance, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 12th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/12/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,999	Emhart Glass Machinery (Co.)	Windsor, CT	03/22/1999	Glass Container Refractory Equipment.
36,000	Guilford Mills (Co.)	Herkimer, NY	03/26/1999	Jersey Knit, Jersey Sheet.
36,001	Wells Lamont Corp (Co.)	McGehee, AR	03/19/1999	Leather Work Gloves.
36,002	Imperial Home Decor Group (Wkrs)	Plattsburgh, NY	03/27/1999	Wallpaper.
36,003	E.I. du Pont de Nemours (Wkrs)	Rochester, NY	03/27/1999	Medical X-Ray Processing Chemistries.
36,004	Specialty Discharge Light (Wkrs)	Bellevue, OH	03/25/1999	Lamps.
36,005	Cannondale Corp (Wkrs)	Bedford, PA	03/20/1999	Bikes and Accessories.
36,006	Ansewn Shoe Co (Co.)	Bangor, ME	03/30/1999	Footwear.
36,007A	Hampshire Designers, Inc (Wkrs)	Winona, MN	03/29/1999	Knitted Sweaters.
36,007	Hampshire Designers, Inc (Wkrs)	La Crescent, MN	03/29/1999	Knitted Sweaters.
36,008	Plastics Development (Wkrs)	Tualatin, OR	03/15/1999	Plastic Injection Molding.
36,009	Chesapeake Operating (Wkrs)	Hays, KS	03/20/1999	District Office.
36,010	Acer Latin America (Wkrs)	Miami, FL	03/25/1999	Computers, Notebooks.
36,011	Westwood Products (Wkrs)	New Castle, IN	03/21/1999	Curved Wire Block.
36,012	Rhone Poulenc (Wkrs)	Ambler, PA	03/25/1999	Chlorethylphosphonic Acid.
36,013	TMBR/Sharp Drilling (Wkrs)	Midland, TX	03/12/1999	Oilfield Services.
36,014	Bengle Manufacturing (Co.)	Stuart, VA	03/30/1999	Fleeceware and T-Shirt.
36,015	World Color, Inc (Wkrs)	Dresden, TN	03/29/1999	Paperback Books.
36,016	Parson's Industries (Co.)	Ashland, OR	03/18/1999	Louver Slats, Edge Glued Panels.
36,017	Triumph Twist Drill (Wkrs)	Rhinelander, WI	03/29/1999	Twist Drill Bits.
36,018	Gloria Gay Coats (UNITE)	Brooklyn, NY	03/30/1999	Ladies' Coats and Jackets.
36,019	Georgia Pacific (Co.)	Bemidji, MN	03/30/1999	Hardboard.
36,020	Precision Circuits (IAMAW)	Eatontown, NJ	03/19/1999	Printed Circuit Boards.
36,021	Rolls Royce Howmet (TWU)	Claremore, OK	03/26/1999	Jet Engine Blades and Vanes.
36,022	IEC Electronics (Wkrs)	Arab, AL	03/24/1999	Printed Circuit Boards.
36,023	Holson Burnes (Wkrs)	N. Smithfield, RI	03/25/1999	Picture Frames.
36,024	Lease Equipment (Wkrs)	Snyder, TX	03/19/1999	Oilfield Services.
36,025	Conoco, Inc., Natural Gas (Comp)	Houston, TX	03/03/1999	Oil and Gas.
36,026	Conoco, Inc., Crude Oil (Comp)	Houston, TX	03/04/1999	Oil and Gas.
36,027	Quadco, Inc., Alaska Div (Comp)	Anchorage, AK	03/18/1999	Crude Oil, Natural Gas.
36,028	True Oil, Black Hills (Wkrs)	Williston, ND	01/27/1999	Drilling Rig Services.
36,029	OPE, Inc. (Comp)	Houston, TX	03/24/1999	Pipeline Engineering.
36,030	Butch Spurlin Mud Consult (Comp)	Tuscola, TX	03/24/1999	Mud Consulting.
36,031	Joe's Casing and Drilling (Comp)	Williston, ND	03/22/1999	Oilfield Services.
36,032	Hallwood Petroleum, Inc (Comp)	Great Bend, KS	03/17/1999	Exploration of Crude Oil, Natural Gas.
36,033	American Casing, Inc (Wkrs)	Williston, ND	03/17/1999	Oil Drilling.
36,034	Big Dog Drilling (Wkrs)	Midland, TX	03/24/1999	Oil Drilling.
36,035	Wyoming Casing (Wkrs)	Dickinson, ND	02/10/1999	Oil Drilling.
36,036	Erickson Contract Survey (Comp)	Sidney, MT	03/22/1999	Contract Surveying for Oil Exploration.
36,037	National Oilwell (Wkrs)	Odessa, TX	03/22/1999	Pumpliners.
36,038	Phillips Petroleum Co (Wkrs)	Odessa, TX	03/24/1999	Crude Oil.
36,039	Wellpro, Inc (Comp)	Williston, ND	03/16/1999	Downhole Fishing Tools.
36,040	Westport Oil and Gas Co (Comp)	Denver, CO	03/25/1999	Exploration of Oil and Gas.
36, 041	Chase Well Service (Wkrs)	Great Bend, KS	03/17/1999	Service Oil and Gas Wells.
36,042	Broughton Operating Corp (Wkrs)	Houston, TX	03/10/1999	Oil, Gas Exploration.
36,043	Construction Services (Wkrs)	Watford City, ND	03/10/1999	Oil Pumping Services.
36,044	G and L Fishing Tool Co (Wkrs)	Big Spring, TX	02/18/1999	Oil Tools.
36,045	TMBR/Sharp Drilling (Wkrs)	Midland, TX	03/18/1999	Oil Drilling.
36,046	Columbus Energy Corp (Comp)	Sidney, MT	03/18/1999	Crude Oil.
36,047	G and A Laydown Services (Wkrs)	Odessa, TX	03/18/1999	Oilfield Services.
36,048	PGS On Shore Industries (Wkrs)	All Locations, OK	03/15/1999	Oil Exploration.
36,049	Lewis Casing Crews, Inc (Wkrs)	Odessa, TX	03/17/1999	Oil Drilling.
36,050	Plains Illinois, Inc (Wkrs)	Bridgeport, IL	02/07/1999	Crude Oil.

[FR Doc. 99–12638 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,081]

Key Energy Drilling, Inc.; Permian Basin Division, Levelland, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 19, 1999, in response to a petition which was filed on behalf of workers at Key Energy Drilling, Inc., Permian Basin Division, Levelland, Texas.

All workers of the subject firm are covered under an existing investigation under TA–W–35,550. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 19th day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12637 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,829; TA–W–35,829A]

Lucia, Inc.; Elkin Plant, Elkin, North Carolina; and Winston-Salem, North Carolina; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 31, 1999, applicable to workers of Lucia, Inc., Elkin Plant, Elkin, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at Lucia, Inc.'s Winston-Salem, North Carolina facility. The workers are engaged in employment related to the production of ladies' coordinated sportswear (blouses, skirts and pants). Accordingly, the Department is amending the certification to cover workers of Lucia, Inc., Winston-Salem, North Carolina.

The intent of the Department's certification is to include all workers of Lucia, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–35,829 is hereby issued as follows:

All workers of Lucia, Inc., Elkin Plant, Elkin, North Carolina (TA–W–35,829) and Winston-Salem, North Carolina (TA–W–35,829A) who became totally or partially separated from employment on or after April 30, 1998 through March 31, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12641 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request an public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 26th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 4/26/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,091	Texas Boot (Co.)	Hartsville, TN	03/30/1999	Ladies' Fashion Boots.
36,092	UCAR Carbon (Wkrs)	Lawrenceburg, TN	04/01/1999	Refractory Products.
36,093	Carbide Graphite Group (Wkrs)	Calvert City, KY	03/31/1999	Calcium Carbide and Acetylene.
36,094	C.R. Bard, Inc (Co.)	Covington, GA	04/05/1999	Medical Devices.
36,095	Ford Microelectronics (Co.)	Colorado Springs, CO	03/26/1999	Elerometers (Device that Deploys Air-bags).
36,096	Paris Fashions (Wkrs)	Paris, TN	03/29/1999	Men's and Ladies' Clothing.
36,097	Florsheim Group (UNITE)	Cape Girardeau, MO	04/06/1999	Shoe Stocks and Patterns.
36,098	Panoramic, Inc (Wkrs)	Janesville, WI	04/09/1999	Parker Pens.
36,099	Miss Elaine, Inc (UNITE)	Ste Genevieve, MO	04/09/1999	Ladies' Lingerie.

APPENDIX—Continued

[Petitions Instituted on 4/26/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,100	Sharp Microelectronics (Wkrs)	Camas, WA	04/02/1999	Chips.
36,101	Dal-Tile (Wkrs)	Dallas, TX	03/24/1999	Ceramic Tile.
36,102	Lear Corporation (Wkrs)	Midland, TX	04/07/1999	Automotive Parts.
36,103	Lincoln Mfg. (IUE)	Jonesboro, AR	04/06/1999	Automotive After-Market Jacks.
36,104	Chamberlain Moore O Matic (Wkrs)	Waupaca, WI	03/29/1999	Garage Door Openers.
36,105	Streamline Cutting, Inc (UNITE)	New York, NY	04/08/1999	Ladies' Sportswear.
36,106	Funtime Sportswear, Inc (Wkrs)	Lansford, PA	04/12/1999	Sportswear.
36,107	Standard Register Co. (Wkrs)	Fulton, KY	04/12/1999	Print Business Forms.
36,108	Sherman Lumber Co. (PACE)	Sherman Station, ME	04/09/1999	Lumber.
36,109	Johansen Shoe Co (UFCW)	Corning, AR	04/07/1999	Ladies' Shoes and Boots.
36,110	Russell Corporation (Wkrs)	Sylacauga, AL	04/12/1999	Fleecewear.
36,111	Berendsen Fluid Power (Wkrs)	Rahway, NJ	04/01/1999	Hydraulic Power Units.
36,112	Daugherty Mfg. Co (Wkrs)	Knoxville, TN	04/05/1999	Tee Shirts.
36,113	Twin Ridge Corp. (Co.)	Action, ME	04/15/1999	Apples—Racking and Storage.
36,114	Edward Vogt Valve Co. (Wkrs)	Jeffersonville, IN	04/15/1999	Forged Steel Valves.
36,115	Siemens Westinghouse (IBEW)	Birmingham, AL	04/12/1999	Repair Electrical Motors.
36,116	Smurfit Stone Container (Wkrs)	Missoula, MT	04/09/1999	Liner Boards.
36,117	Eaton Corporation (Co.)	Laurinburg, NC	04/08/1999	Golf Grip.
36,118	Trinity Industries (UAW)	Greenville, PA	04/07/1999	Rail Cars.
36,119	Sony Electronics, Inc (Co.)	San Diego, CA	04/15/1999	Computer Monitors.
36,120	D and A Industries (UNITE)	El Paso, TX	04/01/1999	Ladies' Coats.
36,121	Raider Apparel (Wkrs)	Alma, GA	04/14/1999	Ladies' Dresses and Sportswear.
36,122	Nashville Textile Corp (Co.)	Nashville, GA	04/12/1999	Ladies' and Children's Sportswear.
36,123	Irwin Research and Dev. (Wkrs)	Yakima, WA	04/16/1999	Plastic Mold-Forming Machinery.
36,124	Coastal Oil and Gas (Co.)	Houston, TX	04/01/1999	Oil and Gas.
36,125	Sheilds Oil Producers (Wkrs)	Russell, KS	04/05/1999	Oil Drilling.
36,126	GLR Corporation (Co.)	Bridgeville, PA	03/31/1999	Service Oil Rigs.
36,127	Tri Pro Cedar (Wkrs)	Spokane, WA	04/09/1999	Cedar Products.

[FR Doc. 99–12633 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,013]

TMB Shrap Drilling, Inc., Midland, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 12, 1999, in response to a petition filed on the same date on behalf of workers at TMB/Shrap Drilling, Inc., Midland, Texas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–36,045). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC this 14th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12634 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,839]

Topco Inc., Elizabeth, New Jersey; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 15, 1999, in response to a petition filed by a company official on behalf of workers at Topco Inc., Elizabeth, New Jersey.

The petitioner has requested that the petition be withdraw. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12639 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3136]

Mount Hamilton Mining, Inc.; Reno, Nevada; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 29, 1999, in response to a worker petition which was filed on behalf of workers at Mount Hamilton Mining, Inc. of Reno, Nevada.

The petitioners did not file a valid petition; two of the petitioners were laid off more than a year before the petition was submitted. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 7th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12636 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The cite following ''FR Notice:'' refers to the issue of the **Federal Register** where MSHA published the notice that the petitioner was seeking a modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: May 13, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–98–001–C.
FR Notice: 63 FR 11696.
Petitioner: Remington Coal Company, Inc. (formerly Day Mining, Inc.).
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2,400 volt cables to power high-voltage longwall equipment considered acceptable alternative method. Granted with conditions for the Stockburg No. 1 Mine.

Docket No.: M–98–003–C.
FR Notice: 63 FR 11696.
Petitioner: Pine Ridge Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2,400 volt cables to power high-voltage equipment inby the last open crosscut at continuous miner sections considered acceptable alternative method. Granted with conditions for the Big Mountain No. 16 Mine.

Docket No.: M–98–004–C.
FR Notice: 63 FR 11696.
Petitioner: Pine Ridge Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2,400 volt cables to power high-voltage equipment inby the last open crosscut at continuous miner sections considered acceptable alternative method. Granted with conditions for the Robin Hood No. 9 Mine.

Docket No.: M–98–009–C.
FR Notice: 63 FR 11696.
Petitioner: FKZ Coal, Inc.
Regulation Affected: 30 CFR 75.335.
Summary of Findings: Petitioner's proposal to permit alternative methods of construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions.

Docket No.: M–98–012–C.
FR Notice: 63 FR 11697.
Petitioner: FKZ Coal, Inc.
Regulation Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead to use increased rope strength/safety factor and secondary safety rope connection in place of such devices considered acceptable alternative method. Granted for the No. 1 Vein Slope Mine with conditions.

Docket No.: M–98–016–C.
FR Notice: 63 FR 11697.
Petitioner: G & P Contractors, Inc.
Regulation Affected: 30 CFR 75.380.
Summary of Findings: Petitioner's proposal to install two five pound or one ten pound portable chemical fire extinguisher in the operator's deck of each Mescher tractor operated at the mine and to have this fire extinguisher readily accessible to the operator; to inspect each fire extinguisher daily prior to entering the escapeway; to keep at the mine a daily record of the inspection; to have a sufficient number of spare fire extinguishers maintained at the mine in case a fire extinguisher becomes defective; and to provide training to each employee operating the Mescher tractor on the proper procedures for conducting daily inspections of the fire extinguisher considered acceptable alternative method. Granted for the Goodin Creek Mine with conditions.

Docket No.: M–98–017–C.
FR Notice: 63 FR 11697.
Petitioner: Lodestar Energy, Inc.
Regulation Affected: 30 CFR 75.380.
Summary of Findings: Petitioner's proposal to use a minimum of 4-feet of clearance on a secondary escapeway at its Wheatcroft mine considered acceptable alternative method. Granted for the Wheatcroft Mine with conditions for locations of reduced width in approximately twenty feet of the secondary escapeway near and between the slope coal haulage conveyor tail roller guarding to the No. 2 belt drive head support beam.

Docket No.: M–98–018–C.
FR Notice: 63 FR 11697.
Petitioner: G & P Contractors, Inc.
Regulation Affected: 30 CFR 75.342.
Summary of Findings: Petitioner's proposal to use hand-held continuous-duty methane and oxygen detectors instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted for the Goodin Creek Mine with conditions.

Docket No.: M–98–019–C.
FR Notice: 63 FR 18232.
Petitioner: Energy West Mining Company.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M–94–166–C is granted. The Assistant Secretary had granted a modification of 30 CFR 75.350 to enable the company to conduct longwall mining with two rather than three entries in longwall panels under deep cover. The Assistant Secretary had concluded that mining under deep cover with more than two entries would result in a diminution of safety. The current modification amends the conditions under which the original modification was granted to accommodate the high-pressure emulsion station within the two-entry longwall retreat sections at Energy West's Trail Mountain Mine.

Docket No.: M–98–020–C.

FR Notice: 63 FR 18232.

Petitioner: Energy West Mining Company.

Regulation Affected: 30 CFR 75.352.

Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M–94–167–C is granted. The Assistant Secretary had granted a modification of 30 C.F.R. § 73.352 to enable the company to conduct longwall mining with two rather than three entries in longwall panels under deep cover. The Assistant Secretary had concluded that mining under deep cover with more than two entries would result in a diminution safety. The current modification amends the conditions under which the original modification was granted to accommodate the high-pressure emulsion station within the two-entry longwall retreat sections at Energy West's Trail Mountain Mine.

Docket No.: M–98–023–C.

FR Notice: 63 FR 18232.

Petitioner: Fray Mining, Inc.

Regulation Affected: 30 CFR 77.214.

Summary of Findings: Petitioner's proposal to allow construction of a refuse bench fill in an area containing abandoned mine openings considered acceptable alternative method. Granted for the Mine No. 2 with conditions.

Docket No.: M–98–025–C.

FR Notice: 63 FR 18233.

Petitioner: Marrowbone Development Company.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal to use an automatic fire detection system based on carbon monoxide monitoring of the underground conveyor entries to allow air coursed through conveyor belt entries to be used to ventilate active working places and to install a carbon monoxide detection system as an early warning fire detection system in all belt entries used to course intake air to a working place considered acceptable alternative method. Granted for the North Marrowbone Creek Mine with conditions.

Docket No.: M–98–026–C.

FR Notice: 63 FR 18233.

Petitioner: Marrowbone Development Company.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal to use permanently installed spring-loaded locking devices instead of padlocks on battery plugs and to install and maintain spring-loaded locking devices on battery plugs to prevent the threaded rings that secure the battery plugs to the battery receptacles from loosening unintentionally considered acceptable alternative method. Granted for the North Marrowbone Creek Mine with conditions.

Docket No.: M–98–027–C.

FR Notice: 63 FR 18233.

Petitioner: Eagle Energy, Inc.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use 4,160 volt cables to power longwall equipment considered acceptable alternative method. Granted for the Mine No. 1 with conditions.

Docket No.: M–98–029–C.

FR Notice: 63 FR 29034.

Petitioner: Joliett Coal Company.

Regulation Affected: 30 CFR 75.1400.

Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead to use increased rope strength/safety factor and secondary safety rope connection in place of such devices considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M–98–033–C.

FR Notice: 63 FR 29034.

Petitioner: Sea ''B'' Mining Company.

Regulation Affected: 30 CFR 75.1710.

Summary of Findings: Petitioner's proposal to operate self-propelled electric face equipment without canopies because of the mining heights less than 46 inches at the Silver Creek Mine considered acceptable alternative method. Granted with conditions for the three center-driven Joy 21SC shuttle cars, Serial Nos. ET11685, ET13646 standard drive reel, and ET16734 off-standard reel; for the S&S Scoop CX2, Serial No. CX2 323; for the Long Airdox Scoop 482, Serial No. 482–2240; and, for the Fletcher Roof Bolting Machine, Model RD RR11 w/T-Bar ATRS, Serial No. 97095, in heights (floor to roof) less than 46 inches.

Docket No.: M–98–062–C.

FR Notice: 63 FR 44292.

Petitioner: Independence Coal Company, Inc.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use high-voltage longwall mining equipment and the nominal voltage of power circuits for this equipment would not exceed 2,400 volts considered acceptable alternative method. Granted with conditions for the 2,400-volt continuous miner system(s) used at the Justice No. 1 Mine.

Docket No.: M–98–063–C.

FR Notice: 63 FR 44292.

Petitioner: Independence Coal Company, Inc.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use high-voltage longwall mining equipment and the nominal voltage of power circuits for this equipment would not exceed 2,400 volts considered acceptable alternative method. Granted with conditions for the 2,400-volt continuous miner system(s) used at the Jack's Branch Buffalo Creek Mine.

Docket No.: M–98–086–C.

FR Notice: 63 FR 58431.

Petitioner: Kedco, Inc.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use high-voltage 2,400 volt cables to power continuous mining machines in and inby the last open crosscut considered acceptable alternative method. Granted with conditions for the 2,400-volt continuous miner system used at the No. 2 Mine.

Docket No.: M–97–004–C.

FR Notice: 62 FR 11926.

Petitioner: Eastern Mingo Coal Company.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use (2,300 volt) a.c. electricity to power continuous mining equipment considered acceptable alternative method. Granted with conditions for the 2,400-volt continuous miner used at the Big Branch Mine.

Docket No.: M–97–020–C.

FR Notice: 62 FR 23797.

Petitioner: Becky Coal Company, Inc.

Regulation Affected: 30 CFR 75.380.

Summary of Findings: Petitioner's proposal to install two number five or

one number ten portable chemical fire extinguisher in the operator's deck of each Mescher tractor operated at its mine; to have the fire extinguisher readily accessible to the operator; and to have each fire extinguisher inspected daily by the equipment operator prior to entering the escapeway and if any defects are found replace the extinguisher before entering considered acceptable alternative method. Granted for the Mine No. 5 with conditions for Mescher three wheel tractors to be operated in the primary intake escapeway.

Docket No.: M–97–027–C.
FR Notice: 62 FR 23798.
Petitioner: Arclar Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use intake air from belt haulage entries to ventilate the active working places and to install and maintain a carbon monoxide monitoring system along the beltline considered acceptable alternative method. Granted with conditions to allow air coursed through conveyor belt entries to be used to ventilate working places.

Docket No.: M–97–029–C.
FR Notice: 62 FR 23798.
Petitioner: Arch of Illinois.
Regulation Affected: 30 CFR 75.323.
Summary of Findings: Petitioner's proposal to have the section's transformer located in the intake air/power entry and maintained at least 300 feet away from any type of mining (development or secondary mining/winging) and that the intake would feed the air to the active working face, the gob area, and around the bleeder system considered acceptable alternative method. Granted for the Conant Mine with conditions for application only during the second mining process known as ''winging'' using the Archveyor system.

Docket No.: M–97–034–C.
FR Notice: 62 FR 23799.
Petitioner: Tanoma Mining Company.
Regulation Affected: 30 CFR 75.326 (now 75.350).
Summary of Findings: Petitioner's proposal to amend paragraph 1(b) by adding ''when pillaring, inby sensor is to be located at least 150 feet but no more than 160 feet from the inby end of the RFM'' considered acceptable alternative method. Granted with conditions.

Docket No.: M–97–035–C.
FR Notice: 62 FR 23799.
Petitioner: Birdeye Coal Company, Inc.
Regulation Affected: 30 CFR 75.380.
Summary of Findings: Petitioner's proposal to install two number five or one number ten portable chemical fire extinguisher in the operator's deck considered acceptable alternative method. Granted for No. 4 Mine for Mescher three wheel tractors to be operated in the primary intake escapeway.

Docket No.: M–97–050–C.
FR Notice: 62 FR 29372.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage 4,160 volt cables to supply power to longwall equipment used inby the last open crosscut considered acceptable alternative method. Granted for the SUFCO for the 4,160-volt longwall equipment.

Docket No.: M–97–060–C.
FR Notice: 62 FR 34311.
Petitioner: B. and B. Anthracite Coal.
Regulation Affected: 30 CFR 75.364.
Summary of Findings: Petitioner's proposal to conduct examinations of areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month considered acceptable alternative method. Granted for the Rock Ridge No. 1 Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–97–062–C.
FR Notice: 62 FR 34311.
Petitioner: B. and B. Anthracite Coal.
Regulation Affected: 30 CFR 75.1202–1.
Summary of Findings: Petitioner's proposal to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations considered acceptable alternative method. Granted for the Rock Ridge No. 1 Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–97–064–C.
FR Notice: 62 FR 34311.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.364.
Summary of Findings: Petitioner's proposal to establish evaluation points P and Q that would be maintained in safe condition; and to have a certified person test for methane and the quantity of air at both check points on a weekly basis and place their initials, date, and time in a record book kept on the surface and made available for inspection by interested persons considered acceptable alternative method. Granted for the Shoemaker Mine with conditions for the unsafe-to-travel 1780-foot segment of the 4 South and East Returns return aircourse near Whittaker Air Shaft and Portal area.

Docket No.: M–97–067–C.
FR Notice: 62 FR 34312.
Petitioner: Old Ben Coal Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use in lieu of a padlock a Spring-Loaded Plug Interlock attached to the receptacle and permanently attached to the battery-case so that when the battery-plugs are secured and the spring loaded interlock is released, the threaded ring securing the battery plugs cannot become loose considered acceptable alternative method. Granted for the Ziegler No. 11 Mine with conditions.

Docket No.: M–97–073–C.
FR Notice: 62 FR 38123.
Petitioner: Apogee Coal Company (dBA Arch of Illinois).
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to allow the use of high-voltage trailing cables (2400 Vac) inby the last open crosscut and within 150 feet of pillar workings at the continuous miner sections considered acceptable alternative method. Granted for the Conant Mine with conditions.

Docket No.: M–97–077–C.
FR Notice: 62 FR 38123.
Petitioner: Apogee Coal Company (dBA Arch of Illinois).
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal to allow the use of a diesel-powered generator to supply power to mobile mining equipment when the equipment is being moved from one area to another without grounding the neutral to a low resistance ground field considered acceptable alternative method. Granted for the 480-volt, three-phase, 200KW/250 KVA DPG set supplying power to a 250 KVA three-phase transformer and three-phase power circuits.

Docket No.: M–97–078–C.
FR Notice: 62 FR 38123.
Petitioner: Eastern Associated Coal Corporation.
Regulation Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to use a 2300-volt three-phase alternating current electric power circuit

for the pump, and the power circuit would be designed and installed to contain (1) either a direct or derived neutral which would be grounded through a suitable resistor at the source transformer or power center; (2) a grounding circuit originating at the grounded side of the grounding resistor that would extend along with the power conductors and serve as the grounding conductor for the frame of the pump and all the associated electric equipment where power is supplied from the circuit; (3) a grounding resistor that would limit the ground fault current to no more that 15 amperes; (4) a suitable circuit breaker to provide protection against grounded phase, undervoltage, short circuit, and overload; (5) a disconnecting device; and (6) a fail-safe ground check circuit considered acceptable alternative method. Granted for the Harris No. 1 Mine and Lightfoot No. 2 Mine with conditions.

Docket No.: M–97–079–C.
FR Notice: 62 FR 38124.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage cables not extending 4,160 volts inby the last open crosscut and has listed in the petition specific terms and conditions for their safe use considered acceptable alternative method. Granted for the Blacksville No. 2 Mine with conditions.

Docket No.: M–97–082–C.
FR Notice: 62 FR 44724.
Petitioner: Tanoma Mining Company.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal to plug and mine through oil and gas wells considered acceptable alternative method. Granted for the Tanoma Mine with conditions for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Lower Kittanning Coal Seam.

Docket No.: M–97–084–C.
FR Notice: 62 FR 44724.
Petitioner: Turris Coal Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use intake air coming from belt haulage entries to ventilate workings and to install a carbon monoxide monitoring system as an early warning system along belt haulage entries considered acceptable alternative method. Granted for the Turris Coal Company with conditions.

Docket No.: M–97–087–C.
FR Notice: 62 FR 46379.
Petitioner: Costain Coal, Inc.
Regulation Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal to install one CO sensor not more than 100 feet downwind of where both the tailpiece and belt drive are located, and at intervals not to exceed 2,000 feet along each conveyor belt entry considered acceptable alternative method. Granted for the Smith Underground No. 1 Mine with conditions for the use of a carbon monoxide monitoring system that identifies the location of sensors in lieu of identifying belt flights.

Docket No.: M–97–089–C.
FR Notice: 62 FR 46379.
Petitioner: Garrett Mining, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use belt haulage entries as intake air courses for ventilation of active working places, and to install a low-level CO monitoring system as an early warning fire detection system in all belt entries used as intake air courses considered alternative method. Granted for the No. 2 Mine with conditions.

Docket No.: M–97–090–C.
FR Notice: 62 FR 46379.
Petitioner: Costain Coal, Inc.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use a spring-loaded device with specific characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve considered acceptable alternative method. Granted for the Smith Underground No. 1 Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–97–091–C.
FR Notice: 62 FR 46379.
Petitioner: G & P Contractors, Inc.
Regulation Affected: 30 CFR 75.380.
Summary of Findings: Petitioner's proposal to install two 5-pound or one 10-pound portable chemical fire extinguisher in the operator's deck of each Mescher tractor readily accessible to the operator; to have the fire extinguisher inspected daily by the equipment operator prior to entering the escapeway; to have the operator make a record of the daily inspections and keep them at the mine site; and to have a sufficient number of spare fire extinguishers maintained at the mine in case an extinguisher becomes defective considered acceptable alternative method. Granted for the Stoney Fork Mine No. 2 with conditions for Mescher three wheel tractors to be operated in the primary intake escapeway.

Docket No.: M–97–094–C.
FR Notice: 62 FR 46380.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.804.
Summary of Findings: Petitioner's proposal to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as a part of its longwall mining system considered acceptable alternative method. Granted for the Shoemaker Mine with conditions.

Docket No.: M–97–097–C.
FR Notice: 62 FR 51910.
Petitioner: CONSOL of Kentucky, Inc.
Regulation Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 and 230 degrees Fahrenheit and with water pressure equal to or greater than 10 psi; to have the sprinklers located not more than 10 feet apart, so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit considered acceptable alternative method. Granted for the Big Springs No. 6 Mine with conditions.

Docket No.: M–97–098–C.
FR Notice: 62 FR 51910.
Petitioner: Eastern Associated Coal Corporation.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage cables (2400-volt) inby the last open crosscut at the longwall working sections considered acceptable alternative method. Granted for the Harris No. 1 Mine with conditions.

Docket No.: M–97–099–C.
FR Notice: 62 FR 51910.
Petitioner: Lodestar Energy, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f)).
Summary of Findings: Petitioner's proposal to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment to prevent accidental separation of the battery plugs from their receptacles during normal

operation of the battery equipment considered acceptable alternative method. Granted for the Baker Mine with conditions.

Docket No.: M–97–100–C.
FR Notice: 62 FR 51910.
Petitioner: Eastern Associated Coal Corporation.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to request that paragraph 28 of the PDO be amended to provide at least one escapeway on the tailgate side of the longwall face considered acceptable alternative method. Granted for the Federal No. 2 Mine with conditions.

Docket No.: M–97–102–C.
FR Notice: 62 FR 51908.
Petitioner: Mark P. Shingara Coal.
Regulation Affected: 30 CFR 75.335.
Summary of Findings: Petitioner's proposal to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the No. 4 Vein Slope with conditions.

Docket No.: M–97–103–C.
FR Notice: 62 FR 51908.
Petitioner: Mark P. Shingara Coal.
Regulation Affected: 30 CFR 75.360.
Summary of Findings: Petitioner's proposal to visually examine each seal for physical damage from the slope gunboat during the preshift examination after an air quality reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section considered acceptable alternative method. Granted for the No. 4 Vein Slope Mine with conditions.

Docket No.: M–97–104–C.
FR Notice: 62 FR 51909.
Petitioner: Mark P. Shingara Coal.
Regulation Affected: 30 CFR 75.364.
Summary of Findings: Petitioner's proposal to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and travel and thoroughly examine these areas for hazardous conditions once a month considered acceptable alternative method. Granted for the No. 4 Vein Slope Mine with conditions.

Docket No.: M–97–108–C.
FR Notice: 62 FR 51909.
Petitioner: Mark P. Shingara Coal.
Regulation Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength/safety factor and secondary safety rope connection in place of such devices considered acceptable alternative method. Granted for the No. 4 Vein Slope with conditions.

Docket No.: M–97–109–C.
FR Notice: 62 FR 51909.
Petitioner: Oxbow Carbon & Minerals, Inc.
Regulation Affected: 30 CFR 75.804.
Summary of Findings: Petitioner's proposal to allow the use of Anaconda Type SHD+GC, Pirelli Type SHD–Center–GC, Tiger Brand Type SHD–CGC, and other brands of identical construction flame-resistant cables on the high-voltage longwall system(s) and that these cables would utilize a flexible No. 16 A.W.G. ground check conductor for the ground continuity check circuit considered acceptable alternative method. Granted for the Sanborn Creek Mine with conditions.

Docket No.: M–97–110–C.
FR Notice: 62 FR 51909.
Petitioner: Oxbow Carbon & Minerals, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2,400 volt cables to power longwall equipment considered acceptable alternative method. Granted for the Sanborn Creek Mine with conditions.

Docket No.: M–97–114–C.
FR Notice: 62 FR 59893.
Petitioner: Roberts Bros. Coal Co., Inc.
Regulation Affected: 30 CFR 75.503(18.41(f)).
Summary of Findings: Petitioner's proposal to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment, to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment and in the event of a battery fire, the spring-loaded device can be disconnected much faster and safer than a padlock considered acceptable alternative method. Granted for the Cardinal No. 2 Mine with conditions.

Docket No.: M–97–115–C.
FR Notice: 62 FR 59893.
Petitioner: BJM Coal Company.
Regulation Affected: 30 CFR 75.503(18.41(f)).
Summary of Findings: Petitioner's proposal to allow the use of a spring-loaded locking device instead of padlocks to secure battery plugs to machine mounted receptacles which would prevent the threaded lock ring on a plug from turning and coming loose unintentionally considered acceptable alternative method. Granted for the Camp Creek Deep Mine with conditions.

Docket No.: M–97–116–C.
FR Notice: 62 FR 59893.
Petitioner: BJM Coal Company.
Regulation Affected: 30 CFR 75.503(18.41(f)).
Summary of Findings: Petitioner's proposal to allow the use of a spring-loaded locking device instead of padlocks to secure battery plugs to machine mounted receptacles which would prevent the threaded lock ring on a plug from turning and coming loose unintentionally considered acceptable alternative method. Granted for the Mine No. 9b with conditions.

Docket No.: M–97–119–C.
FR Notice: 62 FR 63727.
Petitioner: The Pittsburg & Midway Coal Mining Co.
Regulation Affected: 30 CFR 75.503(18.41(f)).
Summary of Findings: Petitioner's proposal to allow the use of a spring-loaded device with specific fastening characteristics with its fastening configuration to secure plugs and electrical-type connectors to batteries and to the permissible mobile-powered equipment, which the batteries serve, instead of using a padlock considered acceptable alternative method. Granted for the Sebree No. 1 Mine with conditions.

Docket No.: M–97–121–C.
FR Notice: 62 FR 63727.
Petitioner: Consol of Kentucky, Inc.
Regulation Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to permit the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyor and the use of a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 to 230 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi; to locate the sprinklers not more than 10 feet apart so that the discharge of water

will extend over the belt drive, belt take-up, electrical control, and gear reducing unit; to conduct a test using the specific procedures outlined in this petition during the installation of each new system, during any subsequent repair or replacement of any critical part, and annually to ensure proper operation considered acceptable alternative method. Granted for the Ridge No. 8 Mine with conditions.

Docket No.: M–97–125–C.
FR Notice: 62 FR 63728.
Petitioner: Island Creek Coal Company.
Regulation Affected: 30 CFR 75.503(18.41(f)).
Summary of Findings: Petitioner's proposal to use a spring-loaded metal locking device instead of padlocks to secure battery charging plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered scoop cars considered acceptable alternative method. Granted for the Ohio No. 11 Mine with conditions.

Docket No.: M–97–127–C.
FR Notice: 62 FR 63728.
Petitioner: Genwal Resources, Inc.
Regulation Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a water sprinkler system with a single overhead pipe system and automatic sprinklers located not more than 10 feet apart so that the water discharged from the sprinklers will cover 50 feet of fire resistant belt, or 150 feet of non-fire resistant belt adjacent to the belt drive; and to permit automatic sprinklers(s) will cover the drive motor(s), belt take-up electrical controls, and gear reducing unit for each belt drive and to conduct a functional test to ensure proper operation during the installation of each new system and during subsequent repair or replacement of any critical part; and to submit to the District Manager proposed revisions to their Part 48 training plan that would specify initial and refresher training for compliance to this petition considered acceptable alternative method. Granted for the Crandall Canyon Mine with conditions.

Docket No.: M–97–141–C.
FR Notice: 63 FR 2700.
Petitioner: M & M Anthracite Coal Company.
Regulation Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength/safety factor and secondary safety rope connection in place of such devices considered acceptable alternative method. Granted for the Little Tracey Slope Mine with conditions.

Docket No.: M–97–142–C.
FR Notice: 63 FR 2700.
Petitioner: Elk Run Coal Company.
Regulation Affected: 30 CFR 75.503(18.41(f)).
Summary of Findings: Petitioner's proposal to use permanently installed, spring-loaded locking devices on mobile battery-powered machines to prevent unintentional loosening of battery plugs from battery receptacles in order to eliminate the hazards associated with difficult removal of padlocks during emergency situations, instead of using padlocks considered acceptable alternative method. Granted for the Black Knight II Mine with conditions.

Docket No.: M–97–149–C.
FR Notice: 63 FR 5972.
Petitioner: Canfield Energy, Inc.
Regulation Affected: 30 CFR 75.342.
Summary of Findings: Petitioner's proposal to use hand-held continuous-duty methane and oxygen indicators in lieu of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted for the Canfield No. 4 Mine with conditions for the Mescher permissible three-wheel battery-powered tractors used to load coal.

Docket No.: M–97–150–C.
FR Notice: 63 FR 5972.
Petitioner: Chestnut Coal Company.
Regulation Affected: 30 CFR 75.1200.
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels considered acceptable alternative method. Granted for the No. 10 Slope Mine with conditions.

Docket No.: M–97–151–C.
FR Notice: 63 FR 5972.
Petitioner: Peabody Coal Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use a spring-loaded metal locking device for securing the battery-connecting plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered scoop cars and tractors instead of using padlocks considered acceptable alternative method. Granted for the Camp No. 1 Mine with conditions.

Docket No.: M–96–044–C.
FR Notice: 61 FR 33141.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.364.
Summary of Findings: Petitioner's proposal to establish two check points, on inby and outby the affected area; to maintain these check points in a safe condition at all times; and to have a certified person test for methane and the quantity of air on a weekly basis at both check points and the person making such examinations would record the results with their initials and date in a record book kept on the surface and made accessible to interested parties considered acceptable alternative method. Granted for the Loveridge No. 22 Mine with conditions for the ''unsafe to travel'' 60-foot segment of the designated return aircourse which has ventilated the battery charging station (old inside shop) near Sugar Run Shaft.

Docket No.: M–96–081–C.
FR Notice: 61 FR 47193.
Petitioner: Kiah Creek Mining Company.
Regulation Affected: 30 CFR 75.364.
Summary of Findings: Petitioner's proposal to evaluate the area at the toe of the fall to determine the quantity and quality of air flowing across the fall and by the seals considered acceptable alternative method. Granted for the No. 8 Mine with conditions to allow monitoring of air flowing over the roof fall in front of the old Southeast Main Nos. 2 & 3 mine seals and indirect evaluation in lieu of physical examination and gas checks at those seals.

Docket No.: M–96–086–C.
FR Notice: 61 FR 47193.
Petitioner: Utah Fuel Company.
Regulation Affected: 30 CFR 75.344.
Summary of Findings: Petitioner's proposal to use audible and visual alarms to be located at the surface office building where assigned persons can respond to the alarms instead of at unmanned locations underground considered acceptable alternative method. Granted for the Skyline No. 3 Mine and Skyline No. 1 with conditions for the preshift examination of remote electrical installations and compressors serving mine de-watering pump installations conducted by pumpers who are certified mine examiners.

Docket No.: M–96–087–C.
FR Notice: 61 FR 47193.
Petitioner: Utah Fuel Company.

Regulation Affected: 30 CFR 75.340.

Summary of Findings: Petitioner's proposal to use audible and visual alarms to be located at the surface office building where assigned persons can respond to the alarms instead of at unmanned locations underground considered acceptable alternative method. Granted for the Skyline No. 1 Mine and Skyline No. 3 with conditions for the continuous monitoring of electrical installations providing power to mine de-watering pump installations in remote locations by an MSHA approved Atmospheric Monitoring System which activates visual and audible alarms at the system's surface location.

Docket No.: M–96–095–C.

FR Notice: 61 FR 47194.

Petitioner: Arch of Illinois.

Regulation Affected: 30 CFR 75.362.

Summary of Findings: Petitioner's proposal to use an intrinsically safe atmospheric monitoring system (AMS), a Trolex Explosive Gas Sensor Model No. TX3266 or an equivalent AMS, to test for methane before the equipment is energized, and to continuously detect and test for methane at 20-minute intervals while the mining equipment is energized in the working face. This would eliminate personnel exposure to the potential hazards of the face area during the tests considered acceptable alternative method. Granted for the Conant Mine with conditions for application only during the second mining process known as ''winging'' using the Archveyor system.

Docket No.: M–96–096–C.

FR Notice: 61 FR 47194.

Petitioner: Arch of Illinois.

Regulation Affected: 30 CFR 75.331.

Summary of Findings: Petitioner's proposal to use a ''blowing'' auxiliary permissible fan and tubing with the Archveyor System to ventilate the wing cut face area considered acceptable alternative method. Granted for the Conant Mine with conditions.

Docket No.: M–96–119–C.

FR Notice: 61 FR 57460.

Petitioner: Utah Fuel Company.

Regulation Affected: 30 CFR 75.360.

Summary of Findings: Petitioner's proposal to continuously monitor electrical installations for carbon monoxide or temperature rather than conduct preshift examinations and to physically examine these installations for other hazardous conditions at least weekly; and to have the miners entering these areas certified and conduct an examination for themselves or to have a certified person examine the areas prior to other employees entering these areas considered acceptable alternative method. Granted for the Skyline Mine No. 1 with conditions.

Docket No.: M–96–137–C.

FR Notice: 61 FR 64373.

Petitioner: D.J.T. Coal Company.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to examine the areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and travel and throughly examine these areas for hazardous conditions once a month considered acceptable alternative method. Granted for the D.J.T. Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–96–168–C.

FR Notice: 62 FR 4331.

Petitioner: Apogee Coal Company (dba Arch of Illinois).

Regulation Affected: 30 CFR 75.901.

Summary of Findings: Petitioner's proposal to allow a diesel powered generator to be operated for supplying power to mobile mining equipment when such equipment is being moved from one area of the mine to another without grounding the neutral to a low resistance ground field and that the mining personnel would be trained in the proper testing procedures to be used at the mine whenever this practice occurs considered acceptable alternative method. Granted for the Conant Mine with conditions.

Docket No.: M–96–174–C.

FR Notice: 62 FR 4332.

Petitioner: Mallie Coal Company, Inc.

Regulation Affected: 30 CFR 75.380.

Summary of Findings: Petitioner's proposal to install two five-pound or one ten-pound portable chemical fire extinguisher in the operators deck of each Mescher tractor operated at the mine; to have the fire extinguisher readily accessible to the operator; and to have each fire extinguisher inspected daily by the equipment operator prior to entering the escapeway considered acceptable alternative method. Granted for the Mine No. 5 with conditions.

Docket No.: M–96–183–C.

FR Notice: 62 FR 4333.

Petitioner: Kerr-McGee Coal Corporation.

Regulation Affected: 30 CFR 77.1304.

Summary of Findings: Petitioner's proposal to use petroleum-based lubrication oil, which would be drained from its Jacobs Ranch Mine equipment, blended with fuel oil to create an Ammonium Nitrate Fuel Oil (ANFO) blasting agent and proposes to submit proposed revisions to its part 48 training plan, which include initial and refresher training regarding compliance to its petition considered acceptable alternative method. Granted for the Jacobs Ranch Mine with conditions.

Docket No.: M–96–194–C.

FR Notice: 62 FR 4334.

Petitioner: Apogee Coal Company (dba Arch of Illinois).

Regulation Affected: 30 CFR 75.333.

Summary of Findings: Petitioner's proposal to allow permanent stoppings to be built and maintained to a point not to exceed 900 feet from the point of deepest penetration in the conveyor belt entry or to a distance from the point of deepest penetration in the conveyor belt entry not to exceed 1½ time the length of the Archveyor continuous face haulage system considered acceptable alternative method. Granted for Conant Mine with conditions for application only to the Archveyor system (i.e. stageloader, system conveyor, continuous mining machine, and bolter car if used).

Docket No.: M–96–207–C.

FR Notice: 62 FR 11925.

Petitioner: Brookside Coal Company.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to examine the areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and travel and throughly examine these areas for hazardous conditions once a month considered acceptable alternative method. Granted for the Diamond Vein Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–95–078–C.

FR Notice: 60 FR 31499.

Petitioner: R. & D. Coal Company.

Regulation Affected: 30 CFR 75.332.

Summary of Findings: Petitioner's proposal to use air passing through inaccessible abandoned workings and additional areas by mixing with air in the intake haulage slope to ventilate the only active workings section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria considered acceptable alternative method. Granted for the Buck Mountain Slope Mine with conditions.

Docket No.: M–95–115–C.

FR Notice: 60 FR 46871.

Petitioner: Consolidation Coal Company.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to establish check points J and K to monitor the affected area and to have a certified person examine the area for methane and the quantity of air at both check points on a weekly basis; and to have the certified person initial and record the date, time, and results of the weekly examinations in a book kept on the surface and made available for inspection by interested persons considered acceptable alternative method. Granted for the Shoemaker Mine with conditions.

Docket No.: M–95–167–C.

FR Notice: 60 FR 64080.

Petitioner: Cyprus Plateau Mining Corporation.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use high-voltage (2,400 or 4,160 volt) cables to power longwall mining equipment considered acceptable alternative method. Granted for the Willow Creek Mine with conditions.

Docket No.: M–95–183–C.

FR Notice: 61 FR 8306.

Petitioner: Mountain Coal Company.

Regulation Affected: 30 CFR 75.1002–1.

Summary of Findings: Petitioner's proposal to use non-permissible electronic testing or diagnostic equipment within 150 feet of pillar workings; and to use low-voltage or battery operated non-permissible equipment such as, but not limited to, laptop computers, oscilloscopes, vibration analysis machines, and cable fault detectors considered acceptable alternative method. Granted for the West Elk Mine with conditions.

Docket No.: M–95–184–C.

FR Notice: 61 FR 8306.

Petitioner: Mountain Coal Company.

Regulation Affected: 30 CFR 75.500.

Summary of Findings: Petitioner's proposal to use non-permissible electronic testing or diagnostic equipment in or inby the last open crosscut; and use low-voltage or battery operated non-permissible equipment such as, but not limited to, laptop computers, oscilloscopes, vibration analysis machines, and cable fault detectors considered acceptable alternative method. Granted for the West Elk Mine with conditions.

Docket No.: M–94–135–C.

FR Notice: 59 FR 46269.

Petitioner: K & S Coal Company.

Regulation Affected: 30 CFR 75.332.

Summary of Findings: Petitioner's proposal to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria considered acceptable alternative method. Granted for the First Chance Slope Mine with conditions.

Docket No.: M–93–07–C.

FR Notice: 58 FR 8065.

Petitioner: McElroy Coal Company.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to establish monitoring stations at the North Return and the Left Return of 2-North before it enters the affected aircourses, and continue using monitoring stations at the 1-South entries of the affected return aircourse daily as described in petition for modification, docket number M–92–142–C considered acceptable alternative method. Granted for the Slope No. 1 Mine with conditions.

Docket No.: M–93–027–C.

FR Notice: 58 FR 13805.

Petitioner: Cyprus Plateau Mining Corporation.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection in all belt entries used as intake aircourses to ventilate active working places considered acceptable alternative method. Granted for the Star Point No. 2 Mine with conditions.

Docket No.: M–93–097–C.

FR Notice: 58 FR 39237.

Petitioner: E & E Fuels.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month considered acceptable alternative method. Granted for the Orchard Slope Mine with conditions for 30 CFR 75.364(b)(1) regarding weekly examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–93–116–C.

FR Notice: 58 FR 39239.

Petitioner: Buck Mountain Coal Company.

Regulation Affected: 30 CFR 75.360.

Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section considered acceptable alternative method. Granted for the Buck Mountain Slope Mine with conditions.

Docket No.: M–97–002–M.

FR Notice: 62 FR 23800.

Petitioner: Barrick Goldstrike Mines, Inc.

Regulation Affected: 30 CFR 56.6309.

Summary of Findings: Petitioner's proposal to allow the use of used crankcase oil blended with diesel fuel to prepare ammonium nitrate/fuel oil (ANFO) for blasting considered acceptable alternative method. Granted for the Barrick Goldstrick Mine with conditions.

Docket No.: M–97–004–M.

FR Notice: 62 FR 34312.

Petitioner: Homestake Mining Company.

Regulation Affected: 30 CFR 56.6202.

Summary of Findings: Petitioner's proposal to substitute a flashing amber light in place of signs on rubber-tired mobile equipment used in the ramp systems and to have the light readily visible from all directions, and the flashing amber light would be a natural extension of the amber light currently used at the Homestake Mine to delineate explosive storage facilities considered acceptable alternative method. Granted for the Lead, S.D. Mine with conditions.

Docket No.: M–97–013–M.

FR Notice: 63 FR 2700.

Petitioner: Tg Soda Ash, Inc.

Regulation Affected: 30 CFR 57.22305.

Summary of Findings: Petitioner's proposal to operate a nonpermissible pump in an area of the mine that was previously a shortwall panel, and to operate approved equipment inby the last open break or in areas where methane may enter the airstream considered acceptable alternative method. Granted for the Wyoming Soda Ash Mine with conditions.

Docket No.: M–95–012–M.

FR Notice: 61 FR 8306

Petitioner: Rock of Ages Quarries, Inc.

Regulation Affected: 30 CFR 56.19003

Summary of Findings: Petitioner's proposal to use chain drives between

the driving mechanism and the gear train of the hoists considered acceptable alternative method. Granted for the Rock of Ages Light Side Mine with conditions.

Docket No.: M–95–013–M

FR Notice: 61 FR 8306.

Petitioner: Rock of Ages Quarries, Inc.

Regulation Affected: 30 CFR 56.19003.

Summary of Findings: Petitioner's proposal to use chain drives between the driving mechanism and the gear train of the hoists considered acceptable alternative method. Granted for the Rock of Ages Light Side Mine with conditions.

Docket No.: M–95–014–M.

FR Notice: 61 FR 8306.

Petitioner: Rock of Ages Quarries, Inc.

Regulation Affected: 30 CFR 56.19003.

Summary of Findings: Petitioner's proposal to use chain drives between the driving mechanism and the gear train of the hoists considered acceptable alternative method. Granted for the Rock of Ages Light Side Mine with conditions.

Docket No.: M–95–015–M.

FR Notice: 61 FR 8306.

Petitioner: Rock of Ages Quarries, Inc.

Regulation Affected: 30 CFR 56.19003.

Summary of Findings: Petitioner's proposal to use chain drives between the driving mechanism and the gear train of the hoists considered acceptable alternative method. Granted for the Rock of Ages Light Side Mine with conditions.

Docket No.: M–95–017–M.

FR Notice: 61 FR 8307.

Petitioner: Swenson Granite Company, Inc.

Regulation Affected: 30 CFR 56.19003.

Summary of Findings: Petitioner's proposal to use chain drives between the driving mechanism and the gear train of the hoists considered acceptable alternative method. Granted for the Swenson Gray Quarry Mine with conditions.

Docket No.: M–95–018–M.

FR Notice: 61 FR 8307.

Petitioner: Swenson Granite Company, Inc.

Regulation Affected: 30 CFR 56.19003.

Summary of Findings: Petitioner's proposal applies to chain drives between the driving mechanism and the gear train of the hoists, allowing the use of chain drives for such application considered acceptable alternative method. Granted for the Lower Quarry Mine with conditions.

Docket No.: M–94–031–M.

FR Notice: 59 FR 29305.

Petitioner: Mitsubishi Cement Corporation.

Regulation Affected: 30 CFR 57.13020.

Summary of Findings: Petitioner's proposal to establish blow-off stations at various places in the plant where employees can clean their clothes with compressed air; to install tamper-proof airline regulators at each station to ensure that primary operating air pressure is consistent; and to post rules for employees to follow when using compressed air to clean their clothes considered acceptable alternative method. The compressed air would have an OSHA-approved nozzle with pressure no greater than 2–6 psi at normal average line pressure. Granted for the Cushenbury Plant with conditions.

Docket No.: M–94–037–M.

FR Notice: 61 FR 8307.

Petitioner: Rock of Ages Quarries, Inc.

Regulation Affected: 30 CFR 56.19003.

Summary of Findings: Petitioner's proposal to use chain drives between the driving mechanism and the gear train of the hoists considered acceptable alternative method. Granted for the Rock of Ages Light Side Mine with conditions.

Docket No.: M–81–072–M.

FR Notice: 47 FR 8898.

Petitioner: Ziegler Chemical and Mineral Corp.

Regulation Affected: 30 CFR 57.19–3.

Summary of Findings: Petitioner's proposal to use a V-belt drive personnel hoist known as Hoist B–11 at its gilsonite mines considered acceptable alternative method. Granted for Bonanza Mine with conditions.

[FR Doc. 99–12550 Filed 5–18–99; 8:45 am]

BILLING CODE 4510–43–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

May 13, 1999.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 64, No. 89, at 25,080, May 10, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Thursday, May 13, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Open.

CHANGES IN MEETING: Following a motion to dismiss the proceedings by the Secretary of Labor, the Commission canceled oral argument on *Secretary of Labor* v. *Newmont Gold Co.*, Docket Nos. WEST 97–164–RM, etc.

PREVIOUSLY ANNOUNCED TIME AND DATE: The meeting to consider *Secretary of Labor* v. *Newmont Gold Co.*, Docket Nos. WEST 97–164–RM, etc., will commence following upon the conclusion of oral argument in the case which commences at 10:00 a.m. on Thursday, May 13, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

CHANGES IN MEETING: Following a motion to dismiss the proceedings by the Secretary of Labor, the Commission canceled the meeting to consider *Secretary of Labor* v. *Newmont Gold Co.*, Docket Nos. WEST 97–164–RM, etc.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–12644 Filed 5–14–99; 4:18 pm]

BILLING CODE 6735–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts Fellowships Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that two meetings of the Fellowships Panel, Jazz Masters section, to the National Council on the Arts will be held on May 27, 1999. The panel will meet from 3:30 to 5:00 p.m. via teleconference from the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: May 14, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99–12702 Filed 5–18–99; 8:45 am]

BILLING CODE 7537–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also hold its deliberative meeting to consider whether to amend the over-order price regulation to establish a supply management program.

DATES: The meeting is scheduled for 10:00 a.m. on Wednesday, June 2, 1999.

ADDRESSES: The meeting will be held at the Merrimack Hotel and Conference Center, 4 Executive Park Drive, Merrimack, New Hampshire (Exit 11 off the Everett Turnpike).

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: May 13, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–12546 Filed 5–18–99; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600, Rev. 1]

Revision of NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (Enforcement Policy) to conform to the amendments to the regulations that govern operators' licenses published in the **Federal Register** as a separate action. Those amendments allow nuclear power facility licensees to prepare, proctor, and grade the written examinations and prepare the operating tests that the NRC uses to evaluate the competence of individuals applying for operator licenses at the facility licensees' plants. Moreover, the amendment requires facility licensees that elect to prepare their own examinations to establish, implement, and maintain procedures to control examination security and integrity, and it clarifies the regulations to ensure that applicants, licensees, and facility licensees understand what it means to compromise the integrity of a required test or examination. Therefore, the Enforcement Policy is being amended to add examples of violations that may be used as guidance in determining the appropriate severity level for violations involving the compromise of applications, tests, and examinations.

EFFECTIVE DATE: This action is effective May 19, 1999, while comments are being received. Submit comments on or before June 18, 1999.

ADDRESSES: Submit written comments to: David Meyer, Chief, Rules Review and Directives Branch, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555–0001. Copies of NUREG–1600 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Copies are also available for inspection and copying for a fee in the NRC Public Document Room.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–2741; e-mail: jxl@nrc.gov.

SUPPLEMENTARY INFORMATION: The Commission's ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (Enforcement Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On May 13, 1998 (63 FR 26630), the Enforcement Policy was revised in its entirety and was also published as NUREG–1600, Rev. 1. The Enforcement Policy primarily addresses violations by licensees and certain non-licensed persons, as discussed further in the Enforcement Policy in footnote 3 to Section I, ''Introduction and Purpose,'' and in Section X, ''Enforcement Action Against Non-Licensees.''

By a separate action published in the **Federal Register**, the NRC is amending its regulations in 10 CFR Part 55 to allow nuclear power facility licensees to prepare, proctor, and grade the written examinations and prepare the operating tests that the NRC uses to evaluate the competence of individuals applying for operator licenses at the facility licensees' plants. Section 107 of the Atomic Energy Act (AEA) of 1954, as amended, requires the NRC to determine the qualifications of individuals applying for operator licenses, to prescribe uniform conditions for licensing such individuals, and to issue licenses as appropriate. Pursuant to the AEA, 10 CFR part 55 requires applicants for operator licenses to pass an examination that satisfies the basic content requirements specified in the regulation. Because the NRC considers the integrity of the licensing tests and examinations to be essential to the safe operation of nuclear facilities, the NRC is also amending 10 CFR 55.49 to clarify that the integrity of a test or examination required by 10 CFR part 55 is considered compromised if any activity, regardless of intent, affected, or but for detection, would have affected the equitable and consistent administration of the test or examination. Moreover, the NRC is amending 10 CFR part 55 to require power reactor facility licensees that elect to prepare their own examinations to establish, implement, and maintain procedures to control examination security and integrity.

The NRC intends to use its enforcement authority to emphasize that a compromise of an application, test, or examination required by 10 CFR part 55 cannot be accepted. Therefore, the NRC is amending the Enforcement Policy by adding examples of violations in Supplement I, ''Reactor Operations,'' to provide guidance in determining the appropriate severity level for violations involving the compromise of an application, test, or examination used to evaluate the competence of individuals

applying for operator licenses or to evaluate the continued competence of licensed operators. In the case of initial operator licensing, a non-willful compromise of an application, test, or examination required by 10 CFR part 55 that contributes to an individual being granted a license is considered significant and will be categorized normally at least at Severity Level III. Similarly, in the case of requalification, a non-willful compromise of an application, test, or examination required by 10 CFR part 55 that permits an individual to perform the functions of an operator or a senior operator is also considered significant and will be categorized normally at least at Severity Level III. A non-willful compromise that is discovered and reported to the NRC before an individual is granted a license, or before an individual is permitted to perform the functions of an operator or a senior operator, will be categorized normally at Severity Level IV, as will other violations of 10 CFR 55.49 that are of more than minor concern, such as failures to establish, implement, or maintain procedures to control the security of the examination process or failures to take adequate corrective action in response to a previous compromise.

For purposes of determining whether a particular compromise contributed to an individual being granted a license, or contributed to an individual being permitted to perform the functions of an operator or a senior operator, the NRC will presume that an individual involved in a compromise was able to pass the test or examination in question only because of the advantage received as a result of the compromise. For example, consider a situation where an individual answered eighty-three out of one hundred questions correctly on a licensing examination and that as a result of answering more than eighty questions correctly the individual was either granted a license or considered eligible to perform the duties of an operator or a senior operator. Under the policy announced above, if it is later determined that a compromise of the examination gave the individual an advantage, the NRC will presume that but for the compromise the individual would have failed the examination. Unless the licensee can conclusively demonstrate that the individual involved would have answered at least eighty out of the one hundred examination questions correctly irrespective of the compromise, the compromise will be categorized at least at Severity Level III.

Willful acts to compromise an application, test, or examination required by 10 CFR part 55 will add to the significance of the compromise and may result in the compromise being categorized at a higher severity level in accordance with the guidance in Section IV.C. of the Enforcement Policy. Consistent with that guidance, in determining the severity level of a compromise involving willfulness, the NRC will consider such factors as the degree of willfulness on the part of any individual involved in the compromise, the positions and levels of responsibility of the individuals involved, the number of individuals involved in the compromise, the scope of the compromise, the advantage received by any individual as a result of the compromise, the timing of the compromise, when the compromise was detected, and the facility licensee's response to the compromise. Depending on the circumstances of the compromise, there may be a difference in the severity level of the violation issued to any individual involved in the compromise and the facility licensee. The NRC intends to utilize its enforcement authority, as warranted, and issue notices of violation, civil penalties, and orders to individuals and facility licensees who (1) compromise an application, test, or examination in violation of 10 CFR 55.49, (2) commit deliberate misconduct in violation of 10 CFR 50.5, or (3) provide incomplete or inaccurate information to the NRC in violation of 10 CFR 50.9. In addition, willful acts to compromise an application, test, or examination required by 10 CFR part 55 may be referred to the Department of Justice for criminal prosecution.

In addition to issuing notices of violation, civil penalties, and orders, the NRC may require an individual involved in a particular compromise of an application, test or examination required by 10 CFR part 55 to be retested or reexamined prior to performing the functions of an operator or a senior operator. The NRC recognizes that it may be difficult in certain situations to determine whether an individual received an advantage as a result of a particular compromise or whether but for the compromise the individual would not have been granted a license or permitted to continue to perform the functions of an operator or a senior operator. Therefore, in any situation where there is some doubt as to whether an individual received an advantage as a result of a particular compromise, the NRC may require an individual to be retested or reexamined to verify that the individual is qualified to perform the functions of an operator or a senior operator. When determining whether an individual must be retested or reexamined prior to performing the functions of an operator or a senior operator, the NRC will make its determination irrespective of the severity level of the compromise or any enforcement action to be taken against the individual or facility licensee as a result of the compromise.

Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, Supplement I—Reactor Operations of Appendix B of the NRC Enforcement Policy is revised to read as follows:

Appendix B: Supplements—Enforcement Examples

* * * * *

Supplement I—Reactor Operations

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

C. Severity Level III—Violations involving for example:

* * * * *

5. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that:

(a) In the case of initial operator licensing, contributes to an individual being granted an operator or a senior operator license, or

(b) In the case of requalification, contributes to an individual being permitted to perform the functions of an operator or a senior operator.

D. Severity Level IV—Violations involving for example:

* * * * *

5. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that:

(a) In the case of initial operator licensing, is discovered and reported to the NRC before an individual is granted an operator or a senior operator license, or

(b) In the case of requalification, is discovered and reported to the NRC before an individual is permitted to perform the functions of an operator or a senior operator, or

(c) Constitutes more than minor concern.

Dated at Rockville, MD, this 13th day of May, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–12622 Filed 5–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection:

''Travel Voucher (Part 1)''
''Travel Voucher (Part 2)
''Optional Travel Voucher (Part 2)''

3. The form number, if applicable:

NRC Form 64
NRC Form 64A
NRC Form 64B

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Contractors, consultants and Invited NRC travelers who travel in the course of conducting business for the NRC.

6. An estimate of the number of responses: 100.

7. The estimated number of annual respondents: 100.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 100.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: As a part of completing the travel process, the traveler must file travel reimbursement vouchers and trip reports. The respondent universe for the above forms includes consultants and contractors and those who are invited by the NRC to travel, e.g., prospective employees. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 18, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150-), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 12th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–12625 Filed 5–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee), to withdraw its November 20, 1998, application for proposed amendment to Facility Operating License No. NPF–47 for the River Bend Station, Unit No. 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would have established a new Technical Specification (TS), TS 3.10.9, ''Control Rod Pattern—Cycle 8,'' added to Section 3.10, ''Special Operations.'' The new TS 3.10.9 was requested as a result of a plant-specific configuration where control rods were inserted into the reactor core for neutron flux suppression surrounding fuel assemblies that were identified as having possible fuel cladding defects. The new requirement was intended to be effective for the remainder of fuel cycle 8, which has been completed, and was to be in force when rod withdrawal operations begin from a condition of 100 percent rod density to 20 percent rated thermal power.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 16, 1998 (63 FR 69338). However, by letter dated April 8, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 20, 1998, and the licensee's letter dated April 8, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana.

Dated at Rockville, Maryland, this 12th day of May 1999.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–12624 Filed 5–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 1, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday June 1, 1999—1:00 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, 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 person, Dr. John T. Larkins (telephone: 301/415–7360) 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 changes in schedule, etc., that may have occurred.

Dated: May 13, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–12620 Filed 5–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Plant Operations and on Fire Protection; Notice of Meeting

The ACRS Subcommittees on Plant Operations and on Fire Protection will hold a joint meeting on June 23, 1999, NRC Region I Office, 475 Allendale Road, Public Meeting Room, King of Prussia, Pennsylvania.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 23, 1999—8:30 a.m. until the conclusion of business

The Subcommittees will discuss items of mutual interest with the representatives of NRC Region I Office, including plant performance review process, implementation challenges associated with the revised inspection and assessment programs, and fire protection issues, including the results of the fire protection functional inspections. 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 and 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 Region I Office, 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. Amarjit Singh (telephone 301/415–6899) 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: May 13, 1999.

Sam Duraiswamy,

ACRS.

[FR Doc. 99–12621 Filed 5–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 2–4, 1999, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 18, 1998 (63 FR 64105).

Wednesday, June 2, 1999

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:45 A.M.–10:15 A.M.: Hydrogen Control Exemption Request for the San Onofre Nulcear Generating Station Units 2 and 3 (Open)—The Committee will hear presentations by and hold discussions with representatives of the Southern California Edison (SCE) and NRC staff regarding the request by SCE for a license exemption to the hydrogen control requirements at San Onofre Nuclear Generating Station Units 2 and 3 and the associated NRC staff's Safety Evaluation Report.

10:30 A.M.–12:00 Noon: Status of the Pilot Application of the Revised Inspection and Assessment Programs (Open)—The Committee will hear presentations by and hold discussions

with representatives of the NRC staff regarding the status of the pilot application of the revised inspection and assessment programs, and related matters.

1:00 P.M.–2:30 P.M.: Proposed Risk-Based Performance Indicators (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed risk-based performance indicators (PIs), trial application of PIs, and identification of thresholds for regulatory action.

2:45 P.M.–4:15 P.M.: Performance-Based Regulatory Initiatives and Related Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding performance-based regulatory initiatives and related matters.

5:15 P.M.–7:00 P.M.: Discussion of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Thursday, June 3, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Use of Averted Onsite Costs in Regulatory Analyses (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed options for using averted onsite costs in regulatory analyses.

10:15 A.M.–11:15 A.M.: Development of a Low-Power and Shutdown Risk Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of development of a low-power and shutdown risk program.

11:15 A.M.–11:45 A.M.: Strategy for ACRS Review of License Renewal Activities (Open)—The Committee will discuss a proposed strategy for ACRS review of plant-specific license renewal applications, industry topical reports, and related matters.

12:45 P.M.–2:15 P.M.: Options for Crediting Existing Programs for License Renewal (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed options for crediting existing NRC-approved programs for license renewal.

2:30 P.M.–3:30 P.M.: Proposed Resolution of Generic Safety Issue (GSI)–165, ''Spring-Actuated Safety and Relief Valve Reliability'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed resolution of GSI–165.

3:30 P.M.–4:00 P.M.: Report of the Joint ACRS/ACNW Working Group (Open)—The Committee will hear a report of the Joint ACRS/ACNW Working Group regarding its review of SECY–99–100, ''Framework for Risk-Informed Regulation in the Office of Nuclear Material Safety and Safeguards,'' and procedures for reviewing and commenting on items of mutual interest between ACRS and ACNW.

5:00 P.M.–7:15 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, June 4, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:30 A.M.: Perspective on Nuclear Safety and the Regulatory Process (Open)—The Committee will hear a presentation by and hold discussions with Dr. Bonaca, ACRS member, regarding his perspective on nuclear safety and the regulatory process.

9:30 A.M.–10:00 A.M.: Site Visit to the Susquehanna Steam Electric Station and Meeting with the NRC Region I Personnel (Open)—The Committee will discuss the proposed schedule for touring the Susquehanna Steam Electric Station, specific plant areas to be visited, proposed issues for discussion with the licensee, and topics for discussion with representatives of the NRC Region I Office.

10:15 A.M.–10:45 A.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

10:45 A.M.–11:15 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

NOTE: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

11:15 A.M.–11:30 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters, including the EDO responses to the ACRS reports on proposed amendment to 10 CFR 50.55a, dated April 19, 1999, and on the proposed ASME Standard for PRA for Nuclear Power Plant Applications (Phase 1), dated March 25, 1999.

12:30 P.M.–5:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

5:00 P.M.–5:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51968). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Duraiswamy if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d), Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2) and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 14, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–12642 Filed 5–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 24, 1999, through May 7, 1999. The last biweekly notice was published on May 5, 1999.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 18, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: March 3, 1999.

Description of amendment request: The proposed amendment would change the reactor vessel (RV) surveillance capsule pull interval from approximately 15 effective full power (EFPY) years to 18 EFPY in Technical Specification (TS) Table 4.6–3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below: The operation of Pilgrim in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The Pilgrim plant's physical configuration and operational practices are not changed by this proposed change. The licensee is only proposing to change the TS withdrawal schedule for the RV surveillance capsule. This change does not affect any of the current accident mitigation features of the facility or the sequence of any accidents previously analyzed. For the reasons given above, deferral of withdrawal of Pilgrim's second capsule for at least one additional cycle (or 3 EFPY) does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Pilgrim in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed in the above narrative, the deferral of the second capsule pull at Pilgrim does not change any of the design features or operation of the facility but does defer a TS surveillance. Pilgrim's current TS pressure-temperature (P–T) curves are conservative and will remain so even if the RV surveillance capsule is not pulled this outage. The data from the first RV capsule supports this conclusion. Because the RV capsule pull schedule is being deferred, the P–T curves, which can be modified based on the data from the RV capsule surveillance, will not be changed. The deferral of the withdrawal of Pilgrim's second RV surveillance capsule does not change the design features or operation of the facility and the existing P–T curves have not changed, therefore, the TS change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Pilgrim in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The capsule pull is a surveillance technique that provides data for modification of the P–T curves. The methods used to develop the temperatures associated with these curves are regarded as conservative. The data from the first RV capsule supported this conclusion. Because the P–T curves have not changed and have been determined to be conservative, the margins of safety that were previously established have not changed. Therefore, deferral of the withdrawal of Pilgrim's second RV surveillance capsule will not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Attorney for licensee: J. Fulton, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: March 30, 1999.

Description of amendment request: The proposed amendment would revise Section 4.0, Surveillance Requirements, of the Technical Specifications (TSs). Specifically, Section 4.0.2 would be added to allow a 24-hour grace period for performing inadvertently missed surveillance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. This proposed change will result in either the plant condition either remaining unchanged (i.e., the system or component is declared operable) or in the plant proceeding to a shutdown condition (i.e., the system or component is declared operable). If at the end of the 24-hour interval, it is necessary to proceed to shutdown, this shutdown is indistinguishable from any shutdown where a system or component is declared inoperable. Allowing an additional 24 hours to perform the surveillance balances the risks associated with an allowance for completing the surveillance within this 24-hour period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with the action requirements before the surveillance can be completed. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. This proposed change will result in either the plant condition either remaining unchanged (i.e., the system or component is declared operable) or in the plant proceeding to a shutdown condition (i.e., the system or component is declared operable). If at the end of the 24-hour interval, it is necessary to proceed to shutdown, this shutdown is indistinguishable from any shutdown where a system or component is declared inoperable. Allowing an additional 24 hours to perform the surveillance balances the risks associated with an allowance for completing the surveillance within this 24-hour period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with the action requirements before the surveillance can be completed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. This proposed change will result in either the plant condition either remaining unchanged (i.e., the system or component is declared operable) or in the plant proceeding to a shutdown condition (i.e., the system or component is declared operable). If at the end of the 24-hour interval, it is necessary to proceed to shutdown, this shutdown is indistinguishable from any shutdown where a system or component is declared inoperable. Allowing an additional 24 hours to perform the surveillance within this 24-hour period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with the action requirements before the surveillance can be completed . Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: S. Singh Bajwa.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 22 and October 22, 1998; May 6, 1999.

Description of amendment request: The amendments would revise the Technical Specifications (TS) to reflect the licensee's planned use of fuel supplied by Westinghouse. The staff has published a Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination on November 18, 1998 (63 FR 64108) covering the July 22 and October 22, 1998, submittals. In the May 6, 1999, submittal the licensee proposed to expand the original amendment request, revising Section 5.6.5 of the Technical Specifications. Section 5.6.5 specifies a list of NRC-approved topical reports that the licensee is required to use to determine reactor core operating limits. The licensee proposed to update this list to show the current approval status of these topical reports.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the proposed changes conveyed by the May 6, 1999, submittal. The NRC staff has reviewed the licensee's analyses against the standards of 10 CFR 50.92(c). The NRC-staff's analysis is presented below.

First Standard

No. The proposed changes to Section 5.6.5 will not affect the safety function and will not involve any change to the design or operation of any plant system or component. The topical reports were previously approved by the NRC staff under separate licensing actions. The use of methodologies in these approved topical reports will ensure that previously evaluated accidents remain bounding. Therefore, no accident probabilities or consequences will be impacted.

Second Standard

No. The proposed changes would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

Third Standard

No. Margin of safety is associated with confidence in the design and operation of the plant; specifically, the ability of the fission product barriers to perform their design functions during and following an accident. The proposed changes to Section 5.6.5 do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for the proposed changes to Section 5.6.5. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 5, 1999.

Description of amendment request: The proposed amendments would provide revised spent fuel pool storage configurations, revised spent fuel pool storage criteria, and revised fuel enrichment and burnup requirements which take credit for soluble boron in maintaining acceptable margins of subcriticality in the spent fuel storage pools. Also, the proposed amendments would provide additional criteria for ensuring acceptable levels of subcriticality in the spent fuel storage pools.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequence of an accident previously evaluated?

No, based upon the following:

Dropped Fuel Assembly

There is no significant increase in the probability of a fuel assembly drop accident in the spent fuel pools when considering the degradation of the Boraflex panels in the spent fuel pool racks coupled with the presence of soluble boron in the spent fuel pool water for criticality control. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water, and the quantity of Boraflex remaining in the racks has no affect on the probability of such a drop accident.

The criticality analysis showed that the consequences of a fuel assembly drop accident in the spent fuel pools are not affected when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron.

Fuel Misloading

There is no significant increase in the probability of the accidental misloading of spent fuel assemblies into the spent fuel pool racks when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron in the pool water for criticality control. Fuel assembly placement and storage will continue to be controlled pursuant to approved fuel handling procedures to ensure compliance with the Technical Specification requirements. These procedures will be revised as needed to comply with the revised requirements which would be imposed by the proposed Technical Specification changes.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel pool racks because criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading if the pool contains an adequate boron concentration. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools. A McGuire Station UFSAR change will revise Chapter 16, ''Selected Licensee Commitments'', to provide for adequate monitoring of the remaining Boraflex in the spent fuel pool racks. If that monitoring identifies further reductions in the Boraflex panels which would not support the conclusions of the McGuire Criticality Analysis, then the McGuire TS's and design bases would be revised as needed to ensure that acceptable subcriticality are maintained in the McGuire spent fuel storage pools.

Significant Change in Spent Fuel Pool Temperature

There is no significant increase in the probability of either the loss of normal cooling to the spent fuel pool water or a decrease in pool water temperature from a large emergency makeup when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the spent fuel pool water. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

A loss of normal cooling to the spent fuel pool water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density that would result in a decrease in reactivity when Boraflex neutron absorber panels are present in the racks. However, since a reduction in the amount of Boraflex present in the racks is considered, and the spent fuel pool water has a high concentration of boron, a density decrease causes a positive reactivity addition. However, the additional negative reactivity provided by the current boron concentration limit, above that provided by the concentration required to maintain k_{eff} less than or equal to 0.95 (1170 ppm), will compensate for the increased reactivity which could result from a loss of spent fuel pool cooling event. Because adequate soluble boron will be maintained in the spent fuel pool water, the consequences of a loss of normal cooling to the spent fuel pool will not be increased. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

A decrease in pool water temperature from a large emergency makeup causes an increase in water density that would result in an increase in reactivity when Boraflex neutron absorber panels are present in the racks. However, the additional negative reactivity provided by the current boron concentration limit, above that provided by the concentration required to maintain k_{eff} less than or equal to 0.95 (1170 ppm), will compensate for the increased reactivity which could result from a decrease in spent fuel pool water temperature. Because adequate soluble boron will be maintained in the spent fuel pool water, the consequences of a decrease in pool water temperature will not be increased. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

2. Will the change create the possibility of a new or different kind of accident from any previously evaluated?

No. Criticality accidents in the spent fuel pool are not new or different types of accidents. They have been analyzed in Section 9.1.2.3 of the Updated Final Safety Analysis Report and in Criticality Analysis reports associated with specific licensing amendments for fuel enrichments up to 4.75 weight percent U–235. Specific accidents considered and evaluated include fuel assembly drop, accidental misloading of spent fuel assemblies into the spent fuel pool racks, and significant changes in spent fuel pool water temperature. The accident analysis in the Updated Final Safety Analysis Report remains bounding.

The possibility for creating a new or different kind of accident is not credible. The amendment proposes to take credit for the soluble boron in the spent fuel pool water for reactivity control in the spent fuel pool while maintaining the necessary margin of safety. Because soluble boron has always been present in the spent fuel pool, a dilution of the spent fuel pool soluble boron has always been a possibility, however this accident was not considered credible. For the proposed amendment, the spent fuel pool dilution evaluation (Attachment 7) demonstrates that a dilution of the boron concentration in the spent fuel pool water which could increase the rack k_{eff} to greater than 0.95 (constituting a reduction of the required margin to criticality) is not a credible event. The requirement to maintain boron concentration in the spent fuel pool water for reactivity control will have no effect on normal pool operations and maintenance. There are no changes in equipment design or in plant configuration. This new requirement will not result in the installation of any new equipment or modification of any existing equipment. Therefore, the proposed amendment will not result in the possibility of a new or different kind of accident.

3. Will the change involve a significant reduction in a margin of safety?

No. The proposed Technical Specification changes and the resulting spent fuel storage operating limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant

specific criticality analysis (Attachment 6) based on the ''Westinghouse Spent Fuel Rack Criticality Analysis Methodology'' described in Reference 1. The Westinghouse methodology for taking credit for soluble boron in the spent fuel pool has been reviewed and approved by the NRC (Reference 6). This methodology takes partial credit for soluble boron in the spent fuel pool and requires conformance with the following NRC Acceptance criteria for preventing criticality outside the reactor:

(1) k_{eff} shall be less than 1.0 if fully flooded with unborated water which includes an allowance for uncertainties at a 95% probability, 95% confidence (95/95) level; and

(2) k_{eff} shall be less than or equal to 0.95 if fully flooded with borated water, which includes an allowance for uncertainties at a 95/95 level.

The criticality analysis utilized credit for soluble boron to ensure k_{eff} will be less than or equal to 0.95 under normal circumstances, and storage configurations have been defined using a 95/95 k_{eff} calculation to ensure that the spent fuel rack k_{eff} will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide safety margin by maintaining k_{eff} less than or equal to 0.95 including uncertainties, tolerances and accident conditions in the presence of spent fuel pool soluble boron. The loss of substantial amounts of soluble boron from the spent fuel pool which could lead to exceeding a k_{eff} of 0.95 has been evaluated (Attachment 7) and shown to be not credible. Accordingly, the required margin to criticality is not reduced.

The evaluations in Attachment 7, which show that the dilution of the spent fuel pool boron concentration from the conservative assumed initial boron concentration (2475 ppm) to the minimum boron concentration required to maintain k_{eff} [less than or equal to] 0.95 (440 ppm) is not credible, combined with the 95/95 calculation which shows that the spent fuel rack k_{eff} will remain less than 1.0 when flooded with unborated water, provide a level of safety comparable to the conservative criticality analysis methodology required by References 2, 3 and 4.

Therefore the proposed changes in this license amendment will not result in a significant reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murray Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 6, 1999.

Description of amendment request: The proposed amendments would expand the allowable values for Interlocks P–6 (Intermediate Range Neutron Flux) and P–10 (Power Range Neutron Flux) in TS 3.3.1, Table 3.3.1–1, Function 16, Reactor Trip System Interlocks, as recommended by Westinghouse.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

Criterion 1—Would operation of the facility in accordance with the requested amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The reactor protection interlocks are provided to ensure reactor trips are in the correct configuration for the current unit status. They back up operator actions to ensure protection system functions are not bypassed during unit conditions under which the safety analysis assumes the functions are not bypassed. The proposed changes involve changing the lower value of the P–10 permissive (power range (PR) neutron flux) allowable values from [greater than or equal to] 9% RTP to [greater than or equal to] 7% RTP, and changing the P–6 permissive (intermediate range (IR) neutron flux) allowable value from [greater than or equal to] 6E11 amp to [greater than or equal to] 4E–11 amp. Changing the P–10 allowable value would allow for tripping and resetting of the permissive at a lower reactor power level. Changing the P–6 allowable value would allow the source range (SR) channels to be blocked at a lower increasing reactor power level and delay resetting of the permissive at a lower decreasing reactor power level.

A review of the UFSAR Chapter 15 accident analyses determined that no credit is taken for the SR reactor trip or the IR reactor trip for any of the UFSAR accidents. Credit is taken for the PR low setpoint trip for a feedwater system malfunction causing an increase in feedwater flow accident (15.1.2), uncontrolled rod cluster control assembly bank withdrawal from a subcritical or low power startup condition accident (15.4.1), and spectrum of rod cluster control assembly ejection accidents (15.4.8). All three of these accident scenarios are bounded by cases at 0% RTP taking credit for the PR low setpoint trip and cases at [greater than or equal to] 10% RTP taking credit for the PR high setpoint trip. The uncontrolled rod cluster control assembly bank withdrawal from power accident (15.4.2) analyses are performed at initial power levels of 10%, 50%, and 100% RTP to demonstrate that acceptable results are obtained for a range of initial power levels. For this accident, the PR neutron flux high setpoint trip, high pressurizer pressure trip, overpower delta-T (OPDT) trip and overtemperature delta-T (OTDT) trip provide core protection. With the P–10 reset function changed to as low as 7% RTP, the conclusions of Section 15.4.2 analysis would not change. Since the uncontrolled bank withdrawal event is analyzed from both zero power and 10% RTP, all low power initial conditions are adequately bounded. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

Criterion 2—Would operation of the facility in accordance with the requested amendment create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes to the allowable values will provide adequate deadbands between the trip and reset setpoints as well as adequate margin for instrument drift. The reactor trip system overpower trips continue to perform their safety function as assumed in safety analyses. Only the permissives (P–6 and P–10) for blocking and unblocking of overpower reactor trips are changed. The proposed changes will not invalidate any of the UFSAR accident analyses. The proposed changes will not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Would operation of the facility in accordance with the requested amendment involve a significant reduction in a margin of safety?

The proposed changes involve lowering the Technical Specification allowable values associated with the P–10 and P–6 permissives for blocking and unblocking of reactor overpower trips. The lowering of these allowable values is not considered a significant reduction since it is just enough to accommodate a deadband recommended by Westinghouse and a margin for instrument drift. The proposed changes will not invalidate any UFSAR Chapter 15 accident analyses. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library,

University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: April 26, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specifications to provide a method for obtaining a Nuclear Regulatory Commission review of (a) the analytical details regarding a revised methodology for determining steam generator tube loads following a main steam line break, and (b) the crediting of the main steam line break detection and feedwater isolation instrumentation as a means for providing runout protection for the turbine-driven emergency feedwater pump.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes involve: (a) revising the methodology utilized to determine steam generator tube loads following a main steam line break (MSLB); and (b) utilizing the MSLB detection and feedwater isolation instrumentation as an additional means of providing runout protection of the turbine-driven emergency feedwater (EFW) pump.

The revised methodology utilized to determine steam generator tube loads following a MSLB is consistent with the methodology utilized in the MSLB containment response analysis which has received Nuclear Regulatory Commission (NRC) approval. The revised MSLB analysis reaches the same conclusion as the original analysis (i.e., steam generator tube integrity is maintained). The new analysis takes into consideration the operation of the MSLB detection and feedwater isolation instrumentation to terminate main feedwater (MFW) flow and inhibit the auto-start of or auto-stop the turbine-driven EFW pump. This instrumentation is QA–1, whereas the Integrated Control System (ICS) is non-safety. Furthermore, the revised MSLB analysis results in a greater temperature difference between the steam generator tube and shell, thus, more conservative steam generator tube loads than those identified in the original MSLB analysis.

Also, in the event that the MSLB detection and feedwater isolation instrumentation does not function properly, the non-safety ICS is still available to maintain steam generator water level at the post-trip minimum level as assumed in the original analysis.

Currently, operator action is the only credited means to protect the turbine-driven RFW pump from runout. The MSLB detection and feedwater isolation instrumentation provides an additional method to protect the turbine-driven EFW pump from runout. Crediting the MSLB detection and feedwater isolation instrumentation simply adds defense in depth.

There are no physical changes to the plant structures, systems, or components (SSCs) or operating procedures, nor are there any changes to safety limits or set points. Also, no new radiological release pathways are created.

Thus, the proposed change does not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from the accidents previously evaluated?

No. The reanalysis of the steam generator tube loads following a MSLB accident is limited to an accident that is already evaluated in the UFSAR. The methodology is similar to the current analysis for the MSLB containment response. The effects of the MSLB on steam generator tube integrity are the same as in the original analysis—tube integrity is maintained.

The revised analysis takes into consideration the operation of the MSLB detection and feedwater isolation instrumentation, which terminates MFW flow and inhibits the auto-start of or auto-stops the turbine-driven EFW pump following a MSLB. As assumed in the original analysis, the non-safety ICS will remain available to control steam generator water level at the post-trip minimum level should a malfunction occur in the MSLB detection and mitigation circuit. Should this malfunction occur, the resulting tube stresses would decrease relative to the revised analysis.

Crediting the MSLB detection and feedwater isolation instrumentation as a means to protect the turbine-driven EFW pump from runout simply adds defense in depth.

There are no physical changes to the plant SSCs or operating procedures. There are no new hazardous materials or potential missiles. It does not introduce the possibility of any new or different malfunctions. No safety limits or set points are changed.

Thus, the proposed change does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety?

No. The reanalysis of the steam generator tube loads following a MSLB accident is similar to the current analysis for the previously NRC approved MSLB containment response. The conclusion of the revised MSLB steam generator tube load analysis is the same as the conclusion in the original analysis—steam generator tube integrity is maintained.

Crediting the MSLB detection and feedwater isolation instrumentation as a means to protect the turbine-driven EFW pump from runout simply adds defense in depth.

There are no safety limit, set point, design parameters, or operating procedure changes required. The integrity of the fuel cladding, reactor coolant system, and containment are preserved.

Thus, the proposed change does not involve a significant reduction in a margin of safety.

Duke has concluded based on the above information that there are no significant hazards involved in this LAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 9, 1999.

Description of amendment request: The proposed amendment would revise the requirements affecting the surveillance methods for the containment tendons, the conduct of containment visual inspections, and the reporting methods employed in disseminating the results of these inspections to the Nuclear Regulatory Commission.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to the ANO–1 [Arkansas Nuclear One, Unit 1] TS [Technical Specifications] replaces previous requirements and commitments to establish a containment inspection program based on the guidance provided in Regulatory Guide 1.35, Revision 2 in favor of regulations depicted in [Title] 10 [of the] CFR [Code of

Federal Regulations] 50.55a(g)(6)(ii)(B) and 50.55a(b)(2)(ix). ANO–1 is implementing a containment inspection program to comply with these new regulatory requirements. The final rule specifies requirements to assure that the critical areas of the containment structure are routinely inspected to detect and take corrective action for defects that could compromise structural integrity.

Maintaining reactor building structural integrity is independent of the operation of the reactor coolant system (RCS), the reactor protection system (RPS) and emergency core cooling system (ECCS). The reactor building is not considered to be the initiator of any accident previously evaluated. The physical location of inspection details does not prevent or inhibit the reactor building from functioning as designed to provide an acceptable barrier against release of radioactive materials to the environment. Through appropriate inspections and implementation of corrective actions for any degradation discovered during the inspections that might lead to containment structural failures, the probability or consequences of accidents will not be increased.

Therefore, the removal of inspection details from the TS does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Maintaining containment structural integrity is independent of the operation of the RCS, the RPS and ECCS. The proposed changes do not change the design, configuration, or method of operation of the plant. By implementing corrective actions for any degradation discovered during the required inspections of the containment, the possibility of a new or different kind of accident will not be created. Implementation of the requirements of Subsection IWL of the ASME [American Society of Mechanical Engineers] code and those of 10 CFR 50.55a(g)(6)(ii)(B) and 50.55a(b)(2)(ix) provide an equally acceptable containment inspection program.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The removal of the level of detail currently found in the ANO–1 TS regarding reactor building inspections and incorporating the applicable requirements of Subsection IWL of the ASME code and of 10 CFR 50.55a(g)(6)(ii)(B) and 50.55a(b)(2)(ix) into the ANO–1 containment inspection program has no impact on any safety analysis assumptions. Requirements associated with containment inspections are controlled by safety related procedure 5220.011. Sufficient controls exist under the procedure change process at ANO–1 to ensure current and future regulations and commitments are properly addressed when making revisions to the containment inspection procedure. The addition of structural integrity requirements to ANO–1 TS Specification 3.6.1 imposes consistent requirements with those previously specified in the ANO–1 TSs. The containment inspection program ensures that the containment will function as designed to provide an acceptable barrier against release of radioactive materials to the environment. Through the implementation of the containment inspection program, the existing margin of safety is preserved.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 9, 1999.

Description of amendment request: The proposed amendment would revise the requirements associated with the station batteries and the direct current (dc) sources to the 125 volt dc switchyard distribution system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The switchyard 125V DC control power source requirements do not meet the criteria for inclusion in Technical Specifications (TSs) as evaluated with respect to the selection criteria of [Title] 10 [of the] CFR [*Code of Federal Regulations*] 50.36. These control power sources are not assumed to mitigate accident or transient events. The effects of a loss of these control power sources are enveloped by the Loss of Offsite Power (LOOP) event and relocation is considered to have a non-significant impact on the probability or severity of a LOOP event. These requirements will be relocated from the TSs to an appropriate administratively controlled document and maintained pursuant to 10 CFR 50.59.

Proposed changes incorporating the requirements of TS 3.7.1.D, 3.7.2.E, 3.7.2.F, and 3.7.2.A, as related to the DC electrical power subsystems, in the new TS 3.7.3 results in a more stringent requirement for the ANO–1 [Arkansas Nuclear One, Unit 1] TSs in that reductions to lower conditions of operation in shorter periods of time are now required. These more stringent requirements are not assumed to be initiators of any analyzed events and will not alter assumptions relative to mitigation of accident or transient events.

The proposed addition of TS 3.7.4 allowing continued operation for a limited period of time with battery cell parameters not within limits under certain conditions clarifies an allowance that currently exists in the ANO–1 TS due to the absence of acceptance criteria for the battery cell parameter surveillances.

Proposed changes in Surveillance Requirements and Frequencies reflect current industry guidance on maintenance and testing of the station batteries. These requirements, in themselves, are not considered to be initiators of any analyzed accident condition. Although some frequencies have been extended, continued performance of maintenance activities in accordance with IEEE–450 [Institute of Electrical and Electronic Engineers, ''Recommended Practice for Maintenance Testing and Replacement of Vented Lead-Acid Batteries for Stationary Applications], in addition to the required Surveillance Requirements, ensures that corrective maintenance can be performed prior to a condition challenging an operability limit.

Therefore, this change does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes revise the surveillance requirements, and required actions associated with the 125VDC distribution system and the battery cell parameters. The requirements associated with the ANO–1 switchyard DC sources have been relocated to licensee control. The proposed changes do not change the design, configuration, or method of operation of the plant.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

Relocation of the switchyard 125V DC control power source requirements has no impact on any safety analysis assumptions. In addition, the requirements associated with these control power sources are relocated to an owner controlled document for which future changes will be evaluated pursuant to the requirements of 10 CFR 50.59.

Proposed changes incorporating the requirements of TS 3.7.1.D, 3.7.2.E, 3.7.2.F, and 3.7.2.A, as related to the DC electrical power subsystems, in the new TS 3.7.3 impose more stringent requirements than previously specified for ANO–1.

The proposed addition of TS 3.7.4 allowing continued operation for a limited period of time with battery cell parameters not within limits under certain conditions clarifies an allowance that currently exists in the ANO–1 TS due to the absence of acceptance criteria for the battery cell parameter surveillances.

Proposed changes in Surveillance Requirements and Frequencies reflect current industry guidance on maintenance and testing of the station batteries. Although some frequencies have been extended, continued performance of maintenance activities in accordance with IEEE–450, in addition to the required Surveillance Requirements, ensures that corrective maintenance can be performed prior to a condition challenging an operability limit.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: March 17, 1999.

Description of amendment request: The proposed amendment changes the Perry Nuclear Power Plant as described in the Updated Safety Analysis Report. The change incorporates a leak-off line in the residual heat removal system. The leak-off line is designed to eliminate an operator work around, which will significantly reduce the collective dose to plant operations personnel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification has been described, and will be procured and installed in accordance with the original design codes and standards. The safety functions of the RHR [residual heat removal] system have not been impacted by the change. Systems supporting the operation of the RHR system have not been affected by this modification. Though the modification affects the Containment System, the containment remains capable of performing its associated safety functions to the same level as the original design.

The accidents of concern are the Loss-Of-Coolant (LOCA) and the Loss of Shutdown Cooling. The proposed change has been designed in accordance with the original codes and standards. The proposed change will not alter the operation of any plant equipment assumed to function in response to the aforementioned analyzed events or otherwise increase their failure probability. Therefore, the probability of occurrence or the consequences of an accident previously evaluated remains unchanged.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed modification has been designed, and will be procured and installed in accordance with the original RHR system design codes and standards. RHR system functions have not been impacted by the change. Systems supporting the operation of the RHR system have not been affected. Failure of the modification to perform its design function due to leak-off line failure or blockage would be identical to the current RHR system performance. Improper operation of the valves associated with the modification have been evaluated and will not prevent or otherwise inhibit the RHR or Containment systems from performing their applicable safety functions.

Missile generation is not a concern since no mechanisms conducive to missile generation have been introduced. Electrical analyses have shown there is no adverse effect upon the diesel generator loadings. A single failure of the new configuration will not result in more than the loss of a single RHR loop which is already analyzed. Therefore, the possibility of a new or different kind of accident from any previously evaluated has not been created.

3. The proposed change will not involve a significant reduction in the margin of safety.

The proposed modification has been designed, and will be procured and installed in accordance with the original RHR system design codes and standards. The RHR and Containment systems remain capable of performing their safety functions. Systems supporting the operation of the RHR system have not been affected. Hence, the RHR system margin of safety with respect to safety classification, protection, redundancy, and seismic classification remains unaffected.

The margins of safety contained in the Technical Specifications and the associated Bases also remain unaffected by this modification. Specifically, Technical Specifications 3.4.6, ''Reactor Coolant System Pressure Isolation Valve Leakage'; 3.4.9, ''RHR Shutdown Cooling System—Hot Shutdown'; 3.4.10, ''RHR Shutdown Cooling System—Cold Shutdown'; 3.6.2.1, ''Suppression Pool Average Temperature'; and 3.6.2.2, ''Suppression Pool Water Level'; and the associated Bases remain unchanged and fully applicable. Hence, the margins of safety defined in the Technical Specifications remains unaffected.

Therefore, the proposed modification does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 31, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications to (1) increase the minimum reactor coolant system (RCS) flow rate limit, (2) delete the reactor coolant flow rate footnote, and (3) change the minimum frequency surveillance for RCS flow rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Combustion Engineering (ABB/CE) in Thermal-Hydraulic Report CR–94–19–CSE95–1131, Revision 0 performed a comprehensive evaluation of the effects the removal of the orifice plates would have on steam generator tube degradation. It was concluded that the removal of the orifice plates would increase the primary flow rate by approximately 5%.

The removal of the orifice plates was estimated to increase the probability of tubes requiring repair over the lifetime of the plant. However, the presence of the orifice plates had prevented inspection of approximately 22% of the steam generator tubes for circumferential cracks on the hot-leg side. Therefore, it was concluded that the removal of the orifice plates did not increase the probability of steam generator tube failure, given that the tubes previously covered by the plates are now inspected each outage in accordance with the Electrical Power Research Institute Pressurized Water Reactor (EPRI PWR) steam generator examination guidelines. Fort Calhoun Station is using the eddy current inspection technology to ensure that tubes showing evidence of a crack exceeding the present plugging criteria will be repaired or removed from service. Industry experience has shown that even in cases of severely degraded tubes, the

resulting primary to secondary leak rates are insignificant compared to those analyzed in the design basis steam generator tube rupture event.

Calculation of the Reactor Coolant Flow Rate using the heat balance methodology once every refueling outage is consistent with requirements contained in the NUREG 1432, Improved Technical Specifications for Combustion Engineering Plants' surveillance requirement 3.4.1.4.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The original orifice plates were installed on each steam generator hot leg tube sheet in the primary inlet plenum as a field modification prior to the initial fuel load in the year 1973. The orifice plates were designed to increase the hydraulic resistance of the primary coolant flow rate in the associated tubes, thereby reducing the primary coolant temperature inside the tubes. Reduction of the primary coolant temperature and flow rate would decrease the heat flux, thus improving the steam quality and reducing the potential for dry-out and surface deposits on the outer surface of the tubes. However, due to inaccessibility, these originally installed orifice plates had prevented tube inspection in the hot leg tube sheet area, even with the latest state-of-the-art eddy current probe technology. The orifice plates also prevented normal repair techniques such as steam generator tube plugging and sleeving.

The original orifice plates were removed during the 1996 refueling outage. However, there were concerns related to Westinghouse fuel failures as a result of flow-induced vibration. To address those concerns, new ''removable'' orifice plates were installed to maintain the RCS flow rate at the previous level. Since then, the remaining batches of the Westinghouse fuel considered most susceptible to flow-induced vibration were replaced during the 1998 refueling outage, thus minimizing the concerns and allowing the permanent removal of the ''removable'' orifice plates.

The removal of the ''removable'' orifice plates returned the steam generators to their original design configuration. RCS flow rate has increased by virtue of decreased hydraulic resistance through the steam generators. No other systems or components other than the steam generators have been affected. The resulting change in operational parameters (decreased reactor coolant T_{hot} temperature and increased flow rate) has been evaluated for the Updated Safety Analysis Report Chapter 14. Potential adverse consequences of the modifications were (1) increase in reactor vessel component vibration, (2) increase in hydraulic loading, and (3) increase in steam generator tube degradation for row 1–18 tubes. The potential adverse consequences were evaluated and found to be acceptable.

Calculation of the Reactor Coolant Flow Rate using the heat balance methodology once every refueling outage is consistent with requirements contained in the NUREG 1432, Improved Technical Specifications for Combustion Engineering Plants' surveillance requirement 3.4.1.4.

3. The proposed change does not involve a significant reduction in a margin of safety.

The removal of the orifice plates has resulted in approximately a 5% increase in the reactor coolant flow rate. This has increased the margin for minimum reactor coolant system flow rate specified in Technical Specifications Section 2.10.4, Power Distribution Limits, Item (5), DNBR Margin During Power Operation Above 15% of Rated Power. Steam Generator tube inspections performed in accordance with Technical Specifications Section 3.17, Steam Generator Tubes, have not been adversely affected.

The increased flow rate has been analyzed for the thermal hydraulic effects on the reactor core and was found acceptable.

Calculation of the Reactor Coolant Flow Rate using the heat balance methodology once every refueling outage is consistent with requirements contained in the NUREG 1432 [Improved Technical Specifications for Combustion Engineering Plants] surveillance requirement 3.4.1.4.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: Stuart A. Richards.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 28, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 (IP3) Technical Specifications (TSs) proposes to remove two lists of Containment Isolation Valves (CIVs) in Tables 3.6–1 and 4.4–1 and make related changes to TSs 1.10, 3.6.A.1, and 4.4 and the associated bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. Operation of Indian Point 3 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The removal of the two component listings (i.e., Tables 3.6–1 and 4.4–1) and the TS references to them from the TS requested by this submittal is performed in accordance with the guidance provided by the NRC in GL 91–08 [Generic Letter 91–08]. As established by the NRC, in the aforementioned GL, such a change will not alter existing TS requirements or those components to which they apply. Required information contained in the two tables being removed is duplicated in the FSAR [final safety analysis report] and other appropriate plant procedures. Any subsequent changes regarding the individual components (i.e., the containment isolation valves) or their operation (e.g., valve positioning under administrative controls) would be addressed in accordance with the requirements specified in the Administrative Controls section of the TS regarding changes to plant procedures and/or changes to the FSAR (i.e., 10 CFR 50.59). These changes will not alter any structure, system, or component and, therefore, will not result in the possibility of an increase in [the] probability or consequence of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The deletion of two component listings (i.e., Tables 3.6–1 and 4.4–1) and the TS references to them from the Technical Specifications and the removal of all references made in the TS regarding these two listings will not alter how the individual components (i.e.—the containment isolation valves) identified in the tables are designed, operated, tested, or maintained. Testing of CIVs will be performed as required by 10 CFR part 50, Appendix J and IP3 TS 6.14.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. The proposed license amendment does not involve a significant reduction in a margin of safety. The proposed changes are in accordance with recommendations provided by NRC in Generic Letter 91–08 and the Standard Technical Specifications, NUREG 1431. These changes will maintain current safety margins while reducing the regulatory/administrative burdens to both the NRC and to the Power Authority. As stated, the changes will not result in changes to the design, operation, or maintenance of the ClVs, and the testing of the CIVs will be in accordance with 10 CFR 50 Appendix J and IP3 TS 6.14.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 12, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 (IP3) Technical Specifications (TSs) proposes to remove the footnote restriction found on page 3.1–36 which states that the departure from nucleate boiling (DNB) analysis contains adequate margin for Cycle 10, but needs to be reviewed/approved prior to Cycle 11.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: The proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed. The removal of the footnote on TS page 3.1–36 is an administrative change in that it does not affect the DNB limits of the current TS. The footnote was added to the TS as part of Amendment 175, which permitted the use of V+ fuel at IP3. The footnote required the Authority to demonstrate that sufficient DNB margin existed for Cycle 11, prior to achieving criticality for that cycle. The NRC requested this DNB limitation because the applicability of the WRB–1 correlation to predict DNB performance for the V+ fuel had not been adequately proven by fuel tests. Westinghouse has completed fuel tests which verify that the use of the WRB–1 correlation with the 15 × 15 V+ fuel is conservative. Therefore, this DNB limitation is no longer applicable and the footnote can be removed.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change does not create the possibility of a new or different kind of accident, as the removal of the footnote on TS page 3.1–36 does not affect the current TS DNB limits, plant equipment, or the way the plant is operated. This footnote was inserted into the TS as part of Amendment 175, which permitted the use of 15 × 15 V+ fuel at IP3. Westinghouse had used scaling techniques to demonstrate that the WRB–1 correlation correctly predicted the critical heat flux performance of the 15 × 15 V+ fuel. Since no fuel tests had been performed on this fuel design, the NRC was concerned that the use of this correlation may be unconservative. Therefore, approval to use the V+ fuel at IP3 was granted based upon the DNB margin available during Cycle 10. This limitation was contained in the footnote on TS page 3.1–36. Westinghouse has recently completed fuel tests on 15 × 15 V+ fuel which verify that the use of the WRB–1 correlation is conservative. Therefore, the use of V+ fuel at IP3 is no longer dependent on the amount of DNB margin available and the footnote can be removed.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed deletion of the footnote on TS page 3.1–36 does not involve a significant reduction in a margin of safety. The footnote was introduced as part of Amendment 175, which permitted the use of V+ fuel at IP3. The footnote required the Authority to demonstrate that sufficient DNB margin existed for Cycle 11, prior to achieving criticality for that cycle. The NRC requested this DNB limitation because the applicability of the WRB–1 correlation to predict DNB performance for the V+ fuel had not been adequately proven by fuel tests. Westinghouse has completed fuel tests which verify that the use of the WRB–1 correlation with the 15 × 15 V+ fuel is conservative. Therefore, this DNB limitation is no longer applicable and the footnote can be removed. The removal of the footnote is an administrative change as deleting it does not alter the current DNB margin or future DNB margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 29, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by relocating the procedural details of the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM). The TSs would also be revised to relocate procedural details associated with solid radioactive wastes to the Process Control Program (PCP). In addition, the Administrative Controls section of the TSs would be revised to incorporate programmatic controls for radioactive effluents and environmental monitoring. The proposed changes are consistent with the guidance provided in Generic Letter 89–01, ''Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents.

Implementation of programmatic controls for RETS in TS will assure that the applicable regulatory requirements pertaining to the control of radioactive effluents will continue to be maintained. Since there are no changes to previous accident analysis, the radiological consequences associated with these analyses remain unchanged, therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes have no impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological

effluents. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation and there are no changes being made to the TS required safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents. A comparable level of administrative control will continue to be applied to those design conditions and associated surveillances being relocated to the ODCM or PCP. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: April 29, 1999 (TS 99–04).

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Sequoyah (SQN) Units 1 and 2 by deleting the Auxiliary Feedwater (AFW) suction pressure low channel functional surveillance test. The licensee's analysis of the performance history revealed that the monthly functional test of this instrument channel does not provide an increased assurance of operability that justifies the monthly 7 hours per unit system unavailability that it creates.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence or the consequences for an accident is not increased by this request. The proposal to delete the monthly channel functional test for the auxiliary feedwater (AFW) suction pressure low functions does not alter the way any structure, system or component functions, does not modify the manner in which the plant is operated, and reduces equipment out-of-service time. This request does not degrade the ability of AFW to perform its intended function. Therefore, the pressure switches will be available to perform their intended function.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A possibility for an accident or malfunction of a different type than any evaluated previously in SQN's FSAR [Final Safety Analysis Report] is not created. The proposal does not alter the way any structure, system or component functions and does not modify the manner in which the plant is operated. Therefore, the possibility of a new or different kind of accident previously evaluated is not created by the proposed change to delete the monthly functional test of the AFW pressure switches.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety has not been reduced since the test methodologies are not being changed. Increasing the surveillance interval does not change the results of accident analysis by this request. The proposed change to delete the AFW system pressure low channel functional test does not involve a significant reduction in the margin of safety. The new frequency will not reduce the reliability of the system and increases overall system availability. Therefore, changing the frequency of the surveillance does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 3740.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H Knoxville, Tennessee 37902.

NRC Section Chief: Sheri Peterson.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: April 29, 1999 (TS 99–03).

Description of amendment request: The proposed amendment would add new actions to Technical Specification (TS) Limiting Condition for Operations (LCOs) 3.3.3.1 and 3.7.7 to address the situation when one channel of radiation monitoring control room emergency ventilation system actuation equipment is inoperable and would expand the mode of applicability for LCOs 3.3.3.1 and 3.7.7 to include periods when movement of irradiated fuel assemblies are involved and defines actions to take in these instances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision does not change any plant functions or equipment operating practices for the radiation monitoring system and control room emergency ventilation system (CREVS). The radiation monitoring instruments and the CREVS are not considered to be the source of any accident evaluated in the Final Safety Analysis Report. These features provide accident mitigation functions that will be utilized in response to postulated accident conditions. The activities and failures that could contribute to the initiation of an accident are not affected by the implementation of this revision. This revision provides for more stringent requirements for operation of the facility (additional limiting condition for operation [LCO] actions and applicability requirements). Therefore the proposed activity will not increase the probability of an accident.

The proposed activity does not affect accident mitigation capabilities or the radiation release amounts for postulated accidents. This TS change will not affect requirements that the radiation monitoring system and CREVS be maintained to support accident mitigation. The functions and testing will remain the same while operability requirements will become more stringent. This TS change enhances the requirements associated with CREVS and the initiation of this system such that inoperabilities are appropriately handled to reduce the safety impact of component inoperabilities. Therefore, the proposed change will not increase the consequences of an accident and could reduce the consequences by limiting operation with inoperable components and requiring the application of appropriate actions for all conditions that could result in a postulated accident that CREVS was designed to mitigate.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change provides more stringent operating requirements for operation of the facility. The proposed

activity will not change any plant function or operating practice that could impact accident initiators. Therefore, these more stringent requirements do not result in operation that will increase the probability of any postulated accidents. In addition, CREVS and the associated actuation features are not considered to be the source of an accident. Therefore, the proposed activity will not create the possibility of an accident of a different kind.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed activity does not impact plant setpoints designed to maintain the assumptions in the safety analysis or limits for the actuation of systems to mitigate accidents. Plant functions and operating practices will not be altered by the implementation of more stringent requirements for operation of the facility. These requirements, by definition, provide additional restrictions to enhance plant safety. Therefore, the proposed activity will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H Knoxville, Tennessee 37902.

NRC Section Chief: Sheri Peterson.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: February 1, 1999, as supplemented on April 19 and April 23, 1999.

Description of amendment request: The amendment request proposes a total replacement of current Technical Specifications Section 6, ''Administrative Controls.'' Administrative changes to certain other sections of Technical Specifications are also being made to conform to the changes resulting from the re-write of Section 6.

The proposed changes represent a comprehensive upgrade of Section 6 of the Vermont Yankee Technical Specifications, incorporating improvements in content and format based on industry standards. In accordance with industry practice some Technical Specifications requirements are being relocated to the recently implemented Vermont Yankee Technical Requirements Manual (TRM), Offsite Dose Calculation Manual (ODCM), or Vermont Yankee Operational Quality Assurance Manual (VOQAM) and will be eliminated from the Technical Specification upon NRC approval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because:

The proposed changes have no effect on plant hardware, plant design, safety limit setting, or plant system operation and therefore do not modify or add any initiating parameters that would significantly increase the probability or consequences of an accident previously evaluated.

No new modes of operation are introduced by the proposed changes such that additional adverse consequences would result. Accordingly, the consequences of previously analyzed accidents are not deleteriously affected by this proposed license amendment.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because:

The proposed changes do not involve any physical alteration of the plant (no new or different type of equipment will be installed) or any change in the methods governing normal plant operation. These changes do not affect the operation of any systems or components, nor do they involve any potential initiating events that would create any new or different kind of accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for VYNPS.

3. Involve a significant reduction in a margin of safety, because:

The proposed changes have no impact on any safety analysis assumptions. Consequently, no margin of safety as described in the Final Safety Analysis Report and defined in the basis of any Technical Specification is reduced as a result of these changes.

These proposed changes do not detrimentally affect the ability of structures, systems and components important to safety to fulfill their intended safety functions. Therefore, it is concluded that the proposed changes do no[t] involve a significant reduction in a margin of safety.

Additional Safety Considerations for Specific Changes Deemed to be ''Less Restrictive''

In accordance with the criteria set forth in 10 CFR 50.92, Vermont Yankee has evaluated the proposed changes to the [Vermont Yankee Nuclear Power Station] VYNPS Technical Specifications and determined that they do not involve a significant hazards consideration. Those changes which are deemed to be ''less restrictive'' have been subject to the following additional consideration:

(a) Changes which are deemed to be ''less restrictive'' based solely upon removal from the Technical Specifications and relocated in VYNPC-controlled documents:

NRC's Technical Specifications Branch has conducted reviews of the Administrative Controls section of Standard Technical Specifications and concluded that certain provisions historically contained in Technical Specifications can be relocated to other licensee documents for which changes to those provisions are adequately controlled by other regulatory requirements. In general, Administrative Controls are those requirements not covered by other Technical Specifications, but are considered necessary to assure operation of the facility in a safe manner. Application of this criterion can be based on two categories or requirements: (a) requirements not covered by other regulatory requirements, but are considered necessary to assure the safe operation of the facility or (b) specific requirements that are broadly covered by regulations or other regulatory controls, for which details need to be specified in the Technical Specifications to ensure safe plant operation. In general, however, Technical Specifications need not duplicate other regulatory requirements.

As identified in Attachment A hereto, certain portions of the current Technical Specifications are to be relocated to the Technical Requirements Manual (TRM), Offsite Dose Calculation Manual (ODCM), or the Vermont Yankee Operational Quality Assurance Manual (VOQAM) and removed from the Technical Specifications. As an initial step in this process, the subject requirements are being duplicated in the TRM, ODCM, or VOQAM. Removal from the Technical Specifications will occur upon NRC approval. The ability to relocate these requirements is based on regulations and standards that contain these provisions such that duplication in the Technical Specifications is not necessary.

[1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because:]

The TRM is a[n] FSAR level document and is incorporated by reference into the FSAR. Changes to the TRM will be strictly controlled by the 10 CFR 50.59 process to ensure that proper reviews are conducted. The relocation of requirements to the VYNPC-controlled TRM will not diminish the effectiveness of compliance withthe relocated provisions. Since any changes to the TRM will be evaluated per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously analyzed will be allowed. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changes to the ODCM are controlled by current Technical Specifications and require the reporting to the NRC of changes to the

ODCM with sufficient information to support the changes together with appropriate analyses or evaluations justifying the changes. The relocation of these details to the ODCM is thus acceptable considering the controls provided by existing regulations and the controls remaining in Technical Specifications for ODCM changes. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Relocation of the Technical Specification Administrative Controls related to quality assurance from the Technical Specifications to the VOQAM is consistent with the guidance provided by the NRC in Administrative Letter 95–06, ''Relocation of Technical Specification Administrative Controls Related to Quality Assurance.'' Changes to the VOQAM are subject to the change control process in 10CFR50.54(a). These provisions are adequate to ensure that quality assurance program commitments are not reduced without prior NRC approval. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because:]

The proposed changes do not involve any physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements, and adequate control of the information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3. Involve a significant reduction in a margin of safety, because:]

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumption. In addition, the details to be transposed from the Technical Specifications to the TRM, ODCM, and VOQAM are the same as the existing Technical Specifications. Since any future changes to these provisions in the TRM will be evaluated per the requirements of 10CFR50.59 and Technical Specifications already requires supporting information be submitted to the NRC for ODCM changes, no reduction (significant or insignificant) in a margin of safety will be allowed. The provisions of 10CFR50.54(a) are adequate to control changes to the VOQAM and maintain current margins of safety.

Based on 10CFR50.92, the existing requirement for NRC review and approval of revisions (to the Technical Specifications provisions proposed for relocation) does not have a specific margin of safety upon which to evaluate. However, since the proposed changes are consistent with industry standards, approved by the NRC, revising the Technical Specifications to relocate these provisions will not diminish administrative controls necessary to assure the safe operation of the facility.

(b) Change [9] identified in Attachments A and D [of the February 1, 1999, submittal]:

This change proposes to relax the requirement to have an individual qualified in radiation protection procedures onsite at all times. The proposed change will allow the position to be vacant for up to two hours in order to provide for unexpected absence.

[1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because:]

The proposed change does not affect the probability of an accident. The actions of an individual qualified in radiation protection procedures are not assumed to be an initiator of an accident. Also, the consequences of an accident are not affected by the presence of an individual qualified in radiation protection procedures. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event. This change will not have any impact on the safe operation of the plant because the presence of a person qualified in radiation protection procedures is not required for the mitigation of any accident. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because:]

This change will not physically alter the plant (no new or different type of equipment will be installed). The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different type of accident from any accident previously evaluated.

[3. Involve a significant reduction in a margin of safety, because:]

The margin of safety is not affected by the presence or absence onsite of an individual qualified in radiation protection procedures. This proposed change has no effect on the assumptions of any design basis accident. This change has no impact on the safe operation of the plant since the presence onsite of an individual qualified in radiation protection procedures is not required for the mitigation of an accident. This change does not affect any plant equipment or requirements for maintaining plant equipment. The safety analysis assumptions will still be maintained, thus no question of safety exists. Therefore, this change does not involve a significant reduction in a margin of safety.

(c) Change [10] identified in Attachments A and D [of the February 1, 1999, submittal]:

This change proposes to incorporate the allowances of a temporary deviation from the shift staffing levels of 10CFR50.54(m)(2)(i) for up to two hours. In addition, this change proposes to apply these same allowances to the positions of Shift Engineer and non-licensed operators.

[1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because:]

The proposed change does not affect the probability of an accident. The shift staffing level requirements are not assumed to be an initiator or any analyzed event. Also, the consequences of an accident are not affected by these temporary deviations to the shift staffing levels. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event, since 10CFR50.54(m) (ii) and (iii) still maintain the requirements for the presence of licensed operators and senior operators. This change has no impact on the safe operation of the plant. The level of shift staffing will still be maintained as required by 10CFR50.54(m) (ii) and (iii) and does not affect any plant equipment or requirements for maintaining plant equipment. The temporary deviations from the shift staffing level for up to two hours to provide for unexpected absence, provided immediate action is taken to fill the required position is acceptable in terms of staffing requirements for the mitigation of an accident due to the low probability of an accident occurring during these short-term, infrequent deviations and the remaining licensed operators and senior operators. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because:]

This change will not physically alter the plant (no new or different type of equipment will be installed). The temporary deviations from shift staffing levels are consistent with the current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different type of accident from any accident previously evaluated.

[3. Involve a significant reduction in a margin of safety, because:]

The margin of safety in not reduced by allowing these temporary deviations from shift staffing levels due to unforeseen events. This proposed change has no effect on the assumptions of any design basis accident. This change has no impact on the safe operation of the plant since 10CFR50.54(m) (ii) and (iii) still maintain the requirements for the minimum number of licensed operators and senior operators necessary to safely operate the plant. This change does not affect any plant equipment or requirements for maintaining plant equipment. The safety analysis assumptions will still be maintained, thus no question of safety exists. Therefore, this change does not involve a significant reduction in a margin of safety.

(d) Changes [38] and [39] identified in Attachments A and D [of the February 1, 1999, submittal]:

In accordance with 10CFR20.1601 (c), these changes propose alternative methods for controlling access to high radiation areas consistent with the intent of 10CFR20.1601 (a) and (b).

[1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because:]

The proposed changes do not affect the probability of an accident. The controls used for access to high radiation areas are not assumed in the initiation of any analyzed event. Also, the consequences of an accident are not affected by these changes. These changes are both consistent with good

radiological practices and will provide an adequate level of radiation protection. These proposed changes do not impact the assumptions of any design basis accident. These changes will not alter assumptions relative to the mitigation of an accident or transient event. These changes have no impact on safe operation of the plant. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because:]

The proposed changes will not create the possibility of an accident. These changes will not physically alter the plant (no new or different type of equipment or system will be installed). The changes in methods governing normal plant operations are consistent with the current safety analysis assumptions and deal only with personnel exposure to radiation, not reactor safety. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3. Involve a significant reduction in a margin of safety, because:]

The margin of safety is not reduced due to these proposed changes. These changes are both consistent with good radiological safety practice and have been found to provide adequate levels of radiation protection. In addition, these changes provide the benefit of ensuring radiation dose to workers can be minimized by providing the flexibility to select the best means of providing access control to a high radiation area, given the plant area and radiological conditions. These proposed changes have no impact on the safe operation of the plant. No change in analytic limits or setpoints is introduced by these changes. The safety analysis assumptions will still be maintained, thus no question of nuclear safety exits. Therefore, these changes do not involve a significant reduction in a margin of safety.

(e) Change [49] identified in Attachments A and D [of the February 1, 1999, submittal]:

This change proposes to relax the requirement for submitting the (now-named) Occupational Radiation Exposure Report from the currently required date of March 1 to April 30 of each year. April 30 is now the industry standard date for submittal of such reports.

[1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because:]

The proposed change does not affect the probability of an accident. The submittal date of the Occupational Radiation Exposure Report is not assumed to be an initiator of any analyzed event. Also, the consequences of an accident are not affected by the submittal date of this report. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event. This change has no impact on the safe operation of the plant. The report will still be required to be submitted each year and does not affect any plant equipment or requirements for maintaining plant equipment. The submittal date of this report is not required for the mitigation of any accident. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because:]

The proposed change will not create the possibility of an accident. This change will not physically alter the plant (no new or different type of equipment will be installed). The change in method governing submittal of this report does not affect current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different type of accident from any accident previously evaluated.

[3. Involve a significant reduction in a margin of safety, because:]

The margin of safety i[s] not reduced by allowing the report to be submitted 60 days later. This proposed change has no effect on the assumptions of the design basis accident. This change has no impact on the safe operation of the plant. The report will still be required to be submitted each year and does not affect any plant equipment or requirements for maintaining plant equipment. The safety analysis assumptions will still be maintained, thus no question of safety exists. Therefore, this change does not involve a significant reduction in a margin of safety.

(f) [Change [64] identified in Attachments A and D [of the February 1, 1999, submittal]:

This change proposes to relax the requirement for submitting the (now-named) Annual Radiological Environmental Operating Report from the currently required date of May 1 to May 15 of each year. May 15 is now the industry standard date for submittal of such reports.

[1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because:]

The proposed change does not affect the probability of an accident. The submittal date of this report is not assumed to be an initiator of any analyzed event. Also, the consequences of an accident are not affected by the submittal date of this report. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event. This change has no impact on the safe operation of the plant. The report will still be required to be submitted each year and does not affect any plant equipment or requirements for maintaining plant equipment. The submittal date of this report is not required for the mitigation of any accident. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because:]

The proposed change will not create the possibility of an accident. This change will not physically alter the plant (no new or different type of equipment will be installed). The change in method governing submittal of this report does not affect current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different type of accident from any accident previously evaluated.

[3. Involve a significant reduction in a margin of safety, because:]

The margin of safety i[s] not reduced by allowing the report to be submitted 14 days later. This proposed change has no effect on the assumptions of the design basis accident. This change has no impact on the safe operation of the plant. The report will still be required to be submitted each year and does not affect any plant equipment or requirements for maintaining plant equipment. The safety analysis assumptions will still be maintained, thus no question of safety exists. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: April 20, 1999.

Description of amendment request: The amendment request proposes changes to the existing requirements associated with the unloading and loading of fuel in the reactor vessel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

VY has determined that the proposed change to reload the reactor core in a spiral pattern beginning around a Source Range Monitor (SRM) does not involve a significant increase in the probability or consequences of an accident previously evaluated. The design basis accident associated with refueling is the Refueling Accident; i.e., the accidental dropping of a fuel bundle onto the top of the core. There is no assumption as to

the core loading pattern in the analysis of this accident. The analyzed abnormal operational transients associated with refueling are: (1) the Control Rod Removal Error During Refueling, and (2) the Fuel Assembly Insertion Error During Refueling. There is no assumption as to the core loading pattern in the analyses of these transients. The Fuel Assembly Insertion Error During Refueling transient involves mislocated and rotated fuel assembly loading errors. However, a change in the approved core loading pattern has no impact on the probability of mislocating or rotating a bundle while following that pattern. Furthermore, the proposed change implements a core loading pattern that provides improved flux monitoring as compared to the pattern prescribed by the current Technical Specifications. When loading the core in accordance with the proposed change, the SRM indication will be indicative of the true flux of the loaded fuel, as the creation of flux traps (moderator filled cavities surrounded on all sides by fuel) is precluded.

The Technical Specification Bases are under the purview of 10CFR50.59. As such, subsequent changes made via 10CFR50.59 to the information relocated to the Bases are not allowed to increase the probability or consequences of an accident previously evaluated. Therefore, relocating the details of the core loading pattern to the Bases does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The SRMs and the core loading pattern are not initiators of any accident previously evaluated. As such, the subject changes cannot affect the probability of an accident previously evaluated. The core loading pattern is not assumed in the mitigation of any accident. Since the proposed change provides improved flux monitoring by the SRMs, operators will have more accurate indication and SRM automatic trip functions will actuate more accurately. As such, any event mitigation function provided by the SRMs is enhanced by this change. Therefore, the associated changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

VY has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. VY proposes to change the core reloading and offloading patterns to start and stop, respectively, at an SRM versus the geometric center of the core as prescribed by current Technical Specifications. This ensures that flux monitoring instrumentation is always OPERABLE in the fueled region of the vessel. There is no separation of the monitoring device from the fuel by cavities of water as is the case with the pattern prescribed by the current Technical Specifications. As such, flux monitoring is enhanced during core reloading and offloading. This change is conservative relative to the current requirements. Therefore, no new categories or types of accidents are created.

Additionally, the Technical Specification Bases are under the purview of 10CFR50.59. As such, subsequent changes made via 10CFR50.59 to the information relocated to the Bases are not allowed to create the possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report. Therefore, relocating the details of the core loading pattern to the Bases does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

VY has determined that the proposed change does not involve a significant reduction in a margin of safety. Loading around the geometric center of the core as prescribed by the current Technical Specifications results in cells of moderator separating the fuel from the instrumentation monitoring its flux. This change requires the flux monitoring instrumentation to be in the fueled region, and, in so doing, provides for more accurate monitoring of core flux during core reloading and offloading. As such, the operators will have more accurate indication and SRM automatic trip functions will actuate when the actual flux reaches the trip setpoints. This corrects non-conservatisms that result from cells of moderator separating the fuel from the instrumentation. Therefore, this change will not result in a significant reduction in a margin of safety.

Additionally, the details of the loading pattern are relocated from the Technical Specifications to the Bases. Since any future changes to the Bases will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will be allowed. Therefore, relocating the core loading pattern details to the Bases does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: April 7, 1999.

Description of amendment request: The proposed amendment would revise the minimum critical power ratio (MCPR) limit in Technical Specification (TS) 2.1.1.2, for the ATRIUM–9X and the SVEA–96 fuel for one and two recirculation loop operation. The proposed amendment would add a new reference in TS 5.6.5, ''Core Operating Limits Report.'' The reference cites ANFB Critical Power Correlation Uncertainty for Limited Data Sets, ANF1125(P)(A), Supplement 1, Appendix D, Siemens Power Corporation-Nuclear Division, July 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed Technical Specifications amendment uses conservatively established SLMCPR [safety limit minimum critical power ratio] values for WNP–2 such that the fuel is protected during normal operation as well as during plant transients or anticipated operational occurrences.

The probability of an evaluated accident is not increased by the use of the ATRIUM–9X MCPR safety limit of 1.10 (two loop operation) or 1.11 (single loop operation). The ATRIUM–9X fuel was evaluated by SPC (Reference 5) [Letter KVW:98:148 dated July 8, 1998, KV Walters, (Siemens Power Corporation), to RA Vopalensky (Supply System), ''MCPR Safety Limit Reanalysis for WNP–2 Cycle 11''] using the additive constant uncertainty for ATRIUM–9X fuel of 0.0201 which is contained in the NRC safety evaluation approval of Reference 4 [ANFB Critical Power Correlation Uncertainty for Limited Data Sets, ANF–1125(P)(A), Supplement 1, Appendix D, Siemens Power Corporation—Nuclear Division, July 1998]. Based upon the NRC approved additive constant of uncertainty of 0.0201, as documented in Reference 5, at least 99.9% of the SPC ATRIUM–9X fuel rods would be expected to avoid boiling transition with a SLMCPR of 1.10 during two loop operation and 1.11 during single loop operation.

The probability of an evaluated accident is not increased by the use of the ABB SVEA–96 SLMCPRs of 1.10 (two loop operation) or 1.12 (single loop operation). NRC approved

methodology documented in CENPD–300–P–A, ''Reference Safety Report for Boiling Water Reactor Reload Fuel'', July 1996 (Reference 3) was used in deriving these ABB SVEA–96 SLMCPR values. The ABB evaluation as a function of cycle exposure established that late in Cycle 15 conservative two loop and single loop SLMCPRs of 1.10 and 1.12, respectively, can be used to represent the entire cycle.

The SLMCPR changes do not require any physical plant modifications, physically affect any plant component, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

Since the operability of plant systems designed to mitigate any consequences of accidents have not changed, the consequences of an accident previously evaluated are not expected to increase.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. This Technical Specification submittal does not involve any modifications of the plant configuration or allowable modes of operation. This Technical Specification change establishes SLMCPRs for SPC fuel based upon the NRC approved additive constant of uncertainty of 0.0201, as documented in Reference 5. At least 99.9% of the SPC ATRIUM–9X fuel rods would be expected to avoid boiling transition with an SLMCPR of 1.10 during two loop operation or 1.11 during single loop operation. Additionally, the ABB SVEA–96 SLMCPRs of 1.10 (two loop operation) or 1.12 (single loop operation) were derived using the NRC approved methodology documented in CENPD–300–P–P, ''Reference Safety Report for Boiling Water Reactor Reload Fuel'', July 1996 (Reference 3). Therefore, no new precursors of an accident are created and no new or different kinds of accidents are created.

3. The proposed change does not involve a significant reduction in a margin of safety.

Implementation of SLMCPRs derived by proven analytical methods provides a margin of safety by ensuring that less than 0.1% of the rods are expected to be in boiling transition if the MCPR limit is not violated. Because the fuel design safety criteria of more than 99.9% of the fuel rods avoiding transition boiling during normal operation as well as anticipated operational occurrences is met, there is not a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: Stuart Richards.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: April 20, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4.11, ''RCS Pressure and Temperature Limits,'' to update the curves that set forth the pressure temperature limit lines. The curves provide the pressure temperature limits for the operation of the reactor coolant system for heatup and cooldown during inservice leak and hydrostatic testing, non-nuclear heating and cooldown, and nuclear heating and cooldown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure temperature shift is well within the operating margins of plant equipment. Using the new non-nuclear and nuclear heating and cooldown curves, higher temperature values for corresponding pressures at temperatures which are closest to RT_{NDT}, further reduce the potential for brittle fracture.

The proposed 32 EFPY [effective full power years] curves were developed using methodology that is consistent with the guidance in Regulatory Guide 1.99, Revision 2, Appendix G of the ASME Code and Appendix G of 10 CFR part 50. This methodology is recognized by the NRC and the industry as providing acceptable margin.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change has no impact on the previously analyzed accidents or transients. The proposed change does not introduce any credible mechanisms for unacceptable radiation release nor does it require physical modification to the plant. The 32 EFPY curves are calculated using a published methodology that was discussed with the NRC.

The proposed change is also within any upper bound limit. The only impact on plant operation is that the plant will be operated with new pressure temperature limits derived from the proposed alternative calculational methodology in place of the previously approved model based on actual plant data.

Therefore, the operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The results of testing reflected 30 ft-lb shifts and changes in uppershelf energy of the base plate and the weld material. However, the results are well within the values predicted by Regulatory Guide 1.99, Revision 2. Furthermore, the adjusted reference temperature values and the upper shelf energy of the reactor beltline materials are expected to remain within the limits of 10 CFR part 50, Appendix G, for at least 32 effective full power years of reactor operation.

For the non-nuclear and nuclear heating and cooldown curves (with a calculated through wall ΔT), lower temperatures which are closest to RT_{NDT}, have an increased margin of safety due to the higher required temperature values for a given pressure than is required by current curve calculation methodology. Thus additional margin to brittle fracture is achieved for non-nuclear and nuclear heating.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Stuart Richards.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait

for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 31, 1997, as supplemented May 15, September 15, November 25, 1998 and January 28, 1999.

Description of amendment request: Revise the St. Lucie, Unit 2, Technical Specifications to increase the capacity of the spent fuel storage pool, in part, by allowing a credit for a certain soluble boron concentration in the spent fuel pool.

Date of publication of individual notice in the **Federal Register**: April 5, 1999 (64 FR 16502).

Expiration date of individual notice: May 5, 1999.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: April 19, 1999.

Brief description of amendments: The amendments would revise Technical Specification Section 3/4.8.1.2, ''Electrical Power Systems, Shutdown,'' and its associated bases to provide a one-time extension of the 18-month surveillance interval for specific surveillance requirements for Units 1 and 2. This surveillance will be performed prior to the first entry into Mode 4 subsequent to receipt of the requested T/S amendment. In addition, for Unit 2 only, a minor administrative change is included to delete a reference to T/S 4.0.8, which is no longer applicable. For Unit 1 only, an editorial change is made to add the word ''or'' to action statement 3.8.1.2.

Date of publication of individual notice in **Federal Register**: April 29, 1999 (64 FR 23129).

Expiration date of individual notice: June 1, 1999.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: April 6, 1999.

Description of amendment request: The proposed amendments would allow an increase of 168 fuel assemblies in the storage capacity of Unit 1's Spent Fuel Pool and an increase of 88 fuel assemblies in the storage capacity of Unit 2's Spent Fuel Pool.

Date of publication of individual notice in **Federal Register**: May 4, 1999 (64 FR 23877).

Expiration date of individual notice: June 3, 1999.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: December 29, 1998.

Brief description of amendments: The amendments change Technical Specification Tables 3.3.1–1 and 3.3.2–1 to revise the Allowable Values for 12 functions of the Reactor Trip System and Engineered Safety Features Actuation System.

Date of issuance: April 23, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 107, 107, 100 and 100.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9186). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: October 30, 1998.

Brief description of amendments: The amendments revised the Technical Specification (TS) requirements for

spent fuel pool inadvertent draindown elevation.

Date of issuance: May 3, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 108, 108 101, and 101.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1998 (63 FR 69335). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 0481.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application of amendment: June 2, 1998, and as supplemented by letters dated January 18 and March 9, 1999.

Brief description of amendment: The amendment relocates requirements related to seismic monitoring instrumentation from the Technical Specifications to the Technical Requirements Manual.

Date of issuance: April 28, 1999.

Effective date: Immediately; and shall be implemented within 60 days of issuance.

Amendment No.: 194.

Facility Operating License No. DPR–61: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50936). The January 18 and March 9, 1999, supplements contained revised TS pages to account for TS changes issued by the NRC since the original June 2, 1998, submittal, pages from the Updated Final Safety Analysis Report and TRM, which were revised to support the June 2, 1998, request, and additional clarifications. The supplemental information did not change the staff's initial proposed no significant hazards consideration determination or expand the scope of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1999.

No significant hazards consideration received: No

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 21, 1996, as supplemented May 2, 1997.

Brief description of amendment: The amendment revised Section 3.3.G (Hydrogen Recombiner System and Post-Accident Containment Venting System), the basis for Section 3.3.G, and Section 4.4, Table 4.4–1 (Containment Isolation Valves). This change permits removal of the existing flame-type hydrogen recombiners, its supporting equipment, and replacement with passive autocatalytic recombiners.

Date of issuance: April 27, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 200.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: Janaury 29, 1997 (62 FR 4345). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 3, 1997.

Brief description of amendment: The amendment revises TS 3.14, Control Room Ventilation, to be consistent with NUREG–1432, Standard Technical Specifications, Combustion Engineering Plants.

Date of issuance: May 6, 1999.

Effective date: May 6, 1999.

Amendment No.: 186.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14281). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423–3698.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: March 1, 1999.

Brief description of amendments: The amendments revised the Technical Specifications by adding a Note to Improved Technical Specification (ITS) 3.9, ''Refueling Operations,'' Subsection 3.9.3, ''Containment Penetrations,'' Limiting Condition for Operation 3.9.3.b, to state that the emergency air lock door is not required to be closed when it is sealed with the temporary cover plate.

Date of Issuance: April 28, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: Unit 1–303; Unit 2–303; Unit 3–303.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: 64 FR 14282 (March 24, 1999). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: March 1, 1999.

Brief description of amendments: The amendments revised the Technical Specifications by changing the number of required channels shown in TS Table 3.3.8–1, ''Post Accident Monitoring Instrumentation'' for the Reactor Coolant System Hot Leg Temperature function from ''2 per loop'' to ''2.''

Date of Issuance: April 28, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: Unit 1–304; Unit 2–304; Unit 3–304

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14281). The Commission's related evaluation of

the amendments is contained in a Safety Evaluation dated April 28, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: April 30, 1998.

Brief description of amendment: The amendment revises the single largest post-accident load capable of being supplied by the diesel generators and relocates this value to the Bases for Technical Specification (TS) Surveillance 4.8.1.1.2.c.3. TS Surveillance 4.8.1.1.2.c.3 has been revised to refer to ''the single largest post-accident load'' rather than a specific numerical value for diesel generator load reject testing. This change is consistent with the guidance provided in NUREG–1432 , ''Improved Standard Technical Specifications for Combustion Engineering Plants.''

Date of issuance: April 21, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 204.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56241). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 21, 1995.

Brief description of amendment: The amendment extends the expiration date of Operating License NPF–29 for Grand Gulf Nuclear Station, Unit 1, from June 16, 2022, to November 1, 2024. The extended date is 40 years from the date the full-power license was issued for the plant on November 1, 1984.

Date of issuance: April 26, 1999.

Effective date: As of the date of issuance to be implemented within 30 days of issuance.

Amendment No: 137.

Facility Operating License No. NPF–29: Amendment revises Operating License No. NPF–29.

Date of initial notice in **Federal Register**: August 16, 1995 (60 FR 42605). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 16, 1998.

Brief description of amendment: The amendment changes Technical Specification (TS) Section 2.1.1.2, ''Reactor Core [Safety Limits],'' by revising the two recirculation loop Minimum Critical Power Ratio (MCPR) limit from 1.13 to 1.12 and the single recirculation loop MCPR limit from 1.14 to 1.13. The revised limits are required to address the River Bend Cycle 9 core design and operation. The proposed TS changes are scheduled to be implemented following refueling outage 8, currently scheduled to begin in April 1999.

Date of issuance: April 27, 1999.

Effective date: As of the date of issuance to be implemented prior to the startup following refueling outage 8.

Amendment No.: 105.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9190). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 8, 1998, as supplemented April 15, 1999.

Brief description of amendment: The amendment implements the Boiling Water Reactor Owners Group Enhanced Option I-A for the reactor stability long-term solution to the neutronic and thermal hydraulic instability that is documented in NEDO–32339, Revision 1, ''Reactor Stability Long-Term Solution, Enhanced Option I-A.''

Date of issuance: May 5, 1999.

Effective date: As of the date of issuance and shall be implemented during refueling outage 8.

Amendment No.: 106.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64112). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: October 30, 1998, as supplemented March 31, 1999.

Brief description of amendment: The amendment proposed to revise the Final Safety Analysis Report (FSAR) and associated Improved Technical Specification (ITS) Bases to reflect changes in the methodology for the B spent fuel pool criticality analysis. The proposed change is necessary due to Boraflex degradation in the B spent fuel pool storage racks.

Date of issuance: April 27, 1999.

Effective date: April 27, 1999.

Amendment No.: 175.

Facility Operating License No. DPR–72: Amendment approves changes to the FSAR and ITS Bases.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71966). The supplemental letter dated March 31, 1999, did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: January 27, 1999.

Brief description of amendment: The change would allow a one-time extension of approximately 2 months of the steam generator tube inspection interval in order for the inspection to coincide with the next planned refueling outage.

Date of issuance: May 5, 1999.

Effective date: May 5, 1999.

Amendment No.: 176.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 10, 1999 (64 FR 11962). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: December 31, 1997, as supplemented May 15, 1998, September 15, 1998, November 25, 1998, and January 25, 1998.

Brief description of amendment: This change modified the St. Lucie Unit 2 Technical Specifications to increase the capacity of the spent fuel storage pool, in part, by allowing a credit for a certain soluble boron concentration in the spent fuel pool.

Date of Issuance: May 6, 1999.

Effective Date: Upon issuance of license amendment package with implementation by the end of the next scheduled refueling outage, currently scheduled for April of 2000.

Amendment No.: 101.

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 11, 1998 (63 FR 6985) and December 16, 1998 (63 FR 69340). Following the receipt of the supplement dated November 25, 1998, and the staff's subsequent no significant hazards consideration determination (63 FR 69340), the supplement dated January 28, 1999, contained clarifying information that did not change the no significant hazards consideration determination. An additional notice was required, in accordance with 10 CFR 2.1107, due to an oversight (64 FR 16502, April 5, 1999). An environmental assessment has been published in the **Federal Register** (64 FR 23133, April 29, 1999). In that assessment, the Commission determined that the issuance of this amendment will not result in any environmental impacts other than those evaluated in the Final Environmental Statement.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: February 24, 1999.

Brief description of amendments: The amendments changed Technical Specification (TS) 3/4.7.4 to permit the option of monitoring the ultimate heat sink temperature afer the intake cooling water (ICW) pumps but before the component cooling water heat exchangers which is considered to be equivalent to temperature monitoring before the ICW pumps.

Date of issuance: May 5, 1999.

Effective date: May 5, 1999.

Amendment Nos.: 200 and 194.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the TS.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14282). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 5, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: July 14, 1998

Brief description of amendment: The proposed amendment changed the Technical Specifications to revise the liquid and gaseous release rate limits to reflect revisions to 10 CFR Part 20, ''Standards for Protection Against Radiation.''

Date of issuance: May 3, 1999.

Effective date: May 3, 1999, to be implemented within 30 days from the date of issuance.

Amendment No.: 163.

Facility Operating License No. DPR–36: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 13, 1999 (64 FR 2249). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: September 30, 1997.

Brief description of amendment: The proposed amendment revises portions of Facility Operating License No. DPR–36 to delete License Conditions 2.B.6.c, 2.B.6.e, 2.B.6.f, 2.b.6.g, 2.b.7(a), and 2.B.7(b) which are no longer applicable due to the permanently shutdown and defueled condition of the Maine Yankee Atomic Power Station. Orders dated May 23, 1980, August 29, 1980, and September 19, 1980, are rescinded due to their being superseded by the equipment qualification rule (10 CFR 50.49).

Date of issuance: May 5, 1999.

Effective date: May 5, 1999, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 164.

Facility Operating License No. DPR–36: The amendment revised the Operating License.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63978). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: January 14, 1998, as supplemented by letters dated May 19, 1998, September 28, 1998, and three letters dated February 5, 1999.

Brief description of amendments: The amendments authorize revisions to the licensing basis as described in the Final Safety Analysis Report (FSAR) Update to incorporate the modification to the 230 kV offsite power system.

Date of issuance: April 29, 1999.

Effective date: April 29, 1999, and shall be implemented in the next periodic update to the FSAR Update in accordance with 10 CFR 50.71(e).

Amendment Nos.: Unit 1–132; Unit 2–130.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Final Safety Analysis Report Update.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53952). The supplemental letters dated September 28, 1998, and the three letters dated February 5, 1999, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 3, 1998, as supplemented by letters dated January 22, 1999, February 5, 1999, and March 17, 1999.

Brief description of amendments: The amendments change the Technical Specifications to revise TS 3/4.4.9.1 Figures for heatup and cooldown to extend their applicability to 16 effective full power years.

Date of issuance: May 3, 1999.

Effective date: May 3, 1999, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–133; Unit 2–131.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1998 (63 FR69345). The supplemental letters dated January 22, 1999, February 5, 1999, and March 17, 1999 provided additional clarifying information and did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 7, 1999.

Brief description of amendment: The amendment allows loading and handling of spent fuel transfer and storage casks in the Trojan fuel building.

Date of issuance: April 23, 1999.

Effective date: April 23, 1999.

Amendment No.: 199.

Facility Operating License No. NPF–1: The amendment changes the Operating License.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9197). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 27, 1999.

Brief description of amendment: This proposed amendment would allow unloading of spent fuel transfer casks in the Trojan Fuel Building.

Date of issuance: April 23, 1999.

Effective date: April 23, 1999.

Amendment No.: 200.

Facility Operating License No. NPF–1: The amendment revises the Operating License.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9198). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: February 12, 1997.

Brief description of amendment: The amendment deletes the Independent Spent Fuel Storage Installation area from the Permanently Defueled Technical Specifications.

Date of issuance: May 5, 1999.

Effective date: May 5, 1999.

Amendment No.: 201.

Facility Operating License No. NPF–1: The amendment changes the Permanently Defueled Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9196). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: January 15, 1999, as supplemented on March 31, 1999.

Brief description of amendment: The amendment allows a one-time extension of the Technical Specification (TS) surveillance interval to the end of fuel Cycle 13 (IR13) for certain TS

surveillance requirements (SRs). Specifically, the amendment extends the surveillance interval in (a) SR 4.3.2.1.3 for the instrumentation response time and sequence testing of each engineered safety features actuation system (ESFAS) function; (b) SRs 4.8.2.3.2.f and 4.8.2.5.2.d for service testing of the 125-volt DC and the 28-volt DC distribution system batteries, respectively; (c) SR 4.8.2.5.2.c.2 for verification of the condition of the 125-volt DC battery connections; (d) SR 4.8.3.1.a.1.a and 4.8.3.1.a.1.b for channel calibration and integrated system functional test for containment penetration conductor protection; (e) SR 4.1.2.2.c for verification that each automatic valve in the reactivity control system flow path actuates on a safety injection (SI) test signal; (f) SRs 4.3.1.1.1,Table 4.3–1, 4.3.2.1.1, Table 4.3–2, 4.3.3.5, Table 4.36, and 4.3.3.7, Table 4.3–11 for the channel calibration of containment water level-wide range, the manual solid-state protection system (SSPS) functional input check, and the ESFAS manual initiation channel functional test; (g) SR 4.5.1.d for verification that each accumulator isolation valve opens automatically on an SI test signal; (h) SR 4.5.2.e.1 for verification that each automatic valve in the ECCS flow path actuates on an SI test signal, (i) SR 4.7.6.1.d.2 for verification that the control room emergency air conditioning system automatically actuates in the pressurization mode on an SI test signal or control room intake high radiation test signal; (j) SR 4.7.10.b for verification that each automatic valve in the chilled water loop actuates on an SI signal; and (k) SR 4.8.1.1.2.d.7 which requires a test to verify that each emergency diesel generator operates for at least 24 hours. The SRs are to be completed during the next refueling outage (1R13), prior to returning the unit to Mode 4 (hot shutdown) upon outage completion. The amendment also makes some administrative and editorial changes on some of the pages that will be affected by the above SR interval extensions.

Date of issuance: May 4, 1999.

Effective date: May 4, 1999.

Amendment No.: 222.

Facility Operating License No. DPR–70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6709). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 8, 1999.

Brief description of amendments: The amendments revise Technical Specification 4.5.3.2.b to allow the option of using closed and disabled automatic valves to provide the necessary isolation function when performing safety injection and charging pump testing in Modes 4, 5, and 6 (i.e., hot shutdown, cold shutdown, and refueling) for low temperature overpressurization protection.

Date of issuance: April 26, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 220 and 202.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14284). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 26, 1998.

Brief description of amendments: The amendments revise Technical Specification 3/4.8.2.1, ''AC Distribution—Operating,'' to add operability conditions and associated action statements for the 115-volt vital instrument bus (VIB) D and inverter. The amendments complete the recommended action from NRC Generic Letter 91–11, Resolution of Generic Issues 48, ''LCOs for Class 1E Vital Instrument Buses,'' and 49, ''Interlocks and LCOs for Class 1E Tie Breakers,'' pursuant to 10 CFR 50.54(f), dated July 18, 1991.

Date of issuance: April 30, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 221 and 203.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 6, 1998 (63 FR 25117). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: March 1, 1999.

Brief description of amendment: The amendment revises the Ginna Station Improved Technical Specifications battery cell parameters limit for specific gravity (Surveillance Requirement (SR) 3.8.6.3 and SR 3.8.6.6).

Date of issuance: April 23, 1999.

Effective date: April 23, 1999.

Amendment No.: 74.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 24, 1999 (64 FR 14284). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 15,1999 (TS 98–07).

Brief description of amendments: The amendments change the Technical specifications (TS) by adding a new action statement to TS 3.1.3.2, ''Position Indicating Systems—Operating,'' that eliminates the need to enter TS 3.0.3 whenever two or more individual rod position indications per bank may be inoperable. It also allows additional time to determine the position of the non indicating rod(s).

Date of issuance: May 4, 1999.

Effective date: May 4, 1999.

Amendment Nos.: 244 and 235.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR

9201). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 3, 1998.

Brief description of amendment: The amendment makes changes to the Technical Specifications to more clearly describe the emergency core cooling system actuation instrumentation for the low pressure coolant injection and core spray systems.

Date of Issuance: April 26, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 170.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6714). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 28, 1998.

Brief description of amendments: The amendments revise the Technical Specifications Section 4.6.2.2.1.b for Units 1 and 2 casing cooling and outside recirculation spray pumps surveillance testing criteria.

Date of issuance: April 22, 1999.

Effective date: April 22, 1999.

Amendment Nos.: 219 and 200.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48272). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 23, 1998.

Brief description of amendment: The amendment revises Technical Specification 3/4.5.1, ''Emergency Core Cooling Systems—Accumulators,'' by increasing the allowed outage time with one accumulator inoperable for reasons other than boron concentration deficiencies from 1 hour to 24 hours. The corresponding Bases section was also revised.

Date of issuance: April 27, 1999.

Effective date: April 27, 1999, to be implemented within 30 days from the date of issuance.

Amendment No.: 124.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64127). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of no Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action.

Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 18, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Southern California Edison Company, et al., Docket No. 50–361, San Onofre Nuclear Generating Station, Unit No. 2, San Diego County, California

Date of application for amendment: April 24, 1999.

Brief description of amendment: This one-time temporary amendment allows the facility to be outside the licensing basis regarding remote shutdown capability of the shutdown cooling system as described in the Updated Safety Analysis Report, Section 5.4.7.1.2, during the period of the repair. The amendment is effective for 7 days from the date of issuance or until the repair of the check valves is completed, whichever occurs first.

Date of issuance: April 26, 1999.

Effective date: April 26, 1999, and is effective for 7 days from the date of issuance or until the check valves repair is completed, whichever occurs first.

Amendment No.: 152.

Facility Operating License Nos. NPF–10: This amendment approved a one-time change to the design basis as described in the Updated Safety Analysis Report.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of California, and final no significant hazards consideration determination are contained in a Safety Evaluation dated April 26, 1999.

Attorney for Licensee: T.E. Qubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

NRC Section Chief: Stephen Dembek.

Dated at Rockville, Maryland, this 12th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–12494 Filed 5–18–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. IC–23834; 812–9600]

Morgan Stanley Dean Witter Institutional Fund, Inc., et al.; Notice of Application

May 12, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to section 17(d) of the Investment Company Act of 1940 (''Act'') and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies to deposit their uninvested cash balances into one or more joint accounts for the purpose of investing in short-term repurchase agreements.

Applicants: Morgan Stanley Dean Witter Institutional Fund, Inc. (''MSDWIF''), Morgan Stanley Dean Witter Universal Funds, Inc. (''MSDWUF''), and Van Kampen Series Fund, Inc. (''VKSF'') (each an ''Open-End Fund'' and, collectively, the ''Open-End Funds''); The Latin American Discovery Fund, Inc., The Malaysia Fund, Inc., Morgan Stanley Africa Investment Fund, Inc., Morgan Stanley Asia-Pacific Fund, Inc., Morgan Stanley Emerging Markets Debt Fund, Inc., Morgan Stanley Emerging Markets Fund, Inc., Morgan Stanley Global Opportunity Bond Fund, Inc., The Morgan Stanley High Yield Fund, Inc., Morgan Stanley India Investment Fund, Inc., The Pakistan Investment Fund, Inc., The Thai Fund, Inc., The Turkish Investment Fund, Inc., and Morgan Stanley Russia & New Europe Fund, Inc. (each a ''Closed-End Fund'' and, collectively, the ''Closed-End Funds''); Morgan Stanley Dean Witter Investment Management, Inc. (''MSDW Investment Management''); and Miller Anderson & Sherrerd, LLP (''Miller Anderson'').

Filing Dates: The application was filed on May 10, 1995 and was amended on March 27, 1997, June 11, 1998, and December 4, 1998. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

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 June 7, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Richard W. Grant, Esq., Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The Open-End Funds are open-end management investment companies registered under the Act. Each Open-End Fund currently offers multiple portfolios (''Portfolios''). The Closed-End Funds are closed-end management investment companies registered under the Act. The Portfolios of the Open-End Funds and the Closed-End Funds are referred to collectively as the ''Funds'' and, individually, as a ''Fund.''

2. MSDW Investment Management is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each Portfolio of MSDWIF, certain Portfolios of MSDWUF, and each Closed-End Fund. Miller Anderson is registered under the Advisers Act and serves as investment adviser to the remaining MSDWUF Portfolios. In addition, MSDW Investment Management serves as investment subadviser to twenty VKSF Portfolios, and Miller Anderson serves as investment subadviser to the remaining two VKSF Portfolios. MSDW Investment Management and Miller Anderson are subsidiaries of Morgan Stanley Dean Witter & Co. MSDW Investment Management, Miller Anderson, and all registered investment advisers now or in the future controlling, controlled by, or under common control and MSDW Investment Management or Miller Anderson are referred to as the ''Advisers'' or, individually, as an ''Adviser.''

3. Applicants request that any relief granted pursuant to the application also apply to (i) future Portfolios of the Open-End Funds and (ii) all other registered management investment companies for which an Adviser may now or in the future act as investment adviser (collectively, the ''Future Funds'').[1]

4. The U.S. assets of each Fund are held by the Chase Manhattan Bank (''Chase'') as custodian. At the end of each trading day, each Fund has, or may have, uninvested cash balances resulting primarily from share purchases that occurred late in the day and cash held in order to assure prompt payment of redemption proceeds (''Cash Balances''). The Cash Balance of each Fund generally is invested by the Fund's Adviser in short-term investments authorized by the Fund's investment policies. Currently, the advisers must make such investments separately on behalf of each Fund. Applicants asserts that these separate purchases result in certain inefficiencies that limit a Fund's return on investment of its Cash Balance.

5. Applicants propose that the Funds establish joint trading accounts or subaccounts (''Joint Accounts'') with Chase or other custodians (collectively, ''Custodians,'' and each a ''Custodian'') into which the Funds may deposit some

[1] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Future Fund that relies on the requested relief will do so only in compliance with the terms and conditions of the application.

or all of their Cash Balances. The balances in the Joint Accounts will be invested in repurchase agreements with an overnight, over-the weekend, or over-a-holiday maturity and a term of no more than seven days (''Overnight Investments''). The investment policies of each Fund permit investments in Overnight Investments. Currently, applicants expect to establish two Joint Accounts with Chase as custodian: one Joint Account for the Funds advised or sub-advised by MSDW Investment Management, and the other for the Funds advised or sub-advised by Miller Anderson.

6. All investments in Overnight Investments through the Joint Accounts will be effected only in compliance with (i) standards and procedures established by the board of trustees or directors (''Board'') of each Fund with respect to Overnight Investments, and (ii) guidelines set forth in Investment Company Act Release No. 13005 (Feb. 2, 1983) and any other existing and future positions taken by the SEC or its staff by rule, release, letter, or order relating to joint Overnight Investment transactions.

7. The Funds will enter into ''hold-in-custody'' repurchase agreements (*i.e.*, repurchase agreements where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only where cash is received very late in the business day and otherwise would be unavailable for investment.

8. Each list of approved repurchase agreement counterparties (''Approved Counterparties'') for a Fund is monitored by the Fund's Adviser on an ongoing basis and reviewed by the Fund's Board on a quarterly basis. Approved Counterparties may include the Custodian and certain affiliated persons of the Advisers to the extent permitted by the Act or by relief from the Act obtained by the Funds.

9. Before investing the assets of any Fund in Overnight Investments through a Joint Account, the Adviser will determine that all Overnight Investments in which that Fund will participate are permissible investments for that Fund. The Joint Accounts will only be used to aggregate what otherwise would be one or more daily transactions by each participating Fund to manage its daily Cash Balance.

10. The Advisers will be responsible for investing the balances of the Joint Accounts, establishing accounting and control procedures, and ensuring equal treatment of each participating Fund. The Advisers will not charge any additional or separate fees for administering or advising the Joint Accounts and will have no monetary participation in the Joint Accounts.

Applicant's Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which that investment company is a participant, unless the Commission has issued an order authorizing the arrangement. In determining whether to grant such an order, the Commission considers whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants in the arrangement.

2. Under section 2(a)(3) of the Act, each Fund might be deemed to be an ''affiliated person'' of each other Fund, or an affiliated person of such a person, if each Adviser was deemed to control each Fund that it advises or subadvises. Applicants state that each Fund participating in a Joint Account and the Adviser managing that Joint Account may be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d) of the Act. In addition, applicants state that each Joint Account may be deemed to be a ''joint enterprise or other arrangement'' within the meaning of rule 17d–1.

3. Applicants assert that no participating Fund will receive fewer relative benefits from effecting its transactions through the proposed Joint Accounts than any other participating Fund. Applicants also believe that the proposed method of operating the Joint Accounts will not result in any conflicts of interest among any of the Funds or between any Fund and its Adviser. Each Fund's liability on any Overnight Investment invested in through the Joint Accounts will be limited to its own interest in such Overnight Investment.

4. Applicants believe that the Joint Accounts could result in certain benefits to the Funds. The Funds may earn a higher return on investments effected through the Joint Accounts relative to the returns they could earn individually. Under normal market conditions, applicants assert, it is possible to negotiate a higher rate of return on larger Overnight Investments than that available on smaller Overnight Investments. Applicants further assert that Funds precluded from investing individually in Overnight Investments because of their relatively small Cash Balances would be able to invest in such instruments through the Joint Accounts. Finally, applicants assert that the Funds would reduce significantly their transaction fees and expenses by aggregating through the Joint Accounts what would otherwise be separate investments by each Fund to manage its daily Cash Balance.

5. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order. Applicants state that, although the Advisers may realize some benefit through administrative convenience and reduced clerical costs, the Funds would be the primary beneficiaries of the Joint Accounts.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Joint Accounts will be established at a Custodian as one or more separate cash accounts on behalf of the Funds that are advised or subadvised by a particular Adviser. Each Fund may deposit daily all or a portion of its Cash Balances into the Joint Accounts that are advised or subadvised by its Adviser. If a Fund wishes to participate in a Joint Account that will be maintained by a Custodian other than its regular Custodian, the Fund would appoint that Custodian as its sub-custodian for the limited purpose of: (1) Receiving and disbursing cash; (ii) holding any Overnight Investment purchased by the Joint Account; and (iii) holding any collateral received from a transaction effected through the Joint Account. Any Fund that appoints a sub-custodian will take all necessary actions to authorize that entity as its legal custodian, including all actions required under the Act.

2. Cash in the Joint Accounts will be invested solely in Overnight Investments with a maximum maturity of seven days that are ''collateralized fully,'' as defined in a rule 2a–7 under the Act, and that will comply with the investment policies of each Fund participating in that Overnight Investment.

3. All Overnight Investments invested in through the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable Commission or staff releases, rules, letters, or orders. Each Fund that relies upon rule 2a–7 under the Act will use the dollar-weighted average maturity of a Joint Account's Overnight Investments

for the purpose of computing that Fund's average portfolio maturity on that day with respect to the portion of its assets held in that Joint Account.

4. In order to assure that there will be no opportunity for one Fund to use any part of a balance of any Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason, although each Fund will be permitted to draw down its *pro rata* share of the entire balance at any time. Each Fund's decision to invest through the Joint Accounts will be solely at the option of that Fund and its Adviser, and no Fund will in any way be obligated to invest through, or maintain any minimum balance in, the Joint Accounts. In addition, each Fund will retain the sole rights of ownership of any of its assets, including interest payable on such assets, invested through the Joint Accounts. Each Fund's investments effected through the Joint Accounts will be documented daily on the books of that Fund as well as on the books of the Custodian. Each Fund, through its Adviser and/or Custodian, will maintain records (in conformity with section 31 of the Act and the rules thereunder) documenting, for any given day, the Fund's aggregate investment in a Joint Account and its *pro rata* share of each Overnight Investment made through such Joint Account.

5. Each Fund will participate in and own its proportionate share of an Overnight Investment, and receive the income earned on or accrued in such Overnight Investment, based upon the percentage of such investment purchased with amounts contributed by such Fund, and each Fund will participate in a Joint Account on the same basis as every other Fund in conformity with its respective fundamental investment objectives, policies, and restrictions. Any Future Funds that participate in a Joint Account would do so on the same terms and conditions as the existing Funds.

6. Each Adviser will administer the Joint Accounts in accordance with standards and procedures established by the Board of each Fund that it advises as a part of its duties under its existing or future investment advisory contracts with the Funds, and will not collect any additional or separate fee for the administration of the Joint Accounts.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

8. The Board of each Fund investing in Overnight Investments through the Joint Account will adopt procedures pursuant to which the Joint Accounts will operate, which procedures will be reasonably designed to provide that the requirements of this application will be met. The Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, not less frequently than annually, the Board will evaluate the Joint Account arrangements, will determine whether the Joint Accounts have been operated in accordance with the adopted procedures, and will authorize a Fund's continued participation in the Joint Accounts only if the Board determines that there is a reasonable likelihood that such continued participation would benefit that Fund and its shareholders.

9. The Joint Accounts will not be distinguishable from any other accounts maintained by a Fund with a Custodian, except that moneys from various Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence with indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transaction that would otherwise require daily management and investment of Cash Balances by each Fund.

10. Overnight Investments held in a Joint Account generally will not be sold prior to maturity unless: (i) The Adviser believes that the investment no longer presents minimal credit risk; (ii) as a result of credit downgrading or otherwise, the investment no longer satisfies the investment criteria of all Funds participating in the investment; or (iii) the counterparty defaults. A Fund may, however, sell its fractional portion of an investment in a Joint Account prior to the maturity of the investment if the cost of the transaction will be borne solely by the selling Fund and the transaction would not adversely affect the other Funds participating in that Joint Account. In no case would an early termination by less than all participating Funds be permitted if it would reduce the principal amount or yield received by other Funds participating in a particular Joint Account or otherwise adversely affect the other participating Funds. Each Fund participating in such Joint Account will be deemed to have consented to such sale and partition of the investment in such Joint Account.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12538 Filed 5–18–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Public Notice #3042

United States International Telecommunication Advisory Committee (ITAC); Telecommunication Standardization Sector (ITAC–T) National Committee and Study Groups B, & D; Telecommunication Development Sector (ITAC–D); Interamerican Telecommunication Commission (CITEL) ad hoc Committee; Notice of Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC) and its committees and Study Groups in the Telecommunication Standardization, Telecommunication Development Sectors, and CITEL ad hoc committee for June through August 1999. The purpose of the Committee and its Study Groups is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization and development. Except where noted, meetings will be held at the Department of State, 2201 ''C'' Street, NW, Washington, DC.

The ITAC will meet from 9:30 to 1:00 on Wednesday June 2 and June 9, 1999, (both in Room 1205) to complete preparations for the ITU Council meeting in June 1999.

The ITAC–T National Committee will meet from 9:30 to 4:00 on July 13 and August 25, 1999, (both in Room 5951) to prepare for the next ITU Telecommunication Sector Advisory Group (TSAG) meeting.

ITAC–T Study Group B will meet from 9:30 to 4:00 on June 3, 1999, in Room 1912 at the State Department to complete preparations for ITU-T Study Group 15 meeting. Study Group B will also meet at 11:30 on June 18, 1999 at the Radisson Governors Inn, I–40 at Davis Drive (exit 280), Research Triangle Park, NC 27709 to complete preparations for ITU–T Study Group 11 Working Party 1 meeting. Study Group B will meet at 11:30 on August 20, 1999, at the Turf Valley Conference Center, 2700 Turf Valley Road, Ellicot City, MD 21042 to complete preparations for

various ITU–T Study Group 13 Working Party Meetings.

ITAC–T Study Group D will meet from 9:30 to 4:00 on August 25, 1999, to prepare for ITU–T Study Group 9 meeting.

The ITAC ad hoc CITEL committee will meet June 8, 1999, in Room 4517 from 9:30 to 12:30 to prepare for the next Permanent Consulatative Committee. I meeting.

Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend ITAC, ITAC–T National Committee and Study Groups A & D meetings should send a fax to (202) 647–7403, (for Study Group B send a fax to (303) 497–5993), not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC, ITAC T National Committee, Study Group and date of meeting), your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: US driver's license, US passport, US Government identification card. Enter from the ''C'' Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: May 10, 1999.

Marian R. Gordon,

Director, Telecommunication and Information Standardization, U.S. Department of State.

[FR Doc. 99–12618 Filed 5–18–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 3041]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Tuesday, June 29, 1999, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street, NW, Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, DC 20522–2902, telephone 703–875–7800, prior to June 18, 1999. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: May 7, 1999.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 99–12617 Filed 5–18–99; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Diego, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Mr. C. Glenn Clinton, Team Leader-Program Delivery Team South, Federal Highway Administration, 980 9th Street, Suite 400, Sacramento, California 95814–2724; Telephone: (916) 498–5037.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to widen and realign approximately 10.1 miles (16.2 KM) of State Route 76 between Melrose Drive to Interstate 15 in San Diego County, California.

The proposal calls for the construction of a four-lane conventional highway alongside the existing State Route 76 alignment with grading to accommodate future widening to 6 lanes. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand and to improve motorist safety. Planned growth is expected to more than triple traffic volume by the year 2020. The accident rate on State Route 76, for fatal and injury accidents, is higher than expected when compared to similar two-lane routes in the state.

Alternatives under consideration include (1) take no action; (2) widening the existing two-lane State Route 76; and (3) other alignment and grade variations as appropriate to minimize environmental effects of the project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting will be held at an appropriate location in or near the communities of Bonsall and Fallbrook in February 1999. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposal action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposal action and the EIS should be directed to FHWA at the address provided above. The views of the agencies having knowledge about the historic resources potentially affected by the proposal or interested in the effects of the project on historic properties are solicited.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on May 10, 1999.

C. Glenn Clinton,

Team Leader—Program Delivery Team South.

[FR Doc. 99–12615 Filed 5–18–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP97–006

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

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety. The petition is hereinafter identified as DP97–006.

FOR FURTHER INFORMATION CONTACT: Dr. George Chiang, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5206.

SUPPLEMENTARY INFORMATION: Edgar F. Heiskell, III (petitioner), Attorney at Law, 400 Bank One Center, P.O. Box 3761, Charleston, West Virginia 25337–3761, submitted a petition to the National Highway Traffic Safety Administration (NHTSA) by letter dated December 3, 1997, requesting that an investigation be initiated to determine whether to issue an order concerning the notification and remedy of a defect in model year 1983 through 1990 Bronco II sport utility vehicles (subject vehicles) manufactured by Ford Motor Company (Ford) because of concerns related to their rollover propensity.

The petitioner alleges that the subject vehicles were ''designed with handling and stability defects which have caused an extraordinary number of rollover accidents resulting in thousands of deaths and severe injuries.''

NHTSA has reviewed all information brought to its attention and reviewed crash databases and Office of Defects Investigation's consumer complaint database. The results of this review and analysis are set forth in a Petition Analysis Report for DP97–006, which is published in its entirety as an appendix to this notice.

For the reasons presented in the petition analysis report, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect in the subject vehicles would be issued at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: May 14, 1999.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

Appendix—Petition Analysis—DP97–006

1.0 Introduction

Edgar F. Heiskell, III (petitioner), Attorney at Law, 400 Bank One Center, P.O. Box 3761, Charleston, West Virginia 25337–3761, submitted a petition to the National Highway Traffic Safety Administration (NHTSA) by letter dated December 3, 1997, requesting that an investigation be initiated to determine whether to issue an order concerning the notification and remedy of a defect in model year 1983 through 1990 Bronco II sport utility vehicles (subject vehicles) manufactured by Ford Motor Company (Ford) because of concerns related to their rollover propensity.

2.0 Previous Inquiries and Investigations by NHTSA Into Alleged Rollover Defects

In October 1979 and July 1981, NHTSA's Office of Defects Investigation (ODI) received two petitions (DP80–002 and DP81–018) for defect investigations into the alleged instability of Jeep CJ vehicles. Both these petitions were denied due to the lack of specific information indicating that there was a defect that caused the vehicles to roll over.

In 1988, ODI received two petitions for defect investigations into the alleged rollover propensity of 1986 through 1988 Suzuki Samurai vehicles, including the convertible, the Samurai, and the SJ410 and LJ80 models (DP88–011 and DP88–019). NHTSA also denied these petitions, primarily because the available information did not show that the alleged rollovers were caused by a defect in the vehicle rather than by the driver and/or environmental factors.

In 1989, ODI conducted investigation EA89–013 concerning 1984–1989 Ford Bronco II sport utility vehicles. This investigation was opened in response to a defect petition, DP88–020. A peer analysis of rollover rates showed the Bronco II to be similar to other sport utility vehicles, as measured using the metric of first-event single-vehicle rollovers per single-vehicle crash. ODI closed this investigation in October 1990, because ''there appears no reasonable expectation that further investigation would lead to a determination of the existence of a safety-related defect with respect to any of the allegations regarding the propensity of the Bronco II to roll over.'' Also during this same time period, ODI was petitioned again to investigate Jeep CJ models (DP90-012). This petition was also denied for the same reasons as the Bronco II petition.

In 1996, ODI was petitioned to open a defect investigation into the rollover propensity of the 1986–1995 Suzuki Samurai convertible (DP96–004). The petitioner alleged that Samurai convertibles have high rollover propensity, as reflected by their low static stability factor (the track width to center of gravity ratio), and, when loaded with occupants, the vehicle is even less stable. After reviewing the materials presented in that petition and other available data and information, the agency concluded that it was unlikely that further investigation of alleged Samurai convertible rollover propensity would enable NHTSA to identify a safety-related defect. The petition was therefore denied.

In August 1996, ODI received a petition (DP96–011) from Consumers Union of the United States (CU) to investigate 1995 and 1996 Isuzu Trooper and Acura SLX sport utility vehicles because of their alleged propensity to roll over in a reverse steer maneuver. CU alleged that these vehicles were prone to tip-up during a double lane maneuver known as the CU ''short course.'' CU's testing of peer vehicles indicated different performance for the peer vehicles compared to the Trooper and SLX. NHTSA conducted crash data analysis, a computer simulation, and a comprehensive test program comparing these vehicles and a peer vehicle during its analysis of the petition. NHTSA testing showed that the results of tests on the CU short course were not repeatable and were affected by driver performance. When these driver performance inconsistencies were accounted for, the Trooper and SLX performed similarly to the peer vehicles during testing using the CU short course. This petition was denied.

3.0 Vehicle Inforamtion

3.1 Subject Vehicle Description

The Ford Bronco II is a light utility vehicle, i.e., a multipurpose passenger vehicle having a wheelbase of 110 inches or less and special features for occasional off-road use, and was originally introduced for sale in the United States in late 1983 as a 1984 model year vehicle. It continued in production through the 1990 model year. It is a two-door, four-passenger vehicle with body-on-frame construction, a 94 inch wheelbase and a 56.9 inch track width (front and rear). The vehicle was equipped with front coil and rear leaf springs and a front-mounted engine throughout its production. All 1984–1986 model year Bronco II vehicles were equipped with four-wheel drive. Beginning with the 1987 model year and through the remainder of its production, the Bronco II was also available in a two-wheel drive configuration.

3.2 Vehicles Involved

Table 1 presents the number of subject vehicles sold in the United States.

TABLE 1.—SALES OF SUBJECT VEHICLES IN THE UNITED STATES

Model year	4X4	4X2	Total
1984	144,061	0	144,061
1985	98,153	0	98,153
1986	109,846	0	109,846
1987	88,818	22,286	111,104
1988	109,524	38,201	147,725
1989	67,356	29,835	97,191
1990	38,451	16,445	54,896
Grand Total			762,976

4.0 Alleged Defect

The petitioner alleges that the subject vehicles were ''designed with handling and stability defects which have caused an extraordinary number of rollover accidents resulting in thousands of deaths and severe injuries.''

5.0 Complaints

5.1 Complaints to ODI Concerning the Subject Vehicles' Rollover Propensity

ODI has reviewed all owner complaints in the ODI database that may be related to the alleged defect in the subject vehicles.

Each complaint in the ODI database is given ''Fault'' codes for ''cause'' and ''result.'' Each complaint that had a ''cause fault'' or ''result fault'' of ''rollover'' was individually reviewed to eliminate duplications and non-rollovers.

Figure 1 shows the number of rollover-related complaints regarding the subject vehicles received by ODI during each calendar year from 1989 through 1998. It indicates that after EA89–013 was closed on October 31, 1990, the number of such complaints to ODI decreased sharply.

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Figure 1. Number of Bronco II Rollover Complaints Received by ODI: 1989 through 1998.

Year	Complaints
1989	33
1990	11
1991	7
1992	5
1993	6
1994	1
1995	2
1996	1
1997	1
1998	0

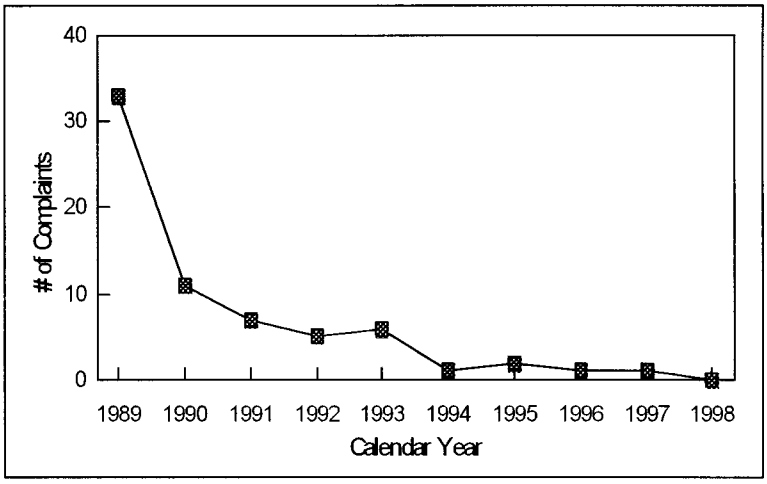

Figure 1. Number of Bronco II Rollover Complaints Received by ODI: 1989 through 1998.

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5.2 Complaints to ODI Concerning the Rollover Propensity of Peer Vehicles

ODI has also reviewed rollover-related owner complaints in the ODI database regarding certain peer vehicles. Figure 2 shows the complaint rate (the number of complaints per 100,000 vehicles sold) based on the complaints received by ODI since January 1, 1994. The rollover complaint rate of the Bronco II is much lower than those of many of the peer vehicles, including some for which ODI has recently denied petitions to open defect investigations.

Figure 2. Complaint Rate of Bronco II and Peers Based on ODI Complaints Received Since 1/1/94.

MY	Make	Model	Rate
1984-1990	Ford	Bronco II	0.6547
1984-1990	Toyota	4Runner	2.8560
1986-1990	Suzuki	Samurai	3.4914
1984-1990	Isuzu	Trooper	2.8412
1984-1990	Jeep	Wrangler/CJ7	1.3456
1984-1990	Jeep	Cherokee	0.1373
1984-1990	GMC	Jimmy	0.2835

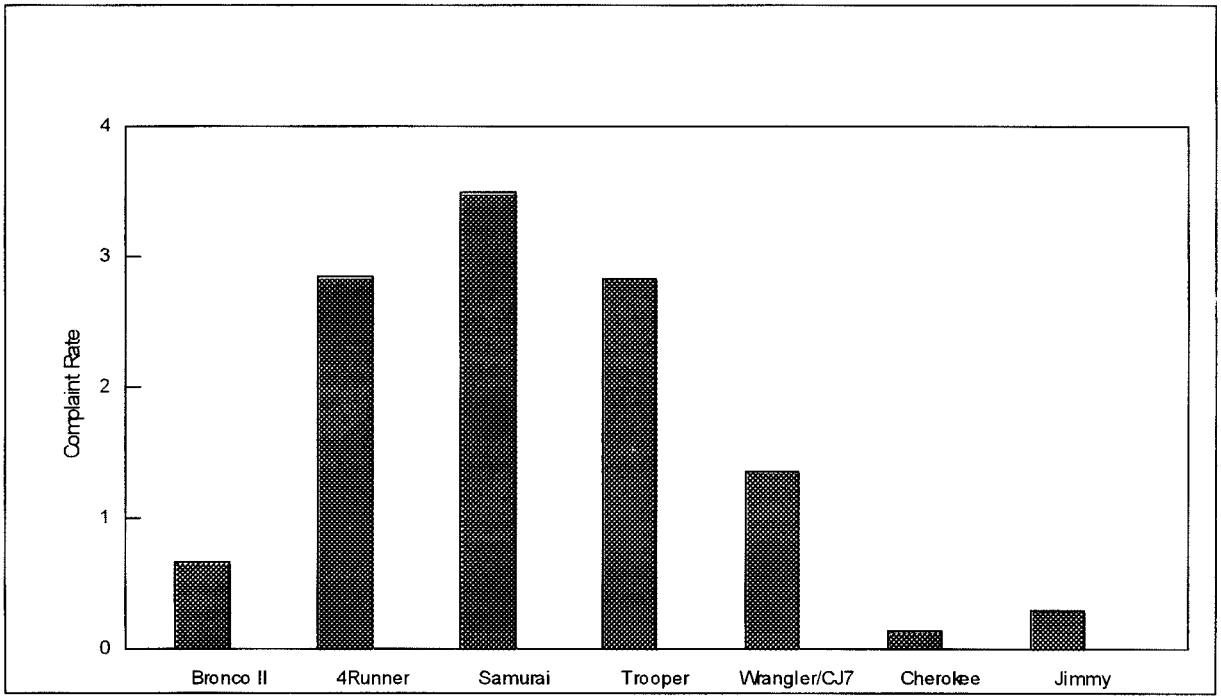

Figure 2. Complaint Rate of Bronco II and Peers Based on ODI Complaints Received Since 1/1/94.

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6.0 Additional Documents Submitted to Petition File

Prior to submitting his petition, Mr. Heiskell submitted three letters with attachments, concerning the rollover propensity of the subject vehicles. In his letters (dated March 13, April 16, and April 24, 1997), Mr. Heiskell presented arguments and provided copies of various documents that he claimed set out new information that would justify reopening EA89–013. Mr. Heiskell's letters and attachments have been placed in the DP97–006 petition file.

In addition, W. Randolph Barnhart, Esq., submitted documents on September 10, 1997, which he alleged demonstrated the rollover susceptibility of the Bronco II. By letter of September 16, 1997, Mr. Barnhart provided the agency with an index to the previously-submitted documents. Both of Mr. Barnhart's submissions have been placed in the DP97–006 petition file.

In their submissions, Mr. Heiskell and Mr. Barnhart focused on vehicle handling tests conducted by Ford in March/April 1982, during its development of the Bronco II, in which the test vehicles rolled over at speeds equal to or greater than 25 mph. They also noted that Ford had not provided reports of those tests in response to ODI's information requests in EA89–013. NHTSA has addressed Ford's failure to provide those test reports during EA89–013 in a May 29, 1998, letter from John Womack, the agency's Senior Assistant Chief Counsel. A copy of that letter has been placed in the DP97–006 public file.

ODI has reviewed the reports of the pre-production tests that were submitted by Mr. Heiskell. While they are clearly relevant to the issues raised by this petition, they do not in themselves warrant granting the petition, for the following reasons. The development of a complex motor vehicle from a concept into a marketable consumer product involves a process of design, testing, and an evaluation of test results. Generally, this leads to a cycle of re-design, re-testing, and re-evaluation, which is repeated until the product meets its performance objectives. When tests conducted during product development disclose a potential problem of any type, a manufacturer generally will take steps to resolve the problem.

When viewed from a defect investigation perspective, the fact that the test reports suggest a relatively high rollover propensity in pre-production Bronco II vehicles illustrates the extent of the problem at the pre-production stage. A variety of modifications were made to the Bronco II after those tests that were likely to affect its rollover propensity to some degree. Thus, the in-service history of the Bronco II with respect to rollover incidents is far more significant than developmental and pre-production testing.

7.0 Crash Data Analysis

ODI and the National Center for Statistics and Analysis (NCSA) have evaluated the rollover performance of a number of light sport utility vehicles by reviewing and analyzing the crash data obtained from several databases, including State data, the Fatality Analysis Reporting System (FARS) data, and the National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) data. ODI also reviewed data provided by Ford on January 29, 1998 in connection with this petition, and data supplied by American Suzuki Motor Corporation (Suzuki)

in response to Defect Petition DP96–011, specifically those data related to fatal on-road rollover crashes.

The subject vehicles were manufactured from the mid 1980s through 1990, and these vehicles have been in operation and exposed to the crash environment for many years; therefore, the crash data is considered to be mature, representative, and reliable.

7.1 Previous NHTSA Analysis of Bronco II Rollover Propensity

As noted above, EA89–013 was an investigation into the rollover propensity of Bronco II vehicles. In that investigation, NHTSA applied logistic regression to the state data covering 11 groups of vehicles in order to obtain the ratio of first-event single-vehicle rollovers to all single-vehicle crashes of each group. The analytical procedure accounted for environmental factors, such as the location of the incident (e.g., rural vs. urban; straight vs. curved road), and driver characteristics, such as age and sex. By considering these variables, the rollover rate data were controlled to normalize the vehicles to a common set of outside-the-vehicle factors that can influence crash outcome. The results of that analysis, taken from the EA89–013 Closing Report, are depicted in Figure 3 and give the best estimate of the controlled first-event single-vehicle rollover rate for single-vehicle crashes for each vehicle group, along with the upper and lower 95 percent confidence intervals for crash years 1986 through 1988. For this analysis, Maryland, Michigan, New Mexico, and Utah data were combined.

Figure 3 shows that the Bronco II has a first-event single-vehicle rollover rate similar to several other vehicles, notably CJ5/6/7 (71–80), Toyota 4Runner, CJ5/7/8 (81–86), Suzuki Samurai, Isuzu Trooper II, and GM S–10/S–15.

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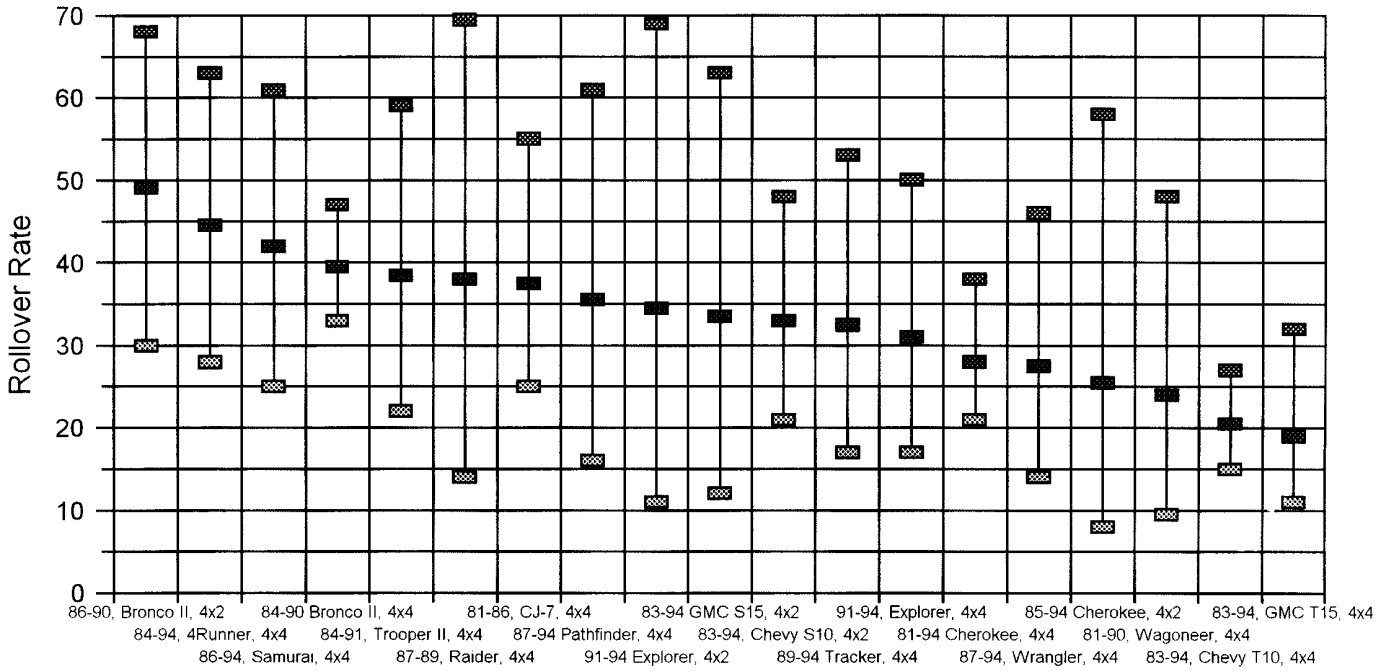

Figure 4. Ford's Analysis of Rollover Rate for Various Sport Utility Vehicles, Controlled for Age, Sex, Location, and Roadway Alignment (Michigan, Arkansas, Florida, Maryland, and Pennsylvania).

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7.2 1993 Analysis of Michigan Data

In November 1993, an analysis of Michigan state rollover data was conducted by NHTSA in connection with a proposed rulemaking effort (Docket 91–68, No. 2, Item 018). In this analysis, rollover data was computed for crash years 1986 through 1990. Table 2 presents the first-event single-vehicle rollover rates for selected sport utility vehicles.[1] When more than one variation of a make/model is included, a range of rates is presented. Table 2 shows that the Bronco II has a first-event single-vehicle rollover rate similar to several other vehicles.

[1] The vehicles were selected to match the vehicles considered in EA89–013, except the GM S and T vehicles were combined together.

TABLE 2.—MICHIGAN FIRST-EVENT SINGLE-VEHICLE ROLLOVER PERCENTAGES, CRASH YEARS: 1986–1990

Make and model*	Percent of first-event single-vehicle rollovers per single-vehicle crash**
Ford Bronco II	39–49
GM S & T series	24–34
Isuzu Trooper II	31
Jeep Cherokee	30
Jeep CJ–5	49–51
Jeep CJ–7	46–48
Jeep Wrangler	28
Suzuki Samurai	29
Toyota 4Runner	*36

*Listed Alphabetically; No data for Jeep Wagoneer.

**Make/models with a range represent the upper and lower rates reported in the Finalized Database of Michigan Data for different variations of the same make/model. This could include variations with different badges, e.g., Chevy and GMC; different drive configurations, e.g., 4x4 and 4x2, or different brake systems, e.g., ABS and non-ABS.

The vehicles compared in this table are of similar age and were fairly new during the time period that the crash data were collected. Vehicle age can affect performance due to change of components, such as new tires, wheels, and shocks absorbers, which may not be the same size or quality as the original ones. Additionally, as a vehicle ages, components on the vehicle wear, which can change the performance characteristics of the vehicle and its susceptibility to rollover.

7.3 1998 Analysis of NASS/CDS Data

Following receipt of Mr. Heiskell's petition, NHTSA analyzed the NASS/CDS data files for NASS years 1988 through 1996. The vehicles analyzed were similar to those considered in the EA89–013 analysis, except the GM S and T vehicles were combined to compare them with the Bronco II data.

Again first-event single-vehicle rollovers and all single-vehicle crashes were considered, which exclude not only crashes with other vehicles, but also with moving objects such as animals, pedestrians, and bicycles. The data are presented in Table 3. The range of model years included in the analysis was 1984 through 1990, except for the Suzuki Samurai, which began production in MY 1986, and the Jeep CJ vehicles. The model year ranges are noted in the table. The sample size (listed in the table as ''Number of NASS Single Vehicle Cases'') is small for all vehicles except the Bronco II and the GM S&T series. Based on comparison of the T-values, the Bronco II rollover rate is not statistically significantly greater than that of any other make/model listed in Table 3, except the Jeep Cherokee. Furthermore, the Bronco II rollover rate is statistically significantly lower than that of the Suzuki Samurai. Finally, the Bronco II's rollover rate is not statistically significantly different from that of all light trucks and vans considered as a whole.

Table 3 also provides an estimate of the total number of first-event single-vehicle rollovers for the time interval analyzed (1988–1996). For example, the total number of Bronco II first-event single-vehicle rollovers is estimated to be about 14,000. During this same time, the total number of first-event single-vehicle rollovers for the Blazer/Jimmy (GM S&T models) was about 19,000.

TABLE 3.—NASS/CDS FIRST-EVENT SINGLE-VEHICLE ROLLOVER PERCENT, 1988–1996

Make*/model**/year range	Number of NASS single-vehicle (SV) cases	Number of crashes, weighted	Number of NASS first-event SV rollover cases	Number of first-event SV rollovers, weighted	First-event SV rollover sample error	Percent first-event SV rollovers per single-vehicle crash	Percent sample error (SE)***	T-value****
Ford Bronco II, 84–90	108	38,078	47	13,620	3,697	36	8.6	0
GM S&T series, 84–90	167	77,557	30	18,935	8,875	24	7.2	−1.014
Isuzu Trooper, 84–90	14	4,049	6	2,453	1,877	61	22.0	1.052
Jeep Cherokee, 84–90	32	7,074	6	1,061	523	15	5.6	−2.020
Jeep CJ–5, 71–80	47	19,375	23	12,476	9,840	64	22.9	1.169
Jeep CJ–7, 81–86	30	15,270	10	8,086	4,690	53	16.8	0.910
Jeep Wagoneer, 84–90	6	1,431	1	296	296	21	20.2	−0.687
Suzuki Samurai, 86–90	25	12,829	13	10,712	7,659	84	12.3	3.170
Toyota 4Runner, 84–90	30	9,102	13	4,005	2,605	44	12.4	0.544
Passenger cars, 84–90	5,494	2,260,883	596	256,910	45,658	11	1.0	−2.810
Light trucks and vans, 84–90	1,855	773,115	431	203,131	42,125	26	3.1	−1.036

*Makes listed alphabetically.

**Data for Jeep Wrangler was too small to analyze and is not presented in this table.

***NASS estimates have a sampling error because NASS is a survey rather than a complete census of all crashes. Rollover rates for two vehicles can be compared to each other for significant differences using the sample error at the 95 percent confidence interval as follows: If $|R_a - R_b| > 1.96$ multiplied by SQRT $[SE_a^2 + SE_b^2]$, then they are different; where R=rate, SE=sample error, SQRT=square root, and a & b are different vehicles.

****The T-value for a vehicle in the table is obtained by: (1) computing the difference between its percentage of first-event SV rollovers and that of Bronco II, (2) computing the standard error of that difference as the square root of the sum of the squares of the two standard errors involved, and (3) dividing the difference by its standard error. If the statistic is greater than 1.96, the compared vehicle is statistically different from the Bronco II at the 95% confidence interval. Positive values of T indicate that the compared vehicle has a greater rollover rate than the Bronco II. Conversely, negative values of T indicate that the compared vehicle has a lower rollover rate than the Bronco II.

7.4 Analysis of FARS Data

FARS data were analyzed for first-event single-vehicle rollovers in all single-vehicle crashes where at least one occupant in the vehicle was fatally injured. This excluded non-occupant fatal single-vehicle crashes, such as pedestrian fatalities. FARS years 1984–1996 were included to maximize the size of the sample. The Jeep CJ–5 and CJ–7 vehicles were not included in the FARS analysis because they were not produced during the same range of years (1984–90) as the Bronco II. The model year range for each make/model was selected to be as similar as possible to that of the subject vehicle. Unlike the State data described in Section 7.1, these FARS data are not adjusted and have not been controlled for environmental, roadway, or driver differences. Table 4 gives the results of this analysis by number of vehicles involved in fatal crashes, while Table 5 considers the total number of fatalities within each fatal vehicle.

TABLE 4.—FATAL VEHICLES IN FIRST-EVENT SINGLE-VEHICLE ROLLOVER CRASHES

Make and model *	Model year	Fatal vehicle single-vehicle crashes **	Fatal vehicle first-event SV rollover crashes	Percentage of the rollovers in fatal single vehicle crashes	Percent standard error [SQRT(P * Q/N)]
Chevy/Blazer GMC/Jimmy	84–90	385	168	44	2.53
Ford Bronco II	84–90	1259	762	61	1.38
Isuzu Trooper	84–90	99	39	39	4.91
Jeep Cherokee	84–90	296	111	38	2.81
Suzuki Samurai	84–90	203	81	40	3.44
Toyota 4Runner	84–90	326	175	54	2.76

* Makes listed alphabetically.
** FARS years 1984–1996.

TABLE 5.—FATALITIES IN FATAL VEHICLES IN FIRST-EVENT SINGLE-VEHICLE ROLLOVER CRASHES

Make and model *	Model year	Fatalities in single-vehicle crashes **	Fatalities in first-event SV rollover crashes	Percentage of single vehicle crash fatalities in the rollovers	Percent standard error [SQRT(P * Q/N)]
Chevy/Blazer GMC/Jimmy	84–90	423	183	43	2.41
Ford Bronco II	84–90	1364	823	60	1.32
Isuzu Trooper	84–90	109	43	39	4.68
Jeep Cherokee	84–90	316	115	36	2.71
Suzuki Samurai	84–90	214	85	40	3.34
Toyota 4Runner	84–90	361	194	54	2.6

* Makes listed alphabetically.
** FARS years 1984–1996.

The fifth column of Tables 4 and 5 shows that the Ford Bronco II has a higher percentage of fatal vehicles and fatalities in first-event single-vehicle rollovers than that of the other five peer vehicles, although it is somewhat similar to the Toyota 4Runner. While the Bronco II rollover rate is not statistically significantly different from that of its peers, these FARS analyses indicate that there could be an issue regarding the relative crashworthiness of Bronco II vehicles in rollovers. In an effort to cast additional light on the crashworthiness issue, several analyses were performed, as documented in section 7.5.

7.5 Crashworthiness Analyses

7.5.1. Crashworthiness Aspects

NCSA analyzed the NASS/CDS and FARS data using the same vehicles listed in the above FARS tables to compute the ratio of the number of fatally injured occupants in first-event single-vehicle rollover crashes (from FARS) to the number of involved occupants in such crashes (from NASS/CDS). Table 6 presents these data.

TABLE 6.—CRASHWORTHINESS ANALYSIS OF FIRST-EVENT SINGLE-VEHICLE ROLLOVER CRASHES ***

Make/model for model years 1984-1990 *	Number of involved occupants (weighted NASS data)	Number of fatalities (FARS data)	Percentage of fatally injured occupants to involved occupants	Standard error of percentage	T difference in percentage **
Chevy/Blazer GMC/Jimmy	27,935	183	0.65	0.27	−2.979
Ford Bronco II	17,721	823	4.44	1.24	0
Isuzu Trooper	5,334	43	0.80	0.33	−2.831
Jeep Cherokee	2,772	115	3.98	1.46	−0.238
Suzuki Samurai	22,199	85	0.38	0.26	−3.195
Toyota 4Runner	9,886	194	1.93	1.10	−1.517

* Makes listed alphabetically
** The T-value gives the difference in the percentage of fatalities divided by the standard error of the difference between the Bronco II and each vehicle. If the absolute value of the statistic is greater than 1.96, the compared vehicle is statistically different from the Bronco II at the 0.05 confidence level. Negative values indicated that the compared vehicle has a lower percentage of fatalities per involved occupant than the Bronco II.
*** Involved occupants were from NASS years 1988–1996, and fatally injured occupants were from FARS years 1984–1996.

These data indicate that the Bronco II has a significantly higher percentage of fatally injured occupants per the total number of involved occupants in first-event single-vehicle rollover crashes than three of the peer vehicles. However, it has a similar percentage when compared to the Jeep Cherokee and possibly to the Toyota 4Runner. This would suggest that if a first-event single-vehicle rollover occurs, there is more likely to be a fatality in a Bronco II than in some, but not all, of its peers.

7.5.2 FARS Ejection Path Analysis

To attempt to determine whether the unique design of the rear side windows in the Bronco II may have affected rollover crashworthiness, ODI reviewed available data on ejection path, including 1991–1996 FARS data on ejection path. FARS data prior to 1991 do not include such information.

Since FARS uses police reports to generate the data entered in the FARS system, it is generally limited to the data contained in the Police Accident Report (PAR). Most of the time, the ejection path is not reported on the PAR. In fact, for the 1991–1996 FARS, the data for first-event single-vehicle rollover crashes indicate that there were 16,124 unknown ejection paths out of the 21,325 ejected persons, whether or not they were fatalities.

Distribution of the ejection paths identified in FARS for each vehicle analyzed in section 7.4 is shown in Table 7. In these analyses, the parameter of ''side door'' includes all side doors; ''side window'' includes all side glass; ''through roof opening'' is through a convertible top which is down or a sunroof; and ''through roof'' is through a convertible roof which is up.

TABLE 7.—DISTRIBUTION OF EJECTIONS BY PATH IN FATAL FIRST-EVENT SINGLE-VEHICLE ROLLOVERS

Make/model, model years 1984–1990	Side door (percent)	Side window (percent)	Windshield (percent)	Back window (percent)	Back door (percent)	Through roof opening (percent)	Through roof (percent)	Other path (percent)	Unknown path (percent)
Chevy/Blazer, GMC/Jimmy	2.1	11.0	0.7	0.0	0.0	0.7	0.0	1.4	84.2
Ford Bronco II	2.3	7.4	1.7	1.3	0.2	0.0	0.0	0.2	87.0
Isuzu Trooper	0.0	11.9	2.4	4.8	0.0	0.0	0.0	0.0	81.0
Jeep Cherokee	5.3	9.7	4.4	0.9	0.0	0.0	0.0	0.0	79.6
Suzuki Samurai	1.3	2.6	0.0	0.0	0.0	3.9	5.3	0.0	86.8
Toyota 4Runner	2.9	6.2	1.1	2.2	0.0	10.5	1.5	1.8	73.8

FARS data: 1991–1996.

The results shown in Table 7 do not indicate a difference between the Bronco II and its peers in the ejection path for these fatal crashes. For ejection through the side windows including the rear side windows, the Bronco II rate is lower than that of three of its peers. When all glazing is considered as a single ejection path (Side Windows + Windshield + Back Window), the Bronco II still remains in the middle of the peer vehicles. It is noted that these results are based on a small sample of the crashes because most of the ejection paths are coded ''unknown'' in FARS.

7.5.3 NASS Case Analysis

To further study the ejection path issue, a hard copy review of all Bronco II rollover crashes in the NASS Crashworthiness Data System was conducted. Both totally and partially ejected occupants were included in this review.

As shown in Table 3, there were 47 NASS cases in which there was a Bronco II first-event single-vehicle rollover. ODI reviewed each of these cases and found that out of the 47 cases (each case contains one rollover incident), 23 cases had ejections involving 33 occupants (27 totally ejected and 6 partially ejected), 22 cases had no occupant ejections, and in 2 cases occupant ejections were unknown.

Table 8 shows recorded ejection paths for the 33 ejected occupants.

TABLE 8.—EJECTION PATHS FOR 33 EJECTED OCCUPANTS

Ejection path	Number of ejections	Weighted number of ejections *	Weighted percentage of ejections by ejection path
Unknown	11	667	19
Left Front (Driver Window)	7	822	24
Left Door Opened	2	344	10
Right Front (Passenger Window)	5	924	27
Windshield	3	447	13
Left Rear Window (Fixed)	2	67	2
Right Rear Window (Fixed)	1	62	2
Rear Backlight	1	30	1
Sunroof	1	86	3

* The total for all ejection paths does not equal to that shown in Item 4 of section 7.5.2. because the partial ejections are included in this analysis.

ODI's review of the 47 cases indicate the following:

1. In a majority of the cases, the crash scenario involved running off the road at highway speed and driver overcorrection, resulting in vehicle yaw, followed by rollover.

2. There was a wide variation in crash dynamics in the incidents reviewed.

3. Distortion of the vehicle body during rollover typically created several potential occupant ejection paths when glazing disintegrated at several locations.

4. The data reviewed are inconclusive with respect to identification of a ''most probable'' occupant ejection path during rollover.

7.6 Other Data Reviewed

7.6.1 Ford Data Review

Ford supplied analyses of rollover propensity in its January 29, 1998, submission in response to this petition. (A copy is in the public file.) These included an overall rollover rate analysis and a logistic regression analysis similar to the NHTSA analysis used in EA89–013.

In the Ford overall rollover rate analysis, rollover crash data were collected from five states and combined to obtain an overall rollover rate. The following states and crash years were used: Alabama, 1990–95; Arkansas, 1987–94; Michigan, 1985–91; Maryland, 1986–94; and Pennsylvania, 1988–

95. For exposure, Ford used registered vehicle years (RVY) for these same states and periods. Ford analyzed all types of vehicles, and included about 700 make/model/model year combinations.

For illustration purposes, Table 9 presents Ford's data for the first 11 sport utility vehicles in Ford's table as shown in Exhibit B of Ford's January 29, 1998, submission. In addition to the 11 sport utility vehicles in Ford's table, there were 4 other vehicles, including 3 pickup trucks (83–94 Ford Ranger—Rollover Rate—76; 81–83 Toyota pickups—75; and 84–94 Toyota pickups—67) and one passenger car (87–94 Mitsubishi Precis—68.)

The NASS/CDS analysis reported in Section 7.3 included four additional vehicle groups not in Table 9, which are the GM–S&T series, Isuzu Trooper, Jeep Cherokee, and Jeep Wagoneer. Their rollover rates ranged from about 20 rollovers per 10,000 Registered Vehicles Years (RVY) to about 36 rollovers per 10,000 RVY, with the remainder in the low to high twenties.

TABLE 9.—FORD STATE DATA ANALYSIS ROLLOVER RATES

Make and model	Model years	Type	RVY*	Rollover crashes	Rollover rate (rollovers/ 10,000 RVY*)
Toyota J4 Land Cruiser	81–83	4×4 SUV	762	8	105
Geo Tracker	89–94	4×4 SUV	46,966	370	79
Jeep CJ–7	81–86	4×4 SUV	137,670	1,032	75
Honda Passport	94	4×4 SUV	1,243	9	72
Ford Bronco II	84–90	4×4 SUV	605,297	4,132	68
Geo Tracker	91–94	4×2 SUV	8,255	56	68
Ford Bronco II	86–90	4×2 SUV	50,217	321	64
Dodge Raider	87–89	4×4 SUV	31,263	188	60
Toyota 4Runner	84–94	4×4 SUV	121,813	728	60
Jeep CJ–5	81–83	4×4 SUV	12,852	74	58
Suzuki Samurai	86–94	4×4 SUV	81,780	451	55

*RVY: registered vehicle years.

For the occupant injury analysis, Ford looked at injury rate data in four states for several crash years, Arkansas, 1987–94; Michigan, 1985–91; Maryland, 1986–94; and Pennsylvania, 1988–95. The total number of rollover crashes, total number of occupants involved in those crashes, and number of severe and fatal injuries were reported for about 700 make/model/model year combinations of vehicles. For illustration purpose, Table 10 presents selected data from Ford's analysis for vehicles similar to the Bronco II.

TABLE 10.—FORD OCCUPANT INJURY RATES IN ROLLOVER CRASHES

Make,* model, model year range	Number of crashes	Number of occupants	Number of severe injured occupants	Number of fatal injured occupants	Percent severe and fatal injured occupants in rollover crashes
Ford, Bronco II, 84–90	4,074	6,453	492	55	8.5
GM, S&T series, 83–94	3,261	5,130	415	68	9.4
Isuzu, Trooper II, 84–91	446	718	53	4	7.9
Jeep, Cherokee, 81–94	1,301	2,078	98	15	5.4
Jeep, CJ–5, 81–83	72	106	12	3	14.2
Jeep, CJ–7, 81–86	989	1,492	122	12	9.0
Jeep, Wagoneer, 81–90	205	330	20	1	6.4
Jeep, Wrangler, 87–94	378	577	46	4	8.7
Suzuki, Samurai, 86–94	418	601	73	6	13.1
Toyota, 4Runner, 84–94	675	1,067	98	14	10.5

*Makes listed alphabetically.

Ford also conducted a logistic regression analysis similar to the analysis conducted by NHTSA during EA89–013. In this analysis, the rollover rates for several sport utility vehicles were compared. The data were normalized for driver and environmental factors, which included age, sex, location, and roadway alignment, and included crash data from Michigan (85–91), Arkansas (87–94), Florida (89–94), Maryland (86–88), and Pennsylvania (88–95). Figure 4 presents these data. The upper and lower 95 percent confidence intervals are presented along with each vehicle's average adjusted rollover rate. This analysis indicates that while the rollover propensity of the Bronco II is relatively high (in fact, the two-wheel drive model has the highest rate), it is not statistically significantly different from that of most of its peers.

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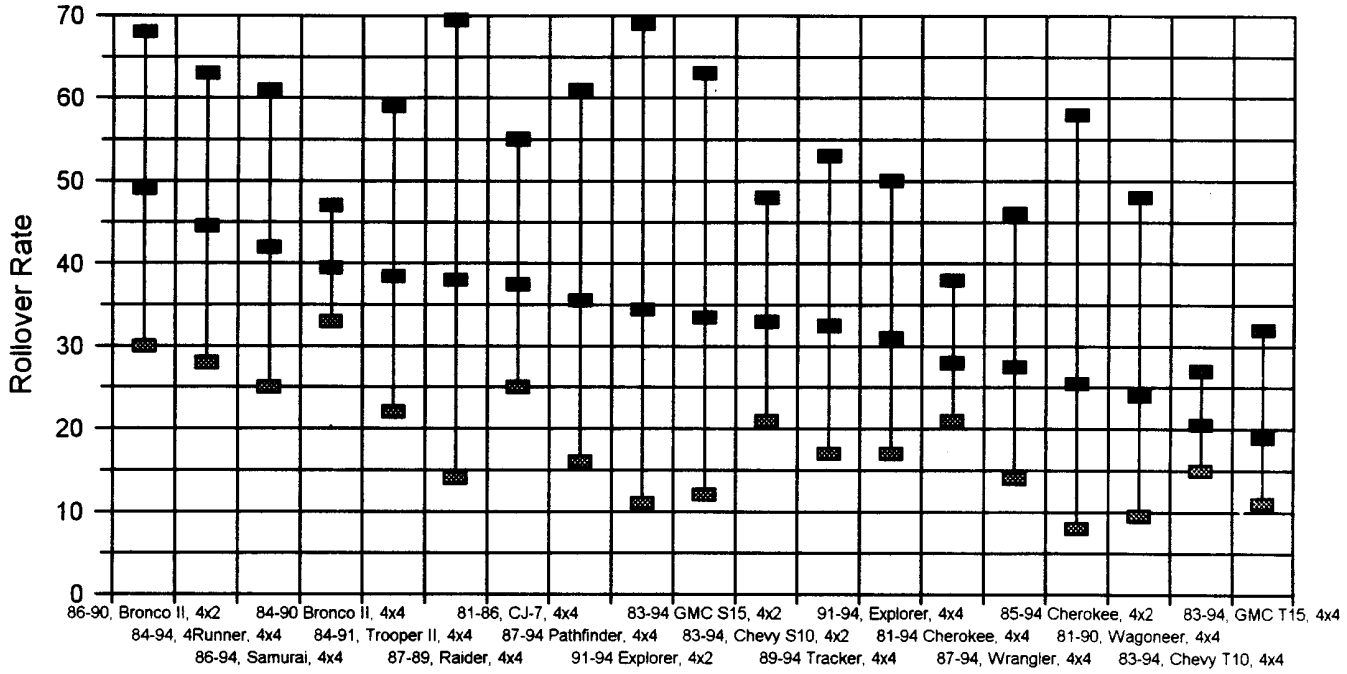

Figure 4. Ford's Analysis of Rollover Rate for Various Sport Utility Vehicles, Controlled for Age, Sex, Location, and Roadway Alignment (Michigan, Arkansas, Florida, Maryland, and Pennsylvania).

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7.6.2 Suzuki Data Review

On March 19, 1997, Suzuki submitted a FARS data analysis related to certain 4X4 SUV rollovers. This analysis only considered those vehicles where the rollover occurred ''on road,'' hence no off-road rollovers were considered. Suzuki stated that comparison of on-road rollovers tends to normalize the rollover rate for some environmental and roadway conditions where the crash occurred. FARS years 1982 through 1995 were used in the analysis. Table 11 presents data for these vehicles.

Table 11 indicates that the rate of on-road first-event single-vehicle rollovers in fatal single-vehicle crashes per 100 vehicles with at least one occupant fatality for the Bronco II is slightly lower than the Toyota 4Runner, and is higher than that of the other five peer vehicles.

TABLE 11.—SUZUKI FARS ANALYSIS REGARDING ON-ROAD FIRST-EVENT SINGLE-VEHICLE ROLLOVERS

Make and model	Model years	On road first-event single-vehicle rollovers in fatal SVCs**	SVC involved vehicles with occupant fatality	On road first-event single-vehicle rollover in fatal SVCs per 100 vehicles with occupant fatality
Toyota 4Runner	90–94	40	188	23.8
Ford Bronco II	84–90	291	1,372	21.2
Nissan Pathfinder	87–94	22	185	11.9
Jeep Grand Cherokee	93–94	9	76	11.8
Chevrolet T10 Blazer	83–90	108	1,057	10.2
Ford Explorer	91–94	22	227	9.7
Isuzu Trooper	84–89	14	146	9.6

** SVCs: Single Vehicle Crashes.

8.0 PETITIONER'S DATA ANALYSIS

In support of his petition, the petitioner stated that sworn deposition testimony of Dr. Michelle Vogler, a statistical expert retained by Ford in Bronco II product liability litigation, shows, by actual count, that there have been 5,672 rollovers of Bronco II vehicles in six states during a six-year time period. The petitioner extrapolated this figure to assert that ''there have been 50,000 Bronco II rollovers nationally since the subject vehicles were first placed in the hands of American consumers.'' By his estimation, ''as many as 300,000 Bronco II owners are going to suffer the same fate [rollover].''

After reviewing NASS/CDS data, the agency believes that Mr. Heiskell's extrapolation overstates the number of Bronco II rollovers that would be expected in a 14-year period. Regardless, the absolute number of rollovers is an inappropriate measure for an analysis of rollover propensity. The petitioner's extrapolation focuses on the number of rollovers of any type (as opposed to first-event rollovers) and represents the raw number of rollovers expected (as opposed to the rollover rate) over a 14-year period, without adjusting for attrition of the Bronco II fleet over time. In contrast, NHTSA's analysis uses the percentage of single-vehicle crashes in which a first-event single-vehicle rollover occurred.

First, the total number of rollovers is, to a large degree, related directly to the number of vehicles on the road. Thus, everything else being equal, two make/models with equivalent rollover propensity could have vastly different numbers of rollovers based solely on variations in the on-road fleet of each make/model. Therefore, the total number of rollovers is insufficient on its own to assess risk. Risk assessment is based on normalized populations and expected outcomes, and can be best accomplished using the agency's long-accepted metric, ''first-event single-vehicle rollovers per single-vehicle crash.''

Secondly, the agency used first-event single-vehicle rollovers as its measure because these crashes focus more on the handling and stability aspects of vehicle performance than do all rollovers combined. Subsequent event rollovers, which were included in the petitioner's extrapolation, generally result from multiple-vehicle collisions and collisions with objects such as utility poles, guardrails, etc., where the inherent handling and stability of each vehicle plays a lesser role due to the presence of forces exerted upon the vehicle by its collision partner.

The use of first-event single-vehicle rollovers per single-vehicle crash has been the focus of most serious efforts to relate vehicle roll stability measures to real-world vehicle rollover propensity. The agency subscribes to this approach, and believes that this measure is an effective way to focus on the contribution of vehicle stability to rollover propensity, while the total number of rollovers experienced by a particular make/model is not.

9.0 Findings

1. An analysis of rollover complaints in the ODI consumer database reveals a sharp decrease in Bronco II rollover complaints since EA89–013 was closed. Additionally, an analysis of ODI rollover complaints received since 1994 on peer vehicles does not suggest that the subject vehicles have an abnormally high rollover propensity compared to other sport utility vehicles.

2. Earlier analyses of rollover propensity demonstrated that the Bronco II first-event single-vehicle rollover rate was consistent with that of its peers, and the recently updated analyses, using both state and NASS data, confirm this finding.

3. FARS data indicate that the subject vehicles have a percentage of first-event single-vehicle rollover fatal crashes (out of all fatal single vehicle crashes) and a percentage of first-event single vehicle rollover fatalities (out of all fatalities in single vehicle crashes) that are substantially higher than that of five peer vehicles, although the results for the Bronco II are somewhat similar to those for the Toyota 4Runner.

4. The Bronco II had a similar number of fatalities per involved occupant in first-event single-vehicle rollover crashes when compared to the Jeep Cherokee and possibly to the Toyota 4Runner, and had more fatalities per involved occupant in first-event single-vehicle rollover crashes when compared to three other peer vehicles. This suggests that if a first-event single-vehicle rollover occurs, there is more likely to be a fatality in a Bronco II than in some, but not all, of its peers.

5. A review of FARS data between 1991 and 1996 describing occupant ejection path did not indicate a difference between the Bronco II and its peers, in part because most ejection paths were coded ''unknown'' in FARS.

6. A detailed review of the 47 NASS cases in which there was a Bronco II first-event single-vehicle rollover did not permit an identification of a ''most probable'' occupant ejection path.

7. In analyses conducted by Ford, the Bronco II's first-event single-vehicle rollover rate, measured as a proportion of the number of registered vehicles, is similar to that of several of its sport utility vehicle peers, pickups and a passenger car. In a logistic regression analysis which controlled for driver and roadway variables, a duplication of NHTSA's EA89–013 analysis using newer data, the Bronco II rollover rate was relatively high, but was not statistically significantly different from that of most of its peers.

8. Suzuki's FARS analysis indicates that the Bronco II and one of its peers have a similar rate of ''on-road'' first-event single-vehicle rollovers as a percentage of all single vehicle fatal crashes.

9. The petitioner's estimate of the number of rollover crashes involving the Bronco II appears to overestimate the number. In any event, the total number of rollover occurrences involving a particular vehicle is not an appropriate analytical tool to assess rollover risk.

10.0 Conclusion

The focus of this defect petition was on the allegedly high rollover propensity of the Bronco II. Consistent with its findings several years ago at the time it closed EA89–013, ODI's analysis of more recent data indicates that the rollover propensity of the Bronco II does not stand out from that of other peer SUVs. Although it was not directly raised by the petitioner, ODI conducted an extensive analysis of the crashworthiness of the Bronco II in rollover crashes. These analyses indicated a cause for concern, since the Bronco II vehicles have a percentage of first-event single vehicle rollover fatal crashes and a percentage of first-event single vehicle rollover fatalities that are substantially higher than that of most of the peer vehicles. However, ODI was unable to identify a most probable ejection path or to identify a specific aspect of the vehicle that appeared to adversely affect the vehicle's rollover crashworthiness.

Based on the information presented above, as well as the age of the subject vehicles, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

[FR Doc. 99–12579 Filed 5–14–99; 3:29 pm]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5683; Notice 1]

Dan Hill & Associates, Inc.; Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are asking for comments on the application by Dan Hill & Associates, Inc. (''Dan Hill''), of Norman, Oklahoma, for a renewal of its existing temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. As before, Dan Hill asserts that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

We granted Dan Hill a 1-year temporary exemption from Standard No. 224 on January 26, 1998 (63 FR 3784). The exemption was to expire on February 1, 1999, but Dan Hill filed a timely application for renewal, and, as provided by 49 CFR 555.8(e), the exemption will continue in effect until we make a decision on its application. The company has requested an extension of this exemption until February 1, 2001.

The information below is based on material from Dan Hill's original and renewal applications.

Why Dan Hill Needs to Renew Its Exemption.

Dan Hill manufactures and sells a horizontal discharge trailer (''Flow Boy'') that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines (''pavers''). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 required, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. Installation of the rear impact guard will prevent the Flow Boy from connecting to the paver.

Thus, Flow Boy trailers will no longer be functional and contractors will be forced to use standard dump body trucks or trailers with their inherent limitations and safety risks.

Dan Hill's Reasons Why Compliance Would Cause Substantial Economic Hardship to a Manufacturer That Has Tried in Good Faith To Comply With Standard No. 224.

At the time of its initial application, Dan Hill told us that it had manufactured 81 Flow Boy trailers in 1996 (plus 21 other trailers). Its production in the 12-month period preceding its application for renewal was ''130 units for the domestic market and 35 units for the international market.''

Dan Hill originally asked for a year's exemption in order to explore the feasibility of a rear impact guard that would allow the Flow Boy trailer to connect to a conventional paver. It has concentrated its efforts this past year in investigating the feasibility of a retractable rear impact guard, which will enable Flow Boys to continue to connect to pavers.

In the absence of an exemption, Dan Hill originally asserted that approximately 60 percent of its work force would have to be laid off; it now argues that failure to extend its exemption would ultimately cause a lay off of ''approximately 70 percent'' of its work force. If the exemption were not renewed, Dan Hill's gross sales would decrease by $8,273,117. Its cumulative net income after taxes for the fiscal years 1995, 1996, and 1997 was $303,303. It projected a net income of $356,358 for fiscal year 1998.

At the time of its original application, its studies show that the placement of the retractable rear impact guard would likely catch excess asphalt as it was discharged into the pavement hopper. Further, the increased cost of the Flow Boy would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the increased weight of the retractable rear impact guard would significantly decrease the payload of the Flow Boy.

Dan Hill sent its Product Specialist to Germany in 1994 to view underride protection guards installed by a German customer on Flow Boy trailers but the technology proved inapplicable because of differences between German and American pavers. Manufacturers of paving machines are not interested in redesigning their equipment to accommodate a Flow Boy with a rear impact guard. Dan Hill contacted a British manufacturer of a retractable rear impact guard but the information received by the time of its initial application did not look encouraging.

During the time that the exemption has been in effect, Dan Hill has continued its efforts to locate a source for a retractable rear impact guard, locating one in Europe which ''was in the process of designing a retractable guard that would meet Standard No. 223 specifications and attach to the Flow Boy trailer while allowing the Flow Boy to attach to a paver.'' However, the European retractable rear impact guard, which was of a ''swing out'' design, raised problems of worker safety, reduced payload because of the guard's weight, accumulation of asphalt paving material on the guard, and prohibitive costs. Dan Hill is now examining the feasibility of a ''swing in'' guard. It is working with an English source to develop a guard that will comply with Standard No. 223. Dan Hill will then install the guard on several Flow Boy trailers to determine whether further design modifications are required. It anticipates full compliance at the end of a further exemption of 2 years.

Dan Hill's Reasons Why a Temporary Exemption Would be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Dan Hill believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Flow Boy aids in the construction of the national road system. Flow Boy spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Flow Boy is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

How You May Comment on Dan Hill's Application

If you would like to comment on Dan Hill's application, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: June 18, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: May 14, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–12627 Filed 5–18–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–5: OTS No. 4202]

Alaska Federal Savings Bank, Juneau, Alaska; Approval of Conversion Application

Notice is hereby given that on May 12, 1999, the Director, Office of Examination & Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Alaska Federal Savings Bank, Juneau, Alaska, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104–4533.

Dated: May 14, 1999.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 99–12547 Filed 5–18–99; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–6: OTS No. 2286]

Indian Village Community Bank, Gnadenhutten, OH; Approval of Conversion Application

Notice is hereby given that on May 12, 1999, the Director, Office of Examination & Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Indian Village Community Bank, Gnadenhutten, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of

Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: May 14, 1999.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 99–12548 Filed 5–18–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–7: OTS No. 1368]

Mechanics Savings & Loan, FSA, Steelton, PA; Approval of Conversion Application

Notice is hereby given that on May 12, 1998, the Director, Office of Examination & Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Mechanics Savings & Loan, FSA, Steelton, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 14, 1999.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 99–12549 Filed 5–18–99; 8:45 am]

BILLING CODE 6720–01–P

federal register

Wednesday
May 19, 1999

Part II

Department of Housing and Urban Development

Request for Proposals; Contract Administrators for Project-Based Section 8 Housing Assistance Payments (HAP) Contracts; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4511–N–01]

Request for Proposals; Contract Administrators for Project-Based Section 8 Housing Assistance Payments (HAP) Contracts

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of Request for Proposals.

SUMMARY: The Request for Proposals (RFP) provided in this notice was issued by HUD on May 3, 1999, and is also published in the **Federal Register** to ensure a wider dissemination. Through this RFP, HUD is seeking sources interested in providing contract administration services for project-based Housing Assistance Payment Contracts under Section 8. This solicitation is not a formal procurement within the meaning of the Federal Acquisition Regulations (FAR) but will follow many of those principles. The Request for Proposals follows this Summary.

Dated: May 11, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

Request for Proposals; Contract Administrators for Project-Based Section 8 Housing Assistance Payments (HAP) Contracts

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Attachment II Proposal Submission Form
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1. Introduction

This is the Department of Housing and Urban Development's (HUD) Request For Proposals (RFP) to provide contract administration services for project-based Housing Assistance Payments (HAP) Contracts under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (Section 8). Of the approximately 24,200 project-based Section 8 HAP Contracts in effect, Public Housing Agencies (PHAs) currently administer approximately 4,200. These PHAs will generally continue to administer these HAP Contracts until expiration. HUD administers the balance of approximately 20,000. This RFP covers contract administration for most of these HUD administered contracts.

When HUD renews the expired project-based HAP Contracts that PHAs currently administer, HUD generally expects to transfer contract administration of the renewed HAP Contracts to the Contract Administrator (CA) it selects through this RFP for the service area where the property is located. This RFP does not apply to contract administration of Section 8 projects assisted under the Section 8 moderate rehabilitation program (including the Section 8 moderate rehabilitation single room occupancy program) or the Section 8 project-based certificate program, or to contract administration of Section 9 projects to be assisted under the Section 8 project-based voucher program.

The successful offerors under this RFP will oversee HAP Contracts, in accordance with HUD regulations and requirements. The CAs responsibilities will be governed by an Annual Contributions Contract (ACC) entered into with HUD (Attachment III). After execution of the ACC, the CA will subsequently assume or enter into HAP Contracts with the owners of the Section 8 properties. The Contract Administrator will monitor and enforce the compliance of each property owner with the terms of the HAP Contract and HUD regulations and requirements.

Proposals in response to this RFP may cover an area no smaller than an individual State (or U.S. Territory). Proposals may cover one or more HUD Multifamily Hubs or one or more States (or U.S. Territory). Geographic Service Area Jurisdiction (Attachment II) describes the jurisdictions of the Multifamily Hubs. HUD encourages proposals through joint ventures and other public/private partnerships between public housing agencies and other private or non-profit entities.

Under the approximately 20,000 Section 8 HAP Contracts this RFP covers, HUD pays billions of dollars annually to owners on behalf of eligible property residents. HUD seeks to improve its performance of the management and operations of this function through this RFP.

Specifically, HUD seeks through this solicitation to achieve three programmatic and three administrative objectives.

Programmatic Objectives

- Calculate and pay Section 8 rental subsidies correctly.
- Administer project-based Section 8 HAP Contracts consistently.
- Enforce owner obligations to provide decent housing for eligible families.

Administrative Objectives

- Execute ACCs only with entities that have the qualifications and expertise necessary to oversee and manage affordable housing and that have the capacity to perform the required services with requisite personnel and other resources.
- Get the best value for dollars spent for CA services.
- Encourage the development of joint ventures and/or partnerships for contract administration services to obtain the benefit of the best practices of both public and private sectors.

2. Overview of Contract Administrator's Responsibilities

Contract Administrators must administer Section 8 HAP Contracts in accordance with the ACC, Federal law, and HUD regulations and requirements, both current and as amended in the future. The ACC with the CA will specify the area where the CA is required to provide contract administration services (service area). The ACC will specify the Section 8 assisted units under HAP Contracts that HUD assigns to the Contract Administrator for servicing (covered units). From time to time during the term of the ACC, HUD may add or delete covered units for contract administration under the ACC. Some units may be assigned to Participating Administrative Entities (PAE) by the Office of Multifamily Housing Assistance Restructuring (OMHAR) for contract administration. On an annual basis, the CA will request funds from the HUD Financial Management Center (FMC) to cover the Section 8 funds to be disbursed to owners for eligible units under the HAP Contract.

Under this RFP, the offerors will competitively bid to perform contract administration services for properties with project-based Section 8 HAP Contracts. A list of the projects which may be assigned under this RFP is located at www.hud.gov/fha/mfh/rfp/sec8rfp.html.

The Statement of Work details core functions (tasks) that the Contract Administrator must perform.

The major tasks of the Contract Administrator under the ACC and this RFP include, but are not limited to:

- Monitor project owners' compliance with their obligation to provide decent, safe, and sanitary housing to assisted residents.
- Pay property owners accurately and timely.
- Submit required documents accurately and timely to HUD (or a HUD designated agent).
- Comply with HUD regulations and requirements, both current and as amended in the future, governing administration of Section 8 HAP contracts.

2.1 Eligibility for Participation

By law, HUD may only enter into an ACC with a legal entity that qualifies as a ''public housing agency'' (PHA) as defined in the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). However, that does not preclude joint ventures or other partnerships between a PHA and other public or private entities to carry out the PHA's contract administration responsibilities under the ACC between the PHA and HUD.

Under the law, a public housing agency is defined as a:

''* * * State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.'' (42 U.S.C. 1437a(b)(6)).

2.2 Definition of a Public Housing Agency

To qualify as a PHA that may enter into a Section 8 ACC with HUD, the legal entity must be one of the following:

A general or special purpose governmental entity: Such governmental entities include a State, municipality, housing authority, or governmental public benefit corporation.

A multi-state, interstate or regional governmental entity.

An instrumentality entity: Such instrumentality entity must act as an *instrumentality* of a parent governmental entity, or multiple parent governmental entities. The instrumentality entity may be a for-profit or not-for-profit entity.

HUD may require the submission of legal opinions and organizational documents needed to determine whether an entity qualifies as a PHA.

In addition, the PHA and any related entity must obtain clearance under HUD Previous Participation procedures (see Form HUD–2530) prior to execution of the ACC.

2.3 Instrumentality Entity Eligibility

An instrumentality entity may be an entity that already exists when the offeror submits a proposal to HUD under this RFP, or a legal entity specially formed subsequent to proposal submission, and prior to execution of the ACC between the entity and HUD, to carry out contract administration under the ACC.

To qualify as an ''instrumentality entity'', the relationship between an instrumentality entity and a governmental entity (''parent entity'') must include all of the following characteristics:

- The parent entity must have the right to approve the corporate charter or other organic documents of the instrumentality entity, including the right to approve any amendments.
- The parent entity must have the right to control, direct and authorize the execution of the ACC between HUD and the instrumentality entity.
- The parent entity must have the right to directly or indirectly control operation of the instrumentality entity.
- The parent entity must have the right that upon dissolution or termination of the instrumentality entity, title to all real or personal property held by the instrumentality entity must be transferred to the parent entity or an entity designated by the parent entity.

Before execution of the ACC with an instrumentality entity, HUD will, upon submission of appropriate documentation as required by HUD, determine whether the private instrumentality entity has been properly established, possesses the required power and jurisdiction to carry out contract administration in the service area, and qualifies as an instrumentality entity as described above.

The charter or other organic documents of the instrumentality entity (e.g., certificate of incorporation, partnership agreement or certificate) must provide that the instrumentality entity is authorized to ''engage in or assist in the development or operation of low-income housing.''

Governmental parent entities may partner with private for-profit or non-profit entities that hold an interest, directly or indirectly, in an instrumentality entity so long as such instrumentality entity is otherwise in compliance with the above stated requirements for eligibility of an instrumentality entity. Private entities may contract directly with an instrumentality entity.

As stated in the evaluation criteria, a proposal for contract administration by an instrumentality entity under ACC between HUD and such entity shall specify any services or functions to be provided or performed by the parent entity, or by any other entity which holds a direct or indirect interest in such instrumentality, to carry out or support Section 8 contract administration in accordance with the ACC and this RFP. If the proposal is accepted, such parent or other entity shall enter into a contract with the instrumentality entity, prior to execution of the ACC, that specifies all such services or functions, and the contract shall obligate the parent entity to provide such services or functions. Such contract shall specify that HUD is a third-party beneficiary of such contract and shall be executed by the parent and instrumentality entities and be in the form and substance approved by HUD.

3. Statement of Work

3.1 Overview

3.1.1 Performance Based Contracting

For work performed under ACCs awarded in response to this RFP, HUD will use Performance-Based Service Contracting (PBSC). PBSC is based on the development of a performance work statement, which defines the work in measurable, mission-related terms with established performance standards and review methods to ensure quality assurance. PBSC assigns incentives to reward performance that exceeds the minimally acceptable and assesses penalties for unsatisfactory performance.

The CA must complete all tasks described in this section of the RFP, including both ''Requirements'' and ''Incentive Based Performance Standards.'' Failure to complete the tasks will result in default of the terms and conditions of the ACC. HUD may terminate the ACC at any time in whole or in part if HUD determines that the CA has committed any default under the ACC.

The specified tasks outlined will provide the offeror with the necessary information to complete the Submission of Proposal Form (Attachment II).

3.1.2 Elements of Core Tasks Descriptions

The description of each core task contains the following elements:

Outcome: The required result of the task.

Requirements: A general description of specific tasks the CA must perform.

Note: CAs must perform each task in accordance with all relevant HUD regulations and requirements in effect during the term of the ACC. The RFP does not set forth the details of such regulations and requirements.

Reference: Current HUD regulations and other HUD requirements related to each task.

Incentive Based Performance Standards: A description of specific elements of each core task. HUD will measure the CA's performance of each such element as the performance standard to determine the CA's earned Administrative and Incentive Fees.

Quality Assurance: A listing of the methods and resources HUD will use to verify the accuracy of CA's reported performance and accomplishments. HUD may use other methods that it deems appropriate to assure quality.

3.1.3 HUD Regulations and Requirements

All references mentioned in the tasks may be obtained through HUD's website (http://www.hudclips.org/cgi/index.cgi.) from which interested parties may obtain HUD handbooks and other directives or through the HUD Multifamily Clearinghouse at 1–800–685–8470. It should be noted that the regulations and directives listed are the current instructions and requirements and may be updated from time to time.

HUD does not represent that the references listed in the RFP or on the HUD website are a complete listing of current relevant HUD regulations and requirements. In addition, HUD regulations and other requirements may change from time to time during the term of the ACC.

HUD's codified regulations are issued as Title 24 of the Code of Federal Regulations (CFR). Revisions or additions to HUD regulations are initially published in the **Federal Register**. HUD may also publish Federal Register notices. In addition to publication in the Federal Register and the CFR, HUD issues additional program requirements as HUD ''directives'', including HUD notices, handbooks and forms.

The CA will be required to carry out the tasks described in this Section, as well as other responsibilities related to contract administration under the ACC, in accordance with all HUD regulations and requirements in effect from time to time, as well as other responsibilities related to contract administration under the ACC.

3.1.4 Core Tasks

The RFP describes eleven core tasks that the CA must perform:

1. Conduct management and occupancy reviews.
2. Adjust contract rents.
3. Process HAP contract terminations or expirations.
4. Pay monthly vouchers from Section 8 owners.
5. Respond to health and safety issues.
6. Submit Section 8 budgets, requisitions, revisions and year-end statements.
7. Submit audits of the CA's financial condition.
8. Monitor owners progress in addressing Annual Financial Statement deficiencies.
9. Renew HAP contracts.
10. Report on CA operating plans and progress.
11. Follow up on results of physical inspections of Section 8 projects. 3.2 Management and Occupancy Reviews

The CA must conduct an on-site management and occupancy review of each Section 8 property, no less than annually. (Some properties may have multiple HAP contracts.) The review must be a comprehensive assessment of the owner's procedures for directing and overseeing project operations, and the adequacy of the procedures for carrying out day to day, front line activities. Some examples of the areas that the CA must audit are: maintenance, security, leasing, occupancy, certification and recertification of family income, and determination of the family payments, financial management, Management Improvement and Operating (MIO) Plans, and general maintenance practices. The results of the on-site review must provide adequate documentation to support any enforcement actions proposed against the owner by the CA or HUD.

Outcome: Identify and resolve areas of noncompliance with HUD regulations and other requirements.

Requirements

- Schedule and conduct annual reviews of each property, using form HUD–9834 or other appropriate documentation.
- Evaluate the owner's operating policies and procedures following guidance in the appropriate HUD directives.
- Verify compliance with HUD regulations and requirements regarding occupancy issues (e.g., resident eligibility and selection, examination and reexamination of family income and assets, household characteristics) and verify that correct documentation is contained in each resident file to support claims for payment under the HAP contract. Use the following resident file random sampling:

Number of units	Minimum file sample
100 or fewer.	5 files plus 1 for each 10 units over 50.
101–600	10 files plus 1 for each 50 units or part of 50 over 100.
601–2000.	20 files plus 1 for each 100 units or part of 100 over 600.
Over 2,000.	34 files plus 1 for each 200 units or part of 200 over 2,200.

- If the CA's review of the sample indicates a problem, the CA must require the owner/agent to conduct a 100% review of the files and report the results of the review to the CA. The CA will test the review done by the owner/agent to determine its reliability and accuracy.
- Verify owner compliance with civil rights regulations, including Title VI, Title VIII, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

• Notify the jurisdictional HUD office by close of next business day of any potential fraud or potential violations of law identified during the reviews.

• Prepare and submit to the owner/agent and jurisdictional HUD office a written report, on form HUD–9834, or other appropriate HUD-required documents, within 30 days of review, outlining any findings and recommendations for corrective action.

• Monitor implementation of corrective action. Notify jurisdictional HUD office within one business day when enforcement action is required.

• Enter required information into HUD data systems.

References

HUD Handbook 4350.1
HUD Handbook 4350.3

Incentive Based Performance Standards

1. The CA must conduct annual Management and Occupancy Reviews in accordance with the CA submitted and HUD approved workplan according to HUD requirements, document corrective actions taken against Section 8 owners or families, and monitor implementation of necessary corrective action.

2. CA's review must document on the appropriate form Section 8 owner compliance with civil rights regulations, including Title VI, Title VIII, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973 and forward to the owner and the appropriate jurisdictional HUD office within 30 days.

Quality Assurance

On-Site Reviews
Data Systems Reports

3.3 Rental Adjustments

Contract rent under each Section 8 HAP contract must be adjusted during the HAP contract term in accordance with the HAP contract and HUD requirements.

The CA must process rent adjustments correctly.

Outcome: Contract rent adjustments are timely and correct.

Requirements:

A. Budget Based Adjustments

Where applicable, the budget based rent adjustment method requires owners to submit an operating budget and supporting documentation for CA review.

The CA will determine budget based adjustments for contract rent by performing the following tasks:

• Analyze the property's operating budget and supporting documentation for a rent adjustment to determine reasonableness according to guidance in HUD Handbook 4350.1.

• Document rent increases on a Rent Schedule (Form HUD–92458)

• Analyze adjustments of the owner utility allowance schedule if applicable.

• Analyze adjustment to the monthly Reserve for Replacement deposit as required and recommend action to HUD.

• Approve/disapprove rent adjustment and provide owners written notification.

• Verify accurate, timely completion and submission of adjusted rent schedule by owners.

• Enter data into the appropriate HUD data system within five business days from completion of action.

B. Annual Adjustment Factor (AAF)/ Operating Cost Adjustment Factor (OCAF)

This rent adjustment method requires the CA to apply the AAF/OCAF to current contract rents to determine which rents are eligible for an adjustment. AAF's are published annually in the **Federal Register** and OCAF's are published annually in a Housing Notice. Refer to the current Notice on the HUD Homepage.

The CA will perform the following tasks:

• Determine the amount annual adjustments in accordance with HUD requirements.

• Analyze adjustments of the owner utility allowance schedule if applicable.

• Analyze adjustment to the monthly Reserve for Replacement Account, if applicable pursuant to the HAP contract and recommend action to HUD.

• Approve/disapprove the amount of rent adjustment and provide owners written notification.

• Validate comparability study if submitted by owners to support rent adjustment request.

• Verify accurate, timely completion and submission of adjusted rent schedule by owners.

• Enter data into the appropriate HUD system within five business days from completion of action.

C. Special Adjustments

For those HAP Contracts with AAF adjusted rents, owners may request special increases in costs for generally applicable increases items such as insurance, taxes and utilities. The appropriate jurisdictional HUD office must approve or deny all special adjustments within 30 days of receipt of properly documented request from CA.

The CA will process the owner's request for a special rent adjustments to determine if the special adjustment should be granted. To accomplish this the CA will perform the following tasks:

• Analyze owners' requests.

• Recommend action to the appropriate jurisdictional HUD office.

• Based on notification from HUD, notify the owner of rent adjustment approval or disapproval.

• Verify accurate, timely completion and submission of adjusted rent schedule by owners.

• Enter data into the appropriate HUD data system within 5 business days from completion of action.

D. Rent Appeals

Owners may appeal rent adjustment decisions. The first level of appeal is to the CA; the second level of appeal is to the appropriate jurisdictional HUD office. CA will review appeals.

The CA will perform the following tasks:

First Level Appeal

• Analyze owner's rent appeal requests.

• Provide owner with written notification of decision and justification within 30 days of receipt.

If appeal is approved:

• Verify accurate, timely completion and submission of adjusted rent schedule by owners.

• Enter data into the appropriate HUD data system within 5 business days from completion of action.

If appeal is denied:

• Notify owner of Second Appeal rights within 30 days of receipt.

Second Level Appeal

If appeal is approved by HUD:

• Receive approval from jurisdictional HUD office within 30 days after request for second level appeal.

• Verify accurate, timely completion and submission of adjusted rent schedule by owners.

• Enter data into the appropriate HUD data system.

References

HUD Handbook 4350.1
Notice: H–98–34
Notice: H–98–3
Notice: H–98–27

Incentive Based Performance Standards

3. CA completes processing of owner's request for rent adjustments and all CA approved rent adjustments are executed and finalized within 30 days of receipt of owner's request for a budget-based rent adjustment or on the anniversary date of the HAP contract for an AAF-based rent adjustment.

Quality Assurance

On-Site Reviews

Data Systems Reports

3.4 Opt-Out and Contract Termination

Section 8 Contracts may terminate because:

- An owner may choose not to renew an expiring Section 8 contract (opt-out); and
- The contract may be terminated by the CA (with HUD approval).

When Section 8 contracts will be terminated, the CA must work with HUD to obtain tenant-based rental assistance for eligible residents by notifying the appropriate HUD contact. The CA will coordinate efforts with the jurisdictional HUD office to identify a PHA to administer the tenant-based assistance.

Outcome: Provide ongoing rental assistance to eligible residents in occupancy at the time of the opt-out

Requirements

A. Notification Requirements

- Inform jurisdictional HUD office by close of next business day of notice by owner, that the owner has elected to opt-out of the program.
- Inform jurisdictional HUD office of recommendation to terminate contracts for cause/default under HAP Contract provisions by the close of the next business day.
- Verify owner has complied with HAP and current law on Opt-outs.

B. CA Must Take the Following Actions When Contracts are Terminated

- Obtain resident payment/unit size data from owners of properties.
- Provide resident/unit data to jurisdictional HUD office within 3 business days of receipt from the owner for purpose of obtaining Section 8 vouchers for residents.
- Coordinate efforts with the jurisdictional HUD to identify a local PHA to administer tenant-based assistance and reserve funds to cover such vouchers.
- Assist residents who must be relocated.

References

Notice: H–98–34

Incentive Based Performance Standards

4. CA notifies jurisdictional HUD office, by close of next business day of notice by owner, that the owner has elected to opt-out.

5. CA provides complete resident data to jurisdictional HUD office 90 days prior to contract expiration.

Quality Assurance

On-Site Reviews
Data Systems Reports

3.5 Monthly Vouchers

In Section 108 of 24 CFR, Part 208-Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects (a/k/a the Automation Rule) requires property owners to request HAP payments monthly through the Tenant Rental Assistance Certification System (TRACS). Vouchers are due the 10th day of the month preceding the month for which the owner is requesting payment. CAs may not pay owners until vouchers are received and reviewed for accuracy. The Voucher and Recertification Review (Attachment 1) lists the tasks and tools associated with review of vouchers and certifications/ recertifications.

Outcome: Payments of Section 8 vouchers and claims are only authorized on eligible units. Payments are made to owners by the first day of every month.

Requirements:

A. Verify accuracy of monthly Section 8 vouchers (forms HUD–52670 & HUD–52670–A)

The CA must verify and provide written documentation of the accuracy of payment requests by the last day of each month before the CA issues payments for the verified request. To accomplish this task, the CA must:

- Monitor owners follow-up efforts on discrepancies identified as a result of any income matching initiatives. HUD will provide discrepancy reports to the CAs.
- Monitor owner's compliance with entry of all resident certification and recertification data in TRACS.
- Verify voucher submissions by owner through TRACS system by the 10th day of the month preceding the month for which the owner is requesting payment.
- Verify through TRACS that the amount of HAP paid on behalf of each resident is accurate.
- Verify that all recertifications are completed by the owner agent in a timely manner and entered into TRACS.
- Verify that payment request does not include any units where Section 8 assistance has been abated.
- Analyze adjustments required to prior month's vouchers to determine accuracy and validity.
- Determine if authorized rent or utility allowance adjustments have been implemented timely and accurately.
- Verify pre-approval of Section 8 Special Claims (see item B).
- Notify the owner, in writing, of any corrections required and track corrections.
- Verify that project owners are complying with current HUD rules and regulations.

B. Verify and Authorize Payment Only on Valid Section 8 Special Claims for Unpaid Rent, Resident Damages and Vacancy Loss

Property owners may claim reimbursement from the CA for unpaid rent, resident damages, and vacancy losses on eligible units. The claims must be pre-approved by the CA before being submitted with the monthly voucher.

- Analyze, verify and approve/ disapprove claims using information in handbooks, regulations, Notices, TRACS and information provided by the owner.
- Enter data into monitoring program using a HUD compatible spreadsheet program.
- Approve/disapprove claims, execute forms and return to owner for their submission with next voucher.

C. Disbursement of Section 8 Funds to Owners

Disburse payments to owners through electronic fund transfer (EFT) transaction no earlier than the first of the month or no later than the first business day of the month after approval of Section 8 voucher (see item A)

Reference:

HUD Handbook 4350.3

Incentive Based Performance Standards

6. CA must promptly review each monthly voucher submitted by an owner, and agree with or modify it, so the monthly payment to the owner is sent no earlier than the first of the month or no later than the first business day of the month.

7. On a monthly basis CAs will provide written formal notification of corrective actions including income verification that results in overpayment to owners within 10 days of CA's verifying and certifying of the vouchers, discrepancies to owners and monitor for adequate resolution. Resolution must be completed within 30 days.

Quality Assurance

On-Site Reviews
Data Systems Reports

3.6 Health and Safety Issues and Community/Resident Concerns

CA must accept resident complaints and follow-up with owners to ensure that owners take appropriate action.

Outcome: Resolved health and safety issues and positive outgoing community/resident relations and communications.

Requirements:

A. Respond to Life Threatening Health and Safety Issues

- Respond to all life threatening health and safety issues immediately.
- Maintain tracking system for inquiries, responses and corrective actions and submit log to jurisdictional HUD office with monthly invoices.
- Notify owner of all concerns and determine appropriate corrective action.
- Monitor owner's response to concerns and implementation of corrective actions.

B. Respond to All Non-Life Threatening Health and Safety and Community/ Resident Concerns

- Respond to all non-life threatening health and safety issues within 2 business days of notification during normal business hours.
- Maintain tracking system for community/resident inquiries, responses and corrective actions and submit log to jurisdictional HUD office with monthly invoices.
- Notify owner of all concerns and determine appropriate corrective action.
- Monitor owner's response to concerns and implementation of corrective actions.

References:

HUD Handbook 4381.5 REV–2

Incentive Based Performance Standards

8. Respond, document and notify owner of life-threatening health and safety issues, inquiries/complaints immediately within an hour or prior to close of business day (whichever is sooner).

9. CA documents their initiatives and actions taken to notify the owner of non-life threatening health and safety issues inquiries/complaints and responds to residents within two business days of notification. CA continues to provide follow-up to residents on actions taken every two weeks until final resolution is reached. Documentation of all action is recorded.

Quality Assurance

On-Site Reviews
Monthly Invoice

3.7 Section 8 Budgets, Requisitions, Revisions and Year-end Statements

To receive monthly ACC payments, Section 8 budgets and requisitions (and revisions as required) must be submitted for each HAP contract at least 90 days before the beginning of the fiscal year. Also to receive monthly ACC payments, Year-end settlement statements must be prepared and submitted at least 45 days prior to the beginning of the CA fiscal year.

Outcome: CA submits financial documents to HUD accurately and timely.

Requirements:

- Prepare and submit annually to HUD (FMC) Section 8 budget (HUD Forms 52672 and 52673) at least 90 days prior to the beginning of the CA fiscal year.
- Prepare and submit annually to HUD (FMC) Annual Requisition for Partial Payment of Annual Contributions (HUD Form 52663) 90 days prior to the beginning of the CA fiscal year.
- Perform monthly comparison of HAP payments to owners and monthly ACC partial payments from HUD.
- Prepare and submit to HUD (FMC) revised Budget and Requisition (HUD Form 52663) when/if monthly comparison indicates ACC payments will exceed HAP payments by more than 5%. CAs must complete submissions by their Fiscal Year End date.
- Prepare and submit to the FMC Year-end Settlement Statement (HUD Form 52681) within 45 days of the year end.

Reference:

HUD Handbook 7420.7, Chapter 8

Incentive Based Performance Standards

10. CAs must submit to the FMC, acceptable and accurate Budget and Annual Requisition for each HAP contract 90 days prior to the beginning of CA's FY. Where monthly reviews of HAP payments to owners and ACC payments received from HUD indicate that the CA will be overpaid by more than 5%, the CA must submit a revised Budget and Annual Requisitions to reduce future payments accordingly. The Revisions (revised Budget and Requisition) must be submitted no later than the 1st day of the month following identification of overpayment.

11. CAs must submit to the FMC, the year-end statement within 45 days of the end of the CA's fiscal year.

Quality Assurance

Monthly Invoice
FMC Status Report

3.8 Contract Administrator's Audit

CA is required to maintain complete and accurate financial records covering the CA's contract administration of covered units under the ACC.

Outcome: Contract Administrator's records are complete and accurate.

Requirements:

- Records concerning contract administration under the ACC must be distinct and separate from all other business of the CA.
- Maintain complete and accurate records regarding activities relating to each HAP contract for covered units.
- CAs required to submit separate audited financial statements under OMB's Circular A–133 shall:
- Provide the FMC with annual financial audit of the CA's activities the earlier of 30 days after receipt of the auditors report or 9 months after the CA's fiscal year end (FYE) (in accordance with OMB Circular A–133). This audit must be performed by an independent public accountant (IPA).
- The Contract Administrator shall submit audited annual financial statements that fully comply with the requirements of OMB Circular A–133 within the earlier of 30 days after receipt of the auditor's report(s) or nine months after the end of the audit period. However, in cases where a Contract Administrator submits its audited financial statements more than 60 days after the end of its fiscal year, the CA shall submit all financial reports required by the HUD in unaudited form within 60 days after the end of its fiscal year.
- Submission of financial information shall also be in accordance with the requirements of HUD's Uniform Financial Reporting Standards (24 CFR, Part 5, Subpart H). The audit shall be performed by an independent auditor, procured using the standards set forth in Circular A–133 and other referenced documents in Circular A–133.
- In accordance with the ACC, CAs not required to submit separate audited financial statements under OMB's Circular A–133 shall: Submit annual unaudited financial statements within 60 days of the end of the CA's fiscal year. For-Profit instrumentality entities shall submit audited financial statements within 60 days of the end of the CAs fiscal year.
- In the event of audit findings that require corrective actions, the CA shall provide HUD with a proposed plan of corrective actions as part of the audit submission package. By the first day of each month, the CA shall provide HUD with a status report of corrective actions being implemented until all actions are completed. Corrective actions must proceed as rapidly as possible. Failure to provide the required audited financial information and/or timely implementation of corrective actions may result in default of the terms and conditions of the ACC.

Reference:

ACC contract
HUD Handbook 7420.7
OMB Circular A–133

Incentive Based Performance Standards

12. The CAs that are required to comply with OMB's Circular A–133 will provide HUD with unaudited financial statements, including supplemental data, within 60 days after the CA's FYE and audited financial statements no later than 9 months after the CA's FYE. CAs that are not required to comply with OMB's Circular A–133 will submit annual unaudited financial statements to HUD within 60 days of the end of the CA's fiscal year. For-Profit instrumentality entities shall submit audited financial statements to HUD within 60 days of the end of the CAs fiscal year.

Quality Assurance

100% Review of the Audit

3.9 Deficient Annual Financial Statements (AFS)

HUD regulations require owners of properties with project-based Section 8 contracts to submit Annual Financial Statements to the Real Estate Assessment Center (REAC) when required by the HAP contract.

Outcome: Financial condition of projects is verified.

Requirements: Where REAC's assessment of AFS reflects unacceptable performance and compliance indicators, owners must develop a plan outlining specific actions to correct deficiencies.

CAs must:

- Track the owners' deficiencies and their progress along their plan until resolved.
- Submit monthly reports by the first day of each month that indicate the owners' progress and activities in the previous month.
- Submit a final report to HUD within 30 days of owners' resolution of deficiencies.

Reference

HUD Handbook 2000.04 REV–1
OMB Circular A–133
Federal Register, September 1, 1998

Incentive Based Performance Standards

13. CA provides HUD with documentation by the first day of each month that indicates the owners' progress and activities in the previous month.

14. CA monitors the unacceptable performance and compliance indicators. CA provides documentation to HUD within 30 days of resolution.

Quality Assurance

On-Site Reviews
Data Systems Reviews

3.10 Renewals of Expiring Section 8 Contracts

As HAP contracts come to an end, owners must apply for contract renewals to have units remain with Section 8 project-based assistance. CAs must ensure that owners fulfill their obligations to residents and HUD that are commensurate with owner renewal decisions.

Outcome: Expiring Section 8 contracts are renewed

Requirements:

- Verify that owners provide the required one-year notice to residents of properties with expiring Section 8 contracts.
- Monitor owner actions with regard to providing a minimum of 90 days notice to CA of intent to renew or not renew the expiring contract, according to current Housing Notices.
- If the owner opts not to renew, take the actions described in Task 3.4.
- Maintain copies of owner's notification to residents of expiring contracts.
- If the owner chooses to renew, determine which option (form of renewal) the owner wishes to use and notify the jurisdictional HUD office.
- Prepare HAP renewal contracts.
- After receipt of confirmation of funding for renewal from HUD, ensure the HAP contract is executed (signed) by the owner and the CA.
- Execute and distribute copies of the HAP within one business week to the owner, jurisdictional HUD office, and CA files.

Reference

Notice: H–98–34

Incentive Based Performance Standards

15. Monitor, process and execute HAP contract documents.

Quality Assurance

On-Site Reviews
Data Systems Reports
Monthly Invoice

3.11 General Reporting Requirements

To track the performance of the Section 8 program, monitor and evaluate CA performance, and identify technical assistance needs, HUD requires the CA to regularly report its activities. Consequently, the CA shall provide to jurisdictional HUD offices Monthly, Quarterly, and Annual reports.

Outcome: HUD can monitor and evaluate program and CA performance from CAs accurate, timely reports.

A. Monthly Reports

CAs must submit reports and an invoice to the Government Technical Representative, or Monitor (GTR/GTM) by the 10th business day of each month for the previous month's activities.

- Hot topics—Projects that required special attention due to such matters as, abatement actions, excessive resident complaints, inquiries from governmental officials or general public.
- Work Plan Status Report that details:

Number of areas reviewed and services performed, including date of review and services; name/s of CA staff performing the review and performing the services.

- Any significant administrative actions that could affect the contract.
- Quality control activities and results
- Major accomplishments, success stories, etc.
- Noteworthy meetings
- Pending issues

B. Quarterly Reports

CAs must submit Work Plan (updated) and status reports to the designated GTR/GTM.

C. Annual Reports

By the close of each contract year, CAs must submit to HUD a report that details its progress against the Work Plan for that year. The report should detail all of the CA actions and services with dates, locations, and employee name for that calendar year. Also at the close of the contract year, CAs must submit a Work Plan for the following year that details its plan to satisfy the ACC's servicing requirements.

Incentive Based Performance Standards

16. HUD receives CA's (a) Monthly Reports by the 10th business day following the end of the month; (b) Quarterly reports by the 10th business day following the end of the quarter; (c) Annual reports by the 20th business day following the end of the CA's contract year.

Quality Assurance

On-Site Reviews
Data Systems Reports
Review of submitted reports

3.12 Physical Inspection

The Department is conducting a baseline physical inspection for every Section 8 property with a HUD-administered HAP contract. The Real Estate Assessment Center's (''REAC'') physical inspection software and protocol is being used for all inspections (See http://www.hud.gov/reac/reaphyin.html). Once this baseline is completed, HUD will determine frequency of future inspections. HUD

may issue a task order under the ACC to have the CA perform physical inspections. If such a task order is issued, HUD will negotiate with the CA a fixed-price fee for such services at that time.

Outcome: Verify completion of corrective actions based upon the analysis of the results of the physical inspections conducted on properties included in the ACC. Take legal actions as directed by HUD for enforcement of the HAP contract.

Requirements:

Post Inspection Activities

- Provide follow-up with owner on violations and corrective actions needed.
- Provide owner with time-frame to correct violations.
- Work with owner to eliminate the deficiencies.
- Abate payments when owner fails to correct violations within designated time period.
- Notify jurisdictional HUD office of abatement of payments and specific reasons for the action.
- Notify jurisdictional HUD office of the completion of required actions.
- Take legal action as directed by HUD for enforcement of the HAP contract.

Reference

HUD Handbook 4350.1
Federal Register, September 1, 1998

Incentive Based Performance Standards

17. CA monitors the unacceptable performance and compliance indicators. CA continues to provide follow-up to HUD on actions taken every 30 days until final resolution is reached.

4. Contract Administrator Fee

4.1 Terms

Administrative fee. The monthly fee HUD pays the PHA for each covered unit under HAP contract on the first day of the month. The administrative fee is the total of the basic fee plus the incentive fee. The fee amount is detailed in the ACC.

Basic fee. The basic fee is the agreed fee per unit per month. HUD pays the basic fee to the CA for each covered unit under HAP contract as of the first day of the month during the ACC term. There is a separate basic fee amount for each FMR area in the CA service area. The ACC will state the agreed basic fee amount for each FMR area.

HUD pays the basic fee for performance of tasks described in the Statement of Work and in accordance with the CA's annual workplan. Such performance is indicated by monthly invoices (and validated through HUD's quality assurance). The total amount of the basic fee will vary each month depending on the total number of eligible units to which it will be applied each month. Of that total, HUD has allocated each task to be performed a certain percentage of the total fee available. The Performance Requirements Summary (PRS) (see Section 4.8) states the basic fee amounts for all portions of the CA service area.

Incentive fee. An additional fee beyond the basic fee that the CA may earn. As reflected in the PRS, HUD will pay an additional payment to the CA for performance on specified Statement of Work tasks that exceeds HUD acceptable quality level for the IBPS associated with that task (see PRS, Section 4.8). HUD will pay up to a maximum 25% of the total incentive fee pool at the end of each quarter. Each task which has an incentive applied to it also identified the percentage of the incentive fee pool that applies to that task. The amount of the incentive fee payable to the CA is determined by HUD, based on HUD's evaluation of the CA's performance in administration of covered units. The amount of the incentive fee per unit per month may not exceed the maximum incentive fee stated in the ACC.

Disincentive. Deductions levied against the basic fee for performance that falls below the acceptable quality level. The ACC states the disincentive for each Statement of Work task. The PRS (Section 4.8) specifies the penalty for each IBPS task as a percentage of the basic fee amount.

Earned basic fee. The basic fee amount per unit per month for each IBPS task minus all applicable disincentive fees for any such IBPS task.

4.2 Evaluation of CA Performance

During the ACC term, HUD will conduct a monthly evaluation and rating of the CA's performance in contract administration of the covered units, and shall issue a performance rating based on such performance. As described below, payment of the fees is based on the HUD rating of the CA's performance.

HUD determines the amount of the earned basic fee for each CA per unit month by review of data submitted in the monthly invoice. HUD determines the amount of the incentive fee earned by the CA per unit per month by quarterly scoring of the CA's contract administration performance during the ACC term. The monthly review and quarterly scoring is based on the CA's performance of the task categories used as incentive based performance standards (IBPS), as described in the Statement of Work of this RFP. Monthly, HUD rates the CA's performance in completion of the IBPS to determine the earned basic fee by calculating a ''percentage completed'' for each IBPS task. In a similar manner, quarterly HUD rates the CA's performance in completing IBPS task to determine the earned incentive fee.

4.3 Basic Fee

In submitting their proposals, offerors are advised that, during the term of the ACC, the basic fee per unit month for each FMR area in the CA service area shall not exceed two (2) percent of the local two bedroom existing HUD Fair Market Rents (FMR) published in the **Federal Register** on October 1, 1998 (and effective the same date) and any revisions to such FMRs published in the **Federal Register** prior to award of the ACC. The entire national listing of the FMRs is located at http://www.hud.gov/local/atl/atl42322.html.

For your information, we have provided a table that lists by state, the total number of units by applicable FMRs. You may find this table with an explanation at http://www.hud.gov/fha/mfh/rfp/sec8rfp.html.

In responding to the RFP, the offeror's proposal must specify the proposed basic fee per unit per month (for the initial two year term and for each of three one year renewal terms. See Proposal Submission Form (Attachment II). If the offer is accepted, the ACC with the CA will specify the agreed basic fee amount during the ACC term. The fee will simply be stated as a percentage of the FMR as described above. The amount of fee proposed will be included in the evaluations for acceptability and to determine the price proposed reflects the proposed technical approach. The CA shall also submit supporting cost data as shown on the attachments.

As an example, if the FMR for a covered unit was $400 and the CA had proposed a price of 1.7%, then the basic fee for each covered unit would be $6.80. If the CA had an inventory of 10,000 covered units as of the 1st of the month, then the total basic fee available for that month would be $68,000. Since the PRS indicates that 5% of the fee will be applied to IPBS # 1, then $3,400 would be allocated to IPBS #1. The CA's performance of IPBS # 1 is evaluated as described to determine if the CA is due the full amount of the basic fee for the month.

4.4 Incentive Fee

In addition to the basic fee, the CA may earn an incentive fee awarded by HUD for CA performance of the contract administration services for designated

IBPS items that exceeds acceptable quality levels of performance. Determination of the amount of the incentive fee payment is specified in the PRS (Section 4.8).

The maximum incentive fee per covered unit per month HUD will evaluate the CA's performance in providing contract administration services for all covered units under the ACC for earned incentive fee quarterly. This evaluation will determine the portion of the incentive fee that the CA has earned for that quarter. As an example, if the FMR for a covered unit is $400, then 1% would be $4. If a CA had 10,000 covered units as of the 1st of the month, then the total incentive pool would be $40,000 for that month. Due to changes in the number of covered units, the subsequent two months may have provided $38,000 and $41,000, which would result in a total of $119,000 for the quarterly incentive pool. If one IPBS item was to cover 25% of the pool, then up to $29,750 in incentive fees could be earned for that specific IBPS factor.

HUD may add or modify performance standards during the ACC term, may add or modify the factors used to measure performance, and may specify the amount of the incentive fee for a specified level of performance. However, HUD must notify the CA of any such changes before the rating period for which such changes are used to rate CA performance.

4.5 Fee Payment

Each month, the CA shall determine the number of eligible units that were being managed as of the 1st day of the month. The CA shall then apply the accepted basic fee percentage to the covered number of units to establish the total available basic fee and the 1% to determine the amount of the incentive fee pool for that month.

4.5.1 Payment of Basic Fee

For tasks that are indicated as being paid annually, the CA shall apply the percentage of the IPBS factor to that monthly payment and deduct that from the total available fee. The CA shall then determine their compliance with the acceptable quality levels established in the ACC for tasks to be paid monthly and apply any appropriate reductions to the available fee. The CA must invoice HUD by the 5th day of each month for the amount of the basic fee earned for the month. For tasks for which annual payments of ongoing basic fees apply, the monthly amounts will be pooled into a total amount available for application of the AQL and the CA must invoice HUD by the 5th day of the 12th month of the ACC performance period. Each invoice shall be fully supported by documentation of the CA's achievements relating to the required AQL of each IPBS factor. In the event that subsequent HUD quality assurance reviews determine the CA did not meet the AQL established, HUD may adjust the payments of subsequent invoices to reflect the amounts that should have been withheld.

Notwithstanding the reductions in the fee for failing to meet the AQL, failure to complete the tasks may result in default of the CA for failing to comply with the terms and conditions of the ACC. HUD may terminate the ACC at any time in whole or in part if HUD determines that CA has committed any default under the ACC.

4.5.2 Payment of Incentive Fee

HUD will pay the incentive fee on a quarterly basis. HUD will base the amount of the incentive fee on the CA's performance against the Incentive Based Performance Standards listed in the Statement of Work.

HUD will review the CA's performance relative to its annual work plan and progress reported in the monthly invoices for the applicable quarter. The HUD findings will be compared to the CA invoice for the incentive fee and adjustments may be made to reflect the results of the HUD findings.

4.6 Availability of Funds

The award of the ACC and subsequent performance periods as well as all fee payments are subject to the availability of appropriated funds on an annual basis.

4.7 Use of Fee Income

The CA may use or distribute payments for the monthly on-going administrative fee that they earn under the ACC for any purpose apart from the use of these fees to reimburse, compensate or transfer any fees to the owners or management agents (or their affiliates) of the projects being serviced by the CA. HUD may reduce or request reimbursement of administrative fees paid if subsequent quality assurance indicates the performance indicated by the CA was not attained.

4.8 Performance Requirements Summary

Each task of the Statement of Work has at least one IBPS standard associated with it. These IBPS are central to the determination of earned basic and incentive fees.

The table below details for each performance standard:

- The IBPS number.
- The task and SOW requirement to which the IBPS applies.
- The acceptable quality level.
- The percentage of the basic fee that applies to the standard.
- Any applicable incentive fee and it method of calculation.
- Any applicable disincentive and its method of calculation.
- The method that HUD will use to assure the quality of the CA's reported performance.
- The frequency of payments for the basic fee.

The information in the table below will govern HUD's payment of CAs for all work performed under the ACC.

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IBPS Performance Requirements Summary

IBPS #	TASK and SOW Requirement	ACCEPTABLE QUALITY LEVEL (AQL)	% OF ADM FEE	INCENTIVE FEE (as % of incentive fee pool)	PENALTY FEE (as % of basic fee for IBPS)	QA Method	PAYMENT
1.	Management & Occupancy Reviews Section 3.2	Each month, average of 95% of required reports are provided to HUD, and data entry into HUD systems completed, within 30 days of **scheduled** completion of the review. AQL: 95%	5%	20% of the Incentive fee pool for achieving 100% on time submissions of acceptable reviews	2% reduction for every 1% that the monthly average falls below the AQL of 95%	On-Site Reviews Systems Data Reports	Monthly
2.	Document Section 8 Owner Compliance Section 3.2	Each month, average of 95% of acceptable reports are provided to HUD within 30 days of M&O Review completion AQL: 95%	5%	20% of the Incentive fee pool for achieving 100% on time submissions of acceptable reviews	2% reduction for every 1% the monthly average falls below AQL of 95%	On-Site Reviews Systems Data Reports	Monthly
3.	Processing Rental Adjustments Section 3.3	Each month, 100% of owner requests for rent adjustments and all approved rent adjustments are processed, executed and finalized within 30 days of receipt of owner's request or on the anniversary date of the HAP contract (for AAFs) AQL: 100%	5%	N/A	1% reduction for every 1% that performance falls below the AQL of 100%, except that if performance falls below 75%, a 50% reduction shall apply	On-Site Reviews Systems Data Reports	Monthly
4.	Opt-Out and Contract Termination Section 3.4	Each month, 100% of opt-out or termination notices are provided to HUD within one business day of notice by owner AQL: 1 business day	5%	N/A	1% reduction for every additional business day (partial days are rounded to the lowest whole day) the average notification time exceeds the AQL of 1 day	On-Site Reviews Systems Data Reports	Monthly
5.	Provide Resident Data to HUD Section 3.4	100% of complete resident data is provided to jurisdictional HUD office 90 days prior to contract expiration. AQL: 90 days	5%	30% of the incentive fee pool for providing HUD data an average of 100 days or more prior to the contract expiration	50% reduction if average notification time is from 85-90 days (portions of days are rounded to the nearest whole day) 100% reduction if average notification time is less than 84 days	On-Site Reviews Systems Data Reports	Monthly
6.	Review, verify, and authorize monthly Sec 8 vouchers Section 3.5	100% of monthly vouchers are processed to ensure the monthly payment to the owner is sent no earlier than the first of the month or no later than the first business day of the month. AQL: 100%	15%	N/A	1% reduction for every 1% the processing of vouchers falls below the AQL of 100%, except that if performance falls below 75%, a 50% reduction shall apply	On-Site Reviews Systems Data Reports	Monthly

IBPS #	TASK and SOW Requirement	ACCEPTABLE QUALITY LEVEL (AQL)	% OF ADM FEE	INCENTIVE FEE (as % of incentive fee pool)	PENALTY FEE (as % of basic fee for IBPS)	QA Method	PAYMENT
7.	Notification of Corrective Actions Section 3.5	100% of all formal written notifications to HUD are completed within 10 calendar days of CA's verifying and certifying of the vouchers and resolution of overpayments is completed within 30 calendar days. AQL: 100%	3%	N/A	1% reduction for every 1% the of the notifications and resolutions combined falls below the AQL of 100%, except that if performance falls below 75%, a 50% reduction shall apply	On-Site Reviews Systems Data Reports	Monthly
8.	Life Threatening Health & Safety Issues Section 3.6A	100% of all responses and notifications to owner of life-threatening health and safety issues, inquiries or complaints are completed within one hour of receipt of knowledge of the issue. AQL: 100%	7%	N/A	1% reduction for every 1% of responses/notifi cations that exceed the AQL of 100% notifications within one hour, except that if performance falls below 75%, a 50% reduction shall apply	On-Site Reviews Monthly Invoices	Monthly
9.	Non-life Threatening Health & Safety Issues Section 3.6B	100% of all non-life threatening health and safety inquiries and/or complaints are responded to within two business days of notification and follow-up every two weeks until final resolution is reached. AQL: Responses performed within 2 business days.	5%	N/A	10% reduction of basic fee for every business day, or part thereof, that the average response time exceeds two business days.	On-Site Reviews Monthly Invoices	Monthly
10.	Section 8 Budgets, Requisitions, Revisions Section 3.7	100% of all Budget & Annual Requisitions for each HAP contract are submitted at least 90 days prior to the beginning of CA's FY. Revised Budget and Annual Requisitions to reduce future payments are submitted no later than the 1st day of the month following identification of overpayments. AQL: 100% on time submissions	8%	N/A	2% reduction for every 1% below the AQL of 100%	Monthly Invoices FMC Status Reports	Monthly
11.	Year-End Statement Section 3.7	The year-end statement is submitted within 45 calendar days of the end of ensure this coincides with narrative description in SOW the CA's fiscal year. AQL: Submission within 45 days.	8%	N/A	4% reduction for every day the submission exceeds the AQL of 45 days.	FMC Status Report	Annually

IBPS #	TASK and SOW Requirement	ACCEPTABLE QUALITY LEVEL (AQL)	% OF ADM FEE	INCENTIVE FEE (as % of incentive fee pool)	PENALTY FEE (as % of basic fee for IBPS)	QA Method	PAYMENT
12.	Contract Administrator's Audit Section 3.8	For CAs that must comply with OMB's Circular A-133, unaudited financial statements are submitted within 60 days after CA's FYE. Audited financial statements are submitted no later than 9 months after CA's FYE. For CAs that are not required to comply with OMB's Circular A-133, annual unaudited financial statements are submitted to HUD within 60 days of the end of the CA's fiscal year. For-Profit instrumentality entities shall submit audited financial statements to HUD within 60 days of the end of the CAs fiscal year AQL: 100% on time submissions	3%	N/A	2% reduction for every day that any action exceeds the days allowed by the AQL.	100% Review of Audit	Annually
13.	Monitoring of Unacceptable Performance & Compliance Indicators Section 3.9	100% of projects with unacceptable performance and compliance indicators are monitored and reported by the first day of every month. AQL: Monitoring report by 1st of every month	3%	N/A	3% reduction for every day the AQL is exceeded for any report or documentation submission	On-Site Reviews Systems Data Reports Monthly Invoices	Monthly
14.	Monitoring of Unacceptable Performance & Compliance Indicators Section 3.9	100% of projects with unacceptable performance and compliance indicators are reported on and documentation is provided to HUD within 30 days of resolution. AQL: Documentation provided within 30days of resolution.	3%	N/A	3% reduction for every day the AQL is exceeded for any report or documentation submission.	On-Site Reviews Systems Data Reports	Annually
15.	Renewals of Expiring Sec 8 Contracts Section 3.10	90% of HAP contracts executed and provided to HUD at least 60 calendar days prior to expiration of the contract. AQL: 90%	12%	20% of the incentive fee pool to monitor, process, & execute 95% of HAP contract documents. An additional 10% of the incentive fee if 100% is attained.	3% reduction for every 1% below the AQL that the HAP contracts fail to be submitted at least 60 days prior to expiration.	On-Site Reviews Data Systems Reports Monthly Invoices	Monthly
16.	General Reporting Requirements Section 3.11	90% of reports (16 out of 17 total) submitted within required time frames. AQL: 90% of reports (16 of 17)	5%	N/A	10% reduction for every untimely report submitted below the AQL	On-Site Reviews; Data Systems Reports; Review of submitted reports	Monthly
17.	Monitoring of Physical Inspection Results Section 3.12	95% of projects with unacceptable performance and compliance indicators are notified within 30 days of receipt of report and monitoring follow-up reports to HUD by the 1st day of every month until final resolution is reached. AQL: 95% of initial notifications and follow up reports completed within required time frames.	3%	N/A	2% reduction for every 1% below the AQL that initial notifications and follow up monitoring reports are untimely	On-Site Reviews Systems Data Reports Monthly Invoices	Monthly

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5. Guidance for Submitting Proposals

5.1 Service Area Designation

Proposals in response to this solicitation must clearly designate the intended service area. Offerors must bid to provide contract administration services for areas no smaller than an individual State (or U.S. Territory). HUD will accept proposals covering the entire nation, multiple Multifamily Hubs, individual Multifamily Hubs, or any combination of states, but no smaller than an individual State (or U.S. Territory). All multi-state proposals must provide a separate cost proposal for each state within the proposed service area (see Attachment II.B). HUD will evaluate proposals for areas larger than an individual State on a state by state basis.

The information in this section governs the procedures Offerors must follow to submit proposals in response to this RFP. Failure to comply with the guidance of this section will disqualify an Offeror's proposal from consideration by HUD.

5.2 Proposal Organization

Offerors must submit one original and three (3) copies of their proposals. All proposals must contain two volumes: a technical proposal that explains the offeror's technical capacity to perform the tasks of the RFP and a cost proposal that indicates the offeror's price and supporting documents to provide CA services. Submit technical and cost proposals as separately bound volumes. Offerors must divide and tab technical proposal into three sections, limited by the specified number of pages:

1. Understanding and Technical Approach—20 pages
2. Management Capacity and Quality Control—20 pages
3. Past Performance—10 pages (Total)
   (a) Key Personnel—5 pages
   (b) Firm—5 pages

Proposals exceeding the allowable page limits will only have the number of pages specified evaluated (e.g. Factor 1 will only have the first 20 pages evaluated; remaining pages will not be reviewed). Page limits refer to one side of an 8½ x 11 piece of paper using standard 10 pitch font.

Offerors shall include with the technical proposal an appendix which includes the following:

(1) Resumes of the project team.

(2) A statement of possible conflict of interest in the appendix. This statement should identify properties in the proposed coverage area of the offeror in which the offeror has a financial interest.

(3) A copy of the offerors' (the PHA and all organizations that form the instrumentality entity) most recent audit of the offeror's financial records. The appendix does not count toward the page limitation.

Offerors are advised that different technical evaluation panel teams will review proposals. The Technical proposal shall be divided according to the stated evaluation factors and shall be submitted in physically distinct sections by each evaluation factor. Individual panel members may review only one evaluation factor; therefore, offerors should be careful to fully respond to each factor separately, and not rely on information in another factor to be a part of the response. Pages with each factor shall be numbered consecutively, including any appendixes.

The cost proposal shall include the CA's proposed percentage of the FMR for covered units on the sheet provided herein. The cost proposal shall also provide supporting cost data to ensure the evaluation panel can determine the prices proposed are reasonable for the technical approach proposed. Failure to adequately explain the price proposed may result in a determination the CA is unable to perform at the stated price or that the price is unreasonable based upon the technical approach described. Sample forms for providing cost data are attached and should be supported by a narrative to the extent necessary. Offerors are not required to follow the samples completely, but shall provide the information requested to the extent possible.

5.3 Proposal Due Date

Offerors must submit proposals no later than 5:00 PM EDT, Friday, July 15, 1999. Offerors must submit proposals to: U.S. Department of Housing and Urban Development, 451 7th Street, SW, Office of the Deputy Assistant Secretary for Multifamily Housing Programs, Room 6106, Washington, DC 20410.

Offerors must clearly mark packages containing proposals ''Proposal for Section 8 Contract Administration Services.''

The Department will not accept proposals that arrive after the above date and time or at any other address. HUD will not be responsible for proposals lost or misdirected due to improper labeling.

5.4 Offeror Questions/Pre-Proposal Conference

HUD will conduct a Pre-Proposal Conference to discuss this request for proposals at length and answer questions. The agenda for the conference will include time for those potential respondents' interested in forming partnerships with other entities to meet.

Date: June 3, 1999.

Time: 9:30 a.m. to 3:00 p.m. EDT.

Location: To Be Announced at http://www.hud.gov/fha/mfh/rfp/sec8rfp.html.

HUD encourages potential Offerors who plan to attend the Pre-Proposal Conference to submit questions in advance, by sending an e-mail to ''Prebiddersconf__Sec8rfp@hud.gov''. All questions and the responses will be posted at the RFP website, www.hud.gov/fha/mfh/rfp/sec8rfp.html. At the Pre-Proposal Conference HUD will be sure to discuss the questions that have generated the most interest.

If attendees raise additional questions as a result of the discussion at the pre-proposal conference, HUD will respond to the questions at the conference as time permits. However, if time has expired and/or if HUD must obtain additional information to provide an appropriate response, HUD will post a transcript of the conference and the answers to any unanswered questions at the RFP website.

In addition to a copy of the transcript, the RFP web site currently contains a database of current properties with Section 8 assisted units and a description of the Section 8 program. After the conference, the RFP website will provide a tool for offerors to pose and for HUD to answer any further questions.

5.5 Amendments and Additional Guidance

HUD may amend this RFP. All amendments or additional guidance will be posted on the website. Offerors should check the website regularly for any amendments to the RFP.

5.6 Contract Term

HUD will award an ACC pursuant to this RFP for an initial term of two (2) years. The CA is reminded however, that continued performance beyond the first year of the ACC is contingent upon the availability of appropriated funds.

HUD may unilaterally renew the ACC for up to three (3) additional one-year terms. Each such renewal shall be at HUD's sole discretion. The Department will use performance as a paramount factor in renewal determinations.

6. Equal Employment Opportunity Compliance

The CA shall not discriminate against any employee or applicant for employment because of race, color,

creed, religion, sex, handicap or national origin. The CA shall take affirmative action to ensure that applicants and employees are treated without regard to race, color, creed, religion, sex, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The CA shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The CA shall assure in all solicitations or advertisements for employees placed by or on behalf of the CA that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. The CA will incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.

7. Factors for Award

Proposals cannot merely offer to provide services in accordance with the requirements of the RFP, rather, they must provide a detailed and concrete description of how the offeror will perform these requirements in operation under the ACC.

HUD will evaluate proposals according to the following:

7.1 Understanding and Technical Approach—50 Points

Offeror's proposal must include a demonstrated understanding of the role of the CA and the full range of the work to be performed. The proposal also must describe the Offeror's plan and approach to perform the tasks of the statement of work. The proposal shall specify any services or functions to be provided or performed by the parent entity, or by any other entity which holds a direct or indirect interest in such instrumentality, to carry out or support Section 8 contract administration in accordance with the ACC. The proposal should detail the Offeror's automated systems that will support it in the performance of SOW tasks (including information technology (IT) support, accessibility, documentation, security, and flexibility). In addition, the offeror must describe the automated system that it will use to provide contract administration services for project-based HAP contracts under Section 8.

The proposal must provide a proposed plan for the transfer of responsibility for contract administration from HUD to the CA that includes, but need not be limited to, how the offeror will be prepared to begin operations within 60 calendar days after award of the ACC.

7.1.1 Data Systems

Offerors must demonstrate their ability to comply with all processing and reporting requirements applicable to CA functions contained in this RFP, including requirements for contract administrators outlined in Section 108 of 24 CFR, Part 208)—Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects (a/k/a the Automation Rule). CAs are expected to have Internet Service Provider access for communication with HUD. (At this time, HUD plans for most data entry and data transfer with CAs to occur over the Internet).

CAs must be capable of implementing revisions in processing and reporting, as specified by HUD, to conform to changes in present or future policy and procedures pertaining to CA functions. With respect to data systems and automated reporting requirements, HUD will provide reasonable advance notice of the need for such change a minimum of 90 days before CA compliance will be required.

CAs must provide HUD with data on HAP contracts, rent adjustments, contract renewal processing, management and occupancy reviews, annual financial statements and other documents and information relevant to the tasks and responsibilities outlined in this RFP. Where automated reporting tools do not already exist, HUD intends to develop specifications for receiving a substantial portion of these data electronically. CAs must have the capability to transmit such data to HUD via the Internet as prescribed by HUD.

Offerors must demonstrate that they have the facilities to receive resident certification and recertification data (form HUD 50059) and voucher data (form HUD 52670) electronically from the owners or management agents in a form consistent with reporting requirements specified by HUD for the HUD TRACS System. Offerors must also demonstrate the ability to transmit HUD 50059 data to the HUD TRACS Tenant System and HUD 52670 data to the HUD TRACS Voucher/Payment System, and to receive the messages transmitted in return from TRACS. As part of these requirements, the CA must have an ability, acceptable to HUD, for communicating errors in HUD 50059 and HUD 52670 submissions to the owners or management agents. CAs are expected to comply with requirements applicable to contract administrators in the Automation Rule (24 CFR 208).

HUD currently receives data submissions to the TRACS Tenant System and the TRACS Voucher/Payment System via SprintMail, but there are plans to accept these transmissions via the Internet. Internet access also provides the CA with the ability to review the resident and voucher data it has transmitted to HUD to ensure that it is correct and consistent with the data maintained in its own files.

CAs will be required to accept and forward to the owners or management agents the Benefit History Reports from HUD that provide confirmation of Social Security and Supplemental Security Income. Alternatively, the CAs may require the owners or management agents to obtain Internet access to retrieve their own Benefit History Reports from HUD.

Resident reporting requirements specified for HUD's TRACS Tenant System and voucher reporting requirements specified for the TRACS Voucher/Payment System are published on the TRACS Documents Page on the world wide web. The CAs are responsible for meeting the requirements specified in these documents. Offerors can access the TRACS Documents Page at http://www.hud.gov/fha/mfh/trx/html/trxdocs.html.

Offerors must demonstrate that they have an account with a federally insured financial institution capable of receiving and sending electronic fund transfer (EFT) transactions.

CAs must have facilities acceptable to HUD for making timely and accurate HAP subsidy payments to project owners with HAP contracts under an Annual Contributions Contract (ACC) contract. CAs also will be required to transmit budget, requisition, and year-end settlement data to HUD via the Internet, as specified by HUD.

7.2 Management Capacity and Quality Control Plan—50 points

The offeror shall fully demonstrate a superior detailed quality control program to (1) ensure the contract performance requirements are met, (2) provide specific internal control programs to provide accountability and

separation of duties to detect and prevent potential fraud, waste, and abuse of funds, and (3) identify processes/procedures to prevent, detect, and resolve actual, or appearances of, conflicts of interest of any staff working with the contract or associated with the entity. This QC Plan must include, but not be limited to

1. A Work Plan including all contract administrative services breaking down each task/sub-task. The Work Plan shall:

—Specify all areas and services that the CA will review.
—Include a timeline (duration, start, finish) the CA will review areas/services.
—Depict the resource name/s and task usage for each task/s.
—Include an example of the CA's Work Plan quarterly report Identify the methodology CAs will use to conduct reviews.

2. The name(s) and qualifications of the individual(s) responsible for performing the quality control reviews and the specific areas/services these individuals will inspect.

3. A method to identify performance deficiencies and to take corrective action to ensure against unsatisfactory performance.

4. A means to document all quality control reviews and any required corrective action. The CA shall establish and maintain files for such documentation through the term of this contract. The filing method shall be such that all information relative to quality control inspections is logically grouped together and readily accessible. The files shall be the property of HUD and be made available to HUD upon demand during the CA's regular business hours. The files shall be turned over to HUD within 10 business days after completion or termination of the ACC.

5. Workflow and organizational charts that describe the processes and controls that the offeror will to implement and operate its technical approach and to execute the QC plan.

7.3 Past Performance—30 Points

Offerors' proposals must provide documented evidence that, during the last two years immediately prior to the deadline for receipt of proposals, the Offeror or related entity has successfully performed duties substantially similar to the core functions that the CA will perform under this RFP. Offerors should give special emphasis to past performance with compliance with and reviews of Multifamily Housing's occupancy requirements, reviews of property physical condition, and problem resolution activities with property owners. (''Related entity'' means any entity that will perform services or functions to carry out or support Section 8 contract administration under the ACC, including the PHA, a parent entity of the PHA, or partners who are affiliated with the PHA.)

HUD will give greater weight to proposals that cite recent experience (the past two years) that is most similar to the requirements of the RFP.

The proposal must include sufficient information on the relevant experience, special training and education of proposed personnel related to the tasks of the SOW.

HUD will allocate points based upon the demonstrated record. References of successful past performance of the same or similar work as described in the SOW and in the ACC shall confirm offerors' demonstrated record. HUD will consider available information, such as reviews of PHAs.

Offerors' proposals must provide at least five references (not letters of recommendations) that document past experience. These references must include:

Project name
Period of performance
Description of the work performed
Contact person information:
Name
Title
Address
Telephone numbers
The relationship of the contact person to the offeror.

Only information that is submitted directly to HUD in the offeror's proposal package will be considered unless HUD seeks additional information during the evaluation process.

HUD reserves the right to review and consider the past performance the offeror may have had with the Department.

8. Proposal Evaluation

HUD will establish one or more panels to review the proposals received. HUD will only evaluate, rate and rank complete proposals submitted.

HUD will evaluate each proposal based on the factors for award and the proposed fees to determine which offerors represent the best overall value, including administrative efficiency, to the Department. While the cost or price factor has no numerical weight in the factors for award, it is always a criterion in the overall evaluation of proposals. HUD may ask any offeror considered to be among the highest rated technically acceptable for additional information to assist HUD in selecting among proposals submitted. HUD may also negotiate the fee with the highest technically acceptable offerors, one or all, to obtain high quality at a better value.

HUD shall have discretion to determine the process for evaluation, rating and ranking of proposals received and for selection of the contract administrator pursuant to the RFP and for award of ACCs.

Proposals to provide contract administration services for project-based HAP contracts will be accepted on an individual state, combination of states, individual Hubs, multiple Multifamily Hubs, and the entire nation, however, the Department will evaluate proposals state by state. Therefore, the offeror must complete and submit the ''Proposal Submission Form'' (Attachment II) for each state the CA is offering a bid.

If there are areas of the country for which HUD does not select a CA during the above process, either because there were no proposals covering that area, or none of the proposals were acceptable, HUD may negotiate with one or more selected offerors to expand the service area in which the selected offeror will provide contract administration services.

Before execution of the ACC, each selected PHA must submit a Previous Participation Certification, Form HUD–2530 and any additional documentation required by HUD within 10 calendar days of request by HUD. The PHA and related parties must be cleared through HUD's previous participation procedure.

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Attachment I Voucher and Recertification Review

The following lists the tasks and tools associated with voucher and certification/recertification reviews.

TASKS	TOOLS
Record voucher in project logs	Manual Process
Check voucher header information	Manual Process • Check the following data: * Project number * Total units * Dates/signed * Voucher month * Usage (declining balance/shortfall
Check information against previous month's voucher	Manual Process • TRACS currently makes no comparisons between HAP requests from one month to the next • Continue to compare HAP amounts for all residents not "changed/added" this month
Check adjustments	Manual Process • TRACS is currently not editing or recording adjustments • Check adjustments • Check for unresolved problems from previous month • Make note to notify project of what has to be done
Check voucher calculations	Manual Process • TRACS only edits certification calculations • Continue to check the voucher totals (i.e., individual page totals against total subsidy requested on cover)
Review special claims	Manual Process • Special claims will not be incorporated until a future release of TRACS • Continue to manually check signatures and totals using current procedures

Attachment II Proposal Submission Form

Section A. (attach this form to the technical and cost proposal)

I propose to provide the services required by this ACC within the geographic area described below. (See description of Multifamily Hubs on the next page).

Offeror	
Date	

_____

_____1. The following area which is larger than a Hub:

_____2. Entire Hub for Area

_____3. The following group of states:

_____4. The following individual State (or U.S. Territory):

Multifamily Hubs

AREA #	HUB	GEOGRAPHIC AREA
1	Boston	Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut
2*	Buffalo	All New York State counties except those listed for the New York HUB
3*	New York	The counties of Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester
4	Philadelphia	Pennsylvania, New Jersey, Delaware, West Virginia
5	Baltimore	Maryland, District of Columbia, Virginia
6	Greensboro	North Carolina, South Carolina
7	Atlanta	Georgia, Tennessee, Kentucky, Caribbean
8	Columbus	Ohio
9	Jacksonville	Florida, Alabama, Mississippi
10	Chicago	Illinois, Indiana
11	Detroit	Michigan
12	Minneapolis	Minnesota, Wisconsin
13	Kansas City	Kansas, Missouri, Oklahoma, Nebraska, Iowa
14	Fort Worth	Texas, Arkansas, Louisiana, New Mexico
15	Denver	Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota
16	Seattle	Washington, Oregon, Idaho, Alaska
17*	San Francisco	Nevada, Arizona, Hawaii and the 46 California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humbolt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba
18*	Los Angeles	California counties not covered by the San Francisco HUB

*For the purpose of this RFP, HUD has combined Hubs 2 &3 and Hubs 17 & 18. This means that CA must offer a proposal for the entire state, not just the single Hub area.

Section B (attach this form to the cost proposal)

I propose to provide the services required by this ACC within _____
(Name of State or U.S. Territory) for the following fixed price:

Initial 2 Year Term	
Basic Fee	% of the FMR

1st Renewal Year 1 Year Term	
Basic Fee	% of the FMR

2nd Renewal Year 1 Year Term	
Basic Fee	% of the FMR

3rd Renewal Year 1 Year Term	
Basic Fee	% of the FMR

CONTRACT COST ESTIMATE

PREPARER NAME, OFFICE, PHONE NUMBER:		SIGNATURE AND DATE:		
DESCRIPTION OF COST ELEMENTS (a)	BASE (b)	RATE (c)	SUBTOTALS (d)	TOTALS (e)
1. DIRECT LABOR - CATEGORIES	Estimated Number of Hours	Hourly Rate ($)		
			TOTAL DIRECT LABOR	
2. LABOR OVERHEAD AND FRINGE BENEFITS		Estimated %		
FRINGE BENEFITS				
OVERHEAD				
			TOTAL LABOR OVERHEAD	
3. TRAVEL (SEE ATTACHED WORKSHEET)				
4. SUBCONTRACTS/CONSULTANTS	No. of Hours/Days	Hourly/Daily Rate		
			TOTAL SUBCONTRACT/CONSULTANT COSTS	
5. OTHER DIRECT COSTS - CATEGORIES				
			TOTAL OTHER DIRECT COSTS	
6. TOTAL DIRECT COSTS AND OVERHEAD				
7. GENERAL AND ADMINISTRATIVE EXPENSE (G&A)				
8. TOTAL COSTS				
9. FEE OR PROFIT				
10. TOTAL ESTIMATED COST AND FEE/PROFIT				

CONTRACT COST ESTIMATE FORM - INSTRUCTIONS

ITEM 1: Direct Labor

Enter labor by category and skill level (e.g. Project Director, senior analyst, junior architect, statistician, clerical, etc.) in column (a). Enter the estimated total number of hours (i.e., for all tasks, etc. in which the labor will be required) in column (b). Enter the estimated hourly rate for each labor category in column (c). Multiply the amount in column (b) by the amount in column (c), and enter the product in column (d). [*NOTE: If the contract is expected to extend beyond a twelve month period, inflation factors should be included for each additional period. This may require using additional sheets.*] Add the amounts in column (d) and enter that total in the row labeled ATOTAL DIRECT LABOR.@

ITEM 2: Labor Overhead and Fringe Benefits

Enter the estimated rates (percentages) for fringe benefits and labor overhead in the blanks in column (c). Multiply these percentages by the amount for TOTAL DIRECT LABOR in 1(e) above and enter the results in column (d). Add the two totals and enter the sum in column (e) of the row labeled ATOTAL LABOR OVERHEAD.@

ITEM 3: Travel

Enter the total estimate and support on a separate worksheet.

ITEM 4: Subcontracts/Consultants

For each type of subcontract/consultant, enter the estimated number of hours/days in column(b). Enter the hourly/daily rate in column (c). Multiply each rate by the number of hours/days and enter the result in column (d). Add the totals in column (d) and enter the sum in column (e) of the row labeled ATOTAL CONSULTANT COSTS.@

ITEM 5: Other Direct Costs

Enter each type of cost in column (a) and its corresponding total cost in column (d). Add the totals in column (d) and enter the sum in column (e) of the row labeled ATOTAL OTHER DIRECT COSTS.@

ITEM 6: Total Direct Cost and Overhead

Add the amounts in 1(e) through 5(e) and enter the sum.

ITEM 7: General and Administrative (G&A)

Enter the estimated rate in column (c) and multiply it by the amount in 7(e) above. Enter the result in column (e).

ITEM 8: Total Estimated Costs

Add the amounts in 6(e) and 7(e) enter the sum in column (e).

ITEM 9: Fee or Profit

Enter the amount calculated or estimated for the fixed fee or profit.

ITEM 10: Total Estimated Cost and Fee/Profit

Add the amounts in 8(e) and 9(e). Enter the sum in column (e). This is the grand total.

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Attachment III Annual Contributions Contract

Annual Contributions Contract

Definitions

ACC. Annual Contributions Contract. This contract between HUD and the PHA.

Administrative Fee. The monthly fee HUD pays the PHA for each covered unit under HAP contract on the first day of the month. The fee amount is determined in accordance with Exhibit E. The administrative fee is the total of the basic fee plus the incentive fee.

Basic Fee. The amount of the basic fee per unit per month as specified in Exhibit E for each FMR area. HUD may reduce the basic fee if HUD determines that the PHA performance of contract tasks is below the minimum acceptable quality level. HUD determines the amount of such reduction. Earned basic fees are paid monthly.

Budget Authority. The maximum amount of funds available for payment to the PHA for each HAP contract. Budget authority is authorized and appropriated by the Congress. The amount of budget authority for each HAP contract is listed on Exhibit C.

Covered Units. Section 8 assisted units under HAP contracts assigned to the PHA for contract administration under the ACC. Covered units are listed on Exhibit B.

Fiscal Year. The PHA fiscal year. Exhibit C states the last month and day of the PHA fiscal year.

Funding Increment. Each commitment of funding (budget authority) by HUD to the PHA for a HAP contract under the ACC. The funding increments are listed on Exhibit C.

HAP Contract. A Section 8 Housing Assistance Payments Contract.

HUD. The United States Department of Housing and Urban Development.

Incentive Fee. A per unit per month administrative fee in addition to the basic fee. The incentive fee is paid if HUD determines that PHA performance of contract tasks is above the minimum acceptable quality level. HUD determines the amount of the incentive fee. The maximum incentive fee per unit per month is specified in Exhibit E for each FMR area. Earned incentive fees are paid quarterly.

PHA. Public Housing Agency.

Portfolio Reengineering. FHA-insured multifamily housing mortgage and housing assistance restructuring of an eligible multifamily project.

Program Expenditures. Amounts which may be charged against program receipts in accordance with the ACC and HUD requirements.

Program Property. Program receipts, including funds held by a depository, and PHA rights or interests under a HAP contract for covered units.

Program Receipts. Amounts paid by HUD to the PHA under the ACC, and any other amounts received by the PHA in connection with administration of the Section 8 program under the ACC.

Project Reserve. An unfunded account established by HUD for a HAP contract from amounts by which the amount of budget authority available for payment under the HAP contract during the owner's fiscal year exceeds the amount actually approved and paid by HUD. HUD may use this account as the source for additional payments under the program.

Public Housing Agency. The agency that has entered the ACC with HUD. Such agency is a ''public housing agency'' as defined in Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

Section 8. Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Service Area. The area where the PHA provides contract administration services under the ACC. The PHA service area is described in Exhibit D of the ACC.

ACC

Purpose

This ACC is a contract between the PHA and HUD. The ACC was awarded by HUD pursuant to a proposal submitted in response to HUD's published Request for Proposals for PHAs to provide contract administration services for units receiving project-based Section 8 housing assistance. (The Request for Proposals was published on May 19, 1999. Under the ACC, the PHA will provide contract administration services for dwelling units in the service area receiving project based assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Exhibits. This ACC Includes the Following Exhibits

1. Exhibit A: Request for Proposal
2. Exhibit B: Covered Units
3. Exhibit C: Funding
4. Exhibit D: Service Area
5. Exhibit E: PHA Administrative Fees
6. Exhibit F: ACC Contract Term

HUD Revision of ACC Exhibits

1. HUD may amend Exhibit B:

—To add covered units.
—To withdraw covered units for which the HAP contract has expired or been terminated, or for which assistance payments are abated.
—To withdraw covered units in connection with portfolio reengineering.

2. HUD may amend Exhibit C:

—To add a funding increment, or
—To remove a funding increment for which the HAP contract has expired or been terminated, or for which assistance payments are abated.
—To remove a funding increment in connection with portfolio reengineering.

HUD may amend Exhibit B or Exhibit C of the ACC by giving the PHA written notice of the revised exhibit. The HUD notice constitutes an amendment of the ACC.

ACC Term

The ACC term is specified in Exhibit F of the ACC. The PHA shall provide contract administration services for the covered units during the ACC term.

PHA Contract Administration Services

Coverage

1. The PHA shall enter into or assume HAP contracts with owners of covered units to make assistance payments to the owners of such units during the HAP contract term.

2. During the ACC term, the PHA shall provide contract administration services for covered units in the service area.

3. HUD will assign to the PHA existing HAP contracts for covered units. Upon such assignment, the PHA assumes all contractual rights and responsibilities of HUD pursuant to such HAP contracts.

PHA Services

1. The PHA shall comply, and shall require owners of covered units to comply, with the United States Housing Act of 1937, applicable Federal statutes and all HUD regulations and other requirements, including any amendments or changes in the law or HUD requirements.

2. The PHA shall perform all the core tasks specified in the Statement of Work contained in the Request for Proposals in accordance with the law and HUD requirements.

3. The PHA shall perform services under the ACC in accordance with the HUD-approved proposal submitted in response to the HUD Request for Proposals, and any HUD-approved modifications of the HUD-approved proposal.

4. The PHA shall require owners to comply with HUD requirements for occupancy of covered units, including requirements governing eligibility for assistance, resident contribution to rent,

and examinations and reexaminations of family income.

5. The PHA shall determine the amount of housing assistance payments to owners in accordance with the terms of the HAP contracts and HUD requirements, and shall pay owners the amounts due under such HAP contracts.

6. The PHA shall require owners to comply with the terms of HAP contracts for covered units, and shall take prompt and vigorous action to enforce the terms of such contracts.

7. The PHA shall take appropriate action, to HUD's satisfaction or as required or directed by HUD, for enforcement of the PHA's rights under a HAP contract. Such actions include requiring actions by the owner to cure a default, termination, or abatement or other reduction of housing assistance payments, termination of the HAP contract, or recovery of overpayments.

Fees and Payments

HUD Payments

1. HUD will make payments to the PHA for covered units in accordance with HUD requirements.

2. For each PHA fiscal year, HUD will pay the PHA the amount approved by HUD to cover:

—Housing assistance payments by the PHA for covered units.
—PHA fees for contract administration of covered units.

3. The amount approved for housing assistance payments shall be sufficient to pay owners the amount of housing assistance payments due to the owners under HAP contracts for covered units.

4. The amount of the HUD payment may be reduced, as determined by HUD, by the amount of program receipts (such as interest income) other than the HUD payment.

Fees

1. HUD may approve administrative fees for either of the following purposes:

—Basic fees.
—Incentive fees.

2. The monthly administrative fee is composed of the basic fee and the incentive fee. The administrative fee shall be paid (subject to availability of appropriated funds) for each covered unit under HAP contract on the first day of the month.

3. The amount of the administrative fee shall be determined in accordance with Exhibit E.

4. For covered units in each FMR area, Exhibit E states the amount of the basic fee and the amount of the maximum incentive fee. Basic fees earned by the PHA shall be paid on the first day of each month. Incentive fees earned by the PHA shall be paid at the end of each quarter.

5. If HUD determines that the PHA has performed above the minimum acceptable quality level in a quarter, the PHA may award an incentive fee per unit per month in addition to the basic fee. If HUD determines that the PHA has performed below the minimum acceptable quality level in any month, HUD may charge a penalty against the basic fee per unit per month.

6. HUD will not pay an administrative fee for any covered units for which the HAP contract has expired or been terminated.

7. If HUD determines that the PHA has failed to comply with any obligations under the ACC, HUD may reduce the amount of any administrative fee.

Limit on Payments for Funding Increment

The total amount of payments for any funding increment over the increment term shall not exceed budget authority for the funding increment.

Reduction of Amount Payable by HUD

1. If HUD determines that the PHA has failed to comply with any obligations under the ACC, HUD may reduce to an amount determined by HUD:

—The amount of the HUD payment for any funding increment.
—The contract authority or budget authority for any funding increment.

2. HUD shall give the PHA written notice of the reduction.

3. The HUD notice may include a revision of the funding exhibit (Exhibit C) that reduces the amount of contract authority or budget authority for a funding increment. The notice of a revised funding exhibit, or of revisions to the funding exhibit constitutes an amendment of the ACC.

Project Reserve

HUD may establish and maintain a project reserve account for a HAP contract administered by the PHA under the ACC. The amount in the project reserve is determined by HUD. The project reserve may be used by HUD to pay any portion of the payment approved by HUD for a fiscal year.

Budget and Requisition for Payment

1. For each fiscal year, the PHA shall submit to HUD an estimate of the HUD payments for the program and any supporting data required by HUD. The budget estimate and supporting data shall be submitted at such time and in such form as HUD may require, and are subject to HUD approval and revision.

2. The PHA shall requisition periodic payments on account of each annual HUD payment. Each requisition shall be in the form prescribed by HUD. Each requisition shall include certification that:

—Housing assistance payments have only been paid in accordance with HAP contracts for covered units, and in accordance with HUD requirements; and
—Covered units have been inspected by the PHA in accordance with HUD requirements.

3. If HUD determines that payments by HUD to the PHA for a fiscal year exceed the amount of the annual payment approved by HUD in the budget for the fiscal year, the excess shall be applied as determined by HUD. Such applications determined by HUD may include, but are not limited to, application of the excess payment against the amount of the annual payment for a subsequent fiscal year. The PHA shall take any actions required by HUD respecting the excess payment, and shall, upon demand by HUD, promptly remit the excess payment to HUD.

Financial Management

Use of Program Receipts

1. The PHA shall use program receipts in compliance with the U.S. Housing Act of 1937 and all HUD regulations and other requirements.

2. Program receipts may only be used to pay program expenditures, including administrative fees payable to the PHA, and housing assistance payments for covered units. The PHA shall not make any program expenditures, except in accordance with the HUD-approved budget estimate and supporting data.

3. The PHA may use or distribute any earned administrative fee income, including basic fees and incentive fees, for any purpose. However, the PHA may not use or distribute administrative fee income to reimburse compensate or transfer any such income, directly or indirectly, to the owner of covered units, agents or affiliates.

4. If required by HUD, program receipts in excess of current needs shall be promptly remitted to HUD or shall be invested in accordance with HUD requirements.

5. Interest on the investment of program receipts constitutes program receipts.

Depository

1. Unless otherwise required or permitted by HUD, all program receipts shall be promptly deposited with a financial institution selected as

depository by the PHA in accordance with HUD requirements.

2. The PHA shall enter an agreement with the depository institution in the form required by HUD.

3. The PHA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements, including payment of housing assistance payments to owners and payment of ongoing administrative fees to the PHA.

4. The agreement with the depository institution shall provide that if required under a written notice from HUD to the depository:

—The depository shall not permit any withdrawal of deposited funds by the PHA unless withdrawals by the PHA are expressly authorized by written notice from HUD to the depository.
—The depository shall permit withdrawals of deposited funds by HUD.

5. If approved by HUD, the PHA may deposit under the depository agreement monies received or held by the PHA in connection with any contract between the PHA and HUD.

Fidelity Bond Coverage

The PHA shall carry adequate fidelity bond coverage, as required by HUD, to compensate the PHA and HUD for any theft, fraud or other loss of program property resulting from action or non-action by PHA officers or employees or other individuals with administrative functions or responsibility for contract administration under the ACC.

Management Requirements

1. The PHA shall (without any compensation or reimbursement in addition to ongoing administrative fees in accordance with § IV.B of the ACC) perform all PHA obligations under the ACC, and provide all services, materials, equipment, supplies, facilities and professional and technical personnel, needed to carry out all PHA obligations under the ACC, in accordance with sound management practices, Federal statutes, HUD regulations and requirements and the ACC.

2. The PHA shall:

—Maintain telephone service during normal and customary business hours;
—Design and implement procedures and systems sufficient to fulfill all PHA obligations under the ACC.
—Take necessary actions to maintain good relations with owners, residents and their representatives, neighborhood groups, and local government agencies.
—Respond fully and promptly to inquiries from assisted residents, and from Congress or other governmental entities.

Program Records

1. The PHA shall maintain complete and accurate accounts and other records related to operations under the ACC. The records shall be maintained in the form and manner required by HUD, including requirements governing computerized or electronic forms of record-keeping. The accounts and records shall be maintained in a form and manner that permits a speedy and effective audit.

2. The PHA shall maintain complete and accurate accounts and records for each HAP contract.

3. The PHA shall furnish HUD such accounts, records, reports, documents and information at such times, in such form and manner, and accompanied by such supporting data, as required by HUD, including electronic transmission of data as required by HUD.

4. The PHA shall furnish HUD with such reports and information as may be required by HUD to support HUD data systems.

5. HUD and the Comptroller General of the United States, or their duly authorized representatives, shall have full and free access to all PHA offices and facilities, and to all accounts and other records of the PHA that are relevant to PHA operations under the ACC, including the right to examine or audit the records and to make copies. The PHA shall provide any information or assistance needed to access the records.

6. The PHA shall keep accounts and other records for the period required by HUD.

7. The PHA shall comply with Federal audit requirements. The PHA shall engage an independent public accountant to conduct audits that are required by HUD. The PHA shall cooperate with HUD to promptly resolve all audit findings, including audit findings by the HUD Inspector General or the General Accounting Office.

Default by PHA

Occurrence of any of the following events will constitute a default by the PHA in performance of its obligations under the ACC:

1. The PHA has failed to comply with PHA obligations under the ACC, or

2. The PHA has failed to comply with PHA obligations under a HAP contract with an owner, or

3. The PHA has failed to take appropriate action, to HUD's satisfaction or as required or directed by HUD, for enforcement of the PHA's rights under a HAP contract, or

4. The PHA has made any misrepresentation to HUD of any material fact.

5. HUD's exercise or non-exercise of any right or remedy for PHA default under the ACC is not a waiver of HUD's right to exercise that or any other right or remedy at any time.

6. HUD may terminate the ACC at any time in whole or in part if HUD determines that the PHA has committed any default under the ACC.

7. HUD shall terminate the ACC by written notice to the PHA, which shall state:

—The reason for termination.
—The date of termination.

8. HUD may take title or possession to any or all program property:

—Upon occurrence of a default by the PHA, or
—Upon termination of the ACC in whole or in part, or
—Upon expiration of the ACC term.

Conflict of Interest

1. Neither the PHA, nor any PHA contractor, subcontractor or agent for operations under the ACC, nor any other entity or individual with administrative functions or responsibility concerning contract administration under the ACC, may enter into any contract, subcontract, or other arrangement in connection with contract administration under the ACC in which any covered individual or entity has any direct or indirect interest (including the interest of any immediate family member), while such person is a covered individual or entity or during one year thereafter.

2. ''Immediate family member'' means the spouse, parent, child, grandparent, grandchild, sister, or brother of any covered individual.

3. ''Covered individual or entity'' means an individual or entity that is a member of any of the following classes:

—A present or former member, officer or director of the PHA, or other PHA official with administrative functions or responsibility concerning contract administration under the ACC.
—If the PHA is an instrumentality of a governmental body:
—A present or former member, officer or director of such governmental body.
—A present or former member, officer or director of any entity that holds a direct or indirect interest in the instrumentality entity.
—An employee of the PHA.
—A PHA contractor, subcontractor or agent with administrative functions or

responsibility concerning contract administration under the ACC, or any principal or other interested party of such contractor, subcontractor or agent.

—An individual who has administrative functions or responsibility concerning contract administration under the ACC, including an employee of a PHA contractor, subcontractor or agent.

—A public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities concerning contract administration under the ACC.

4. The PHA shall require any covered individual or entity to disclose his, her or its interest or prospective interest to the PHA and HUD.

5. During the term of the ACC, the PHA shall not own or otherwise possess any direct or indirect interest in any covered unit (including a unit owned or possessed, in whole or in part, by an entity substantially controlled by the PHA), and shall not claim or receive any administrative fee for contract administration of a unit in which the PHA has any such interest.

6. HUD may waive the conflict of interest requirements for good cause. Any covered individual or entity for whom a waiver is granted may not execute any contract administration functions or responsibility concerning a HAP contract under which such individual is or may be assisted, or with respect to a HAP contract in which such individual or entity is a party or has any interest.

7. No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of the ACC or to any benefits which may arise from it.

Equal Opportunity

1. The PHA shall comply with all equal opportunity requirements imposed by Federal law, including applicable requirements under:

—The Fair Housing Act, 42 U.S.C. 3610–3619 (implementing regulations at 24 CFR parts 100 *et seq.*).

—Title VI of the Civil rights Act of 1964, 42 U.S.C. 2000d (implementing regulations at 24 CFR part 1).

—The Age Discrimination Act of 1975, 42 U.S.C. 6101–6107 (implementing regulations at 24 CFR part 146).

—Executive Order 11063, Equal Opportunity in Housing (1962), as amended, Executive Order 12259, 46 FR 1253 (1980), as amended, Executive Order 12892, 59 FR 2939 (1994) (implementing regulations at 24 CFR part 107).

—Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (implementing regulations at 24 CFR part 8).

—Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*

2. The PHA must submit a signed certification to HUD of the PHA's intention to comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

3. The PHA shall cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and related rules and regulations.

Communication With HUD

The CA shall communicate with HUD through the official or officials designated by HUD.

Exclusion of Third Party Rights

1. A family that is eligible for housing assistance under the ACC is not a party to or a third party beneficiary of the ACC.

2. Nothing in the ACC shall be construed as creating any right of any third party to enforce any provision of the ACC, or to assert any claim against HUD or the PHA.

Public Housing Agency

_____

Signature of authorized representative

_____

Name and official title (print)

_____

Date

_____

Secretary of Housing and Urban Development

Signature of authorized representative

_____

Name and official title (print)

_____

Date

BILLING CODE 4210–27–P

EXHIBIT A
REQUEST FOR PROPOSALS

EXHIBIT B
COVERED UNITS

HAP NUMBER	LOCATION	NUMBER OF UNITS

EXHIBIT C
FUNDING

LAST MONTH AND DAY OF PHA FISCAL YEAR:

_____

HAP NUMBER	CONTRACT AUTHORITY	BUDGET AUTHORITY

EXHIBIT D
SERVICE AREA

EXHIBIT E
PHA ADMINISTRATIVE FEES

AMOUNTS

NAME OF FMR AREA:
BASIC FEE (PER UNIT PER MONTH);
MAXIMUM INCENTIVE FEE (PER UNIT PER MONTH):
[This information must be provided for each FMR area in the service area.]

FEE CALCULATION

[Insert procedure for determination of administrative fees in accordance with the RFP.]

EXHIBIT F
ACC CONTRACT TERM

BEGINNING OF TERM:

_____

END OF TERM:

_____

[FR Doc. 99–12502 Filed 5–18–99; 8:45 am]
BILLING CODE 4210–27–C

federal register

Wednesday
May 19, 1999

Part III

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Final Allocation Formula; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Final Allocation Formula

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of Final Allocation Formula.

SUMMARY: On December 22, 1998, the Employment and Training Administration (ETA) published a notice in the **Federal Register** (63 FR 70795 (Dec. 22, 1998)) of a description of and rationale for a new allocation formula for the Job Training Partnership Act (JTPA), section 402 and the Workforce Investment Act (WIA), Section 167, migrant and seasonal farmworker program and presented preliminary State planning estimates derived therefrom for Program Year (PY) 1999 (July 1, 1999 through June 30, 2000). Public comments were requested at that time. The public comment period closed on February 5, 1999. This notice responds to the comments and publishes a new allocation formula.

FOR FURTHER INFORMATION CONTACT: Mr. Michael S. Jones on (202) 219–8216, Ext. 103 (this is not a toll free number) or via e-mail at <mjones@doleta.gov>, or Mr. Ross Shearer, Jr. on (202) 219–8216, Ext. 102 (this is not a toll free number) or via e-mail at <rshearer@doleta.gov>.

I. Introduction, Scope and Purpose of Notice

This notice is published pursuant to Section 162(d) of the JTPA, which states:

Whenever the Secretary utilizes a formula to allot or allocate funds made available for distribution at the Secretary's discretion under the Act, the Secretary shall, not less than 30 days prior to allotment or allocation, publish such formula in the **Federal Register** for comment along with the rationale for the formula and the proposed amount to be distributed to each State and area. After consideration of any comments received, the Secretary shall publish final allotments and allocations in the **Federal Register**.

Thus, this notice represents the second stage of a two-stage process. The first stage of the process involved the consideration of comments from the public regarding the notice which was published on December 22, 1998. As a result of these considerations, the Department of Labor (DOL) plans to make modifications to the proposed formula. In this second stage, the final allocation formula description is published in this notice. The resulting planning estimates are published herein and include data from updated sources. These data have been processed in accordance with the allocation formula methodology with adjustments as described herein.

The formula is developed for the purpose of distributing funds geographically by State service area, on the basis of each State service area's relative share of persons eligible for the program. Beginning with PY 1999, the revised allocation formula will be implemented which will improve and update the methodology for allocating funds among the States by using more relevant and current data on the distribution of the farmworker population.

The revised formula is the result of work done by an Interagency Task Force on Farmworker Population Data (Interagency Task Force) and the DOL's response to public comments received in response to a January 16, 1997 **Federal Register** notice of a proposed updated allocation formula for the JTPA, Section 402 program and a December 22, 1998 **Federal Register** notice of a proposed updated allocation formula for the JTPA, Section 402 and the WIA, Section 167 Migrant and Seasonal Farmworker (MSFW) program.

In developing an allocation formula for the MSFW Program, the DOL has a responsibility to use the most current and reliable data available. To do so, the DOL sought the advice of experts in agricultural economics. This process led to the development of a formula which combines data from the Census of Agriculture (COA), the Farm Labor Survey (FLS), the National Agricultural Workers Survey (NAWS), and the Census of Population (COP). As a result of our consideration of the public comments received pursuant to the December 22, 1998 notice, the DOL will incorporate Unemployment Insurance (UI) contributions data from the DOL Bureau of Labor Statistics (BLS) ES 202 report into the allocation formula.

Enumerating farmworkers and estimating their proportion among the States is a daunting task. Farmworkers migrate extensively—often traveling nearly the length or breadth of the United States during a single agricultural season—live in non-standard housing (even seasonal farmworkers and migrants who are at their home base), and supplement their agricultural wages with nonagricultural employment and unemployment insurance (when they are determined eligible). Moreover, many farmworkers, including citizens and noncitizens authorized to work in the United States, are wary of government. These factors and many more, severely complicate the task of allocating funds among the States in relationship to potentially eligible farmworkers.

The current JTPA, Section 402 allocation formula is based primarily on the 1980 COP. After passage of the Immigration Reform and Control Act (IRCA), the JTPA, Section 402 allocation formula was supplemented by incorporating data about the number and site of application for Special Agricultural Workers (SAW) whose status was adjusted as a result of IRCA. At this time, it is obvious that the 1980 COP and the IRCA-based SAW data are neither correct nor relevant.

From the time the current allocation formula was first introduced, it was the subject of concern. Concerns were expressed about the current allocation formula methodology because, among other reasons:

- It relied, at least initially, exclusively on the 1980 COP;
- The only means available to adjust the COP data for the JTPA, Section 402 program eligibility was in the inclusion of farmworkers employed in certain specifically eligible agricultural occupations who also met the Lower Living Standard Income Level (LLSIL) poverty guideline;
- The COP was not (and still is not) designed to allow for the identification of otherwise JTPA, Section 402/WIA, Section 167 eligible farmworkers who are either absent from the United States during the time the COP is taken, or who are engaged in nonagricultural activities or unemployed during the COP-reference week;
- The COP was not (and still is not) designed to identify persons living in difficult-to-find housing, ''back-of-the house'' residences and other non-standard dwellings and living arrangements; and,
- The COP did not (and still does not) accommodate consideration of other factors relevant to the JTPA, Section 402/WIA, Section 167 farmworker population such as specific program eligibility criteria.

Most experts, including officials from the Bureau of the Census at the Department of Commerce, acknowledge that the COP does not provide an effective enumeration of farmworkers. Consequently, reliance on the COP data should be subordinate to the application of other data sources that are recognized as providing greater reliability for this purpose.

While the ETA has been attentive to these concerns, data sources and

scholarship available when the current allocation formula was developed, did not offer nationally relevant alternatives. In developing this allocation formula, the DOL has sought to allocate MSFW program funds in a way that accounts nationally for:

- The identification of JTPA, Section 402-eligible farmworkers;
- The time and location of their activities (including the amount of time spent by eligible farmworkers doing farmwork versus non-farmwork); and
- Their turnover rates.

In developing the new allocation formula, the DOL has not operated in a vacuum. The DOL has sought the opinion of experts in the field, grantee representatives, and the general public. The DOL is pleased to have received comments, input and participation from individuals in seventeen States.

In an effort to ensure that the principals in every JTPA, Section 402 grantee organization had a thorough understanding of the proposed allocation formula and an opportunity to offer meaningful input, the Division of Seasonal Farmworker Programs (DSFP) sponsored four educational campaign conferences during the summer of 1998—including support for the travel and lodging expenses of every attendee. Also, throughout the educational campaign process, the DSFP has entertained questions and comments from JTPA, Section 402 grantee staff and other interested persons via telephone, e-mail and during grantee-sponsored and other conferences. This input was considered in the development of the proposed allocation formula that was published on December 22, 1998.

To achieve an equitable basis for an allocation formula, the DOL has sought to draw from a combination of data sources available on MSFW's. In devising the proposed allocation formula, the DOL is satisfied that the appropriate combination of the best choices of available sources of data on MSFW has been achieved.

The development of this allocation formula was guided by a Task Force convened by the ETA's DSFP in 1994. This Interagency Task Force included representatives from the DOL's Office of Policy and its Bureau of Labor Statistics. Representation from outside the DOL included the Bureau of the Census at the Commerce Department, the Economic Research Service at the Agriculture Department and the Executive Director of the Association of Farmworker Opportunity Programs—an association of MSFW Program grantees.

To satisfy our concern about the reasonableness and equity of this proposed allocation formula, ETA engaged Dr. Phillip Martin—a widely recognized expert in the field of agricultural economics—to review the formula proposal and its methodology. He is a Professor of Agricultural and Resource Economics at the University of California at Davis, and has published extensively on labor migration, economic development, and immigration policy issues.

In evaluating the proposed allocation formula and its methodology, Dr. Martin was asked to: (1) determine whether or not a single reliable source of data exists from which a count or distribution among grantee jurisdictions within the United States of MSFWs approximating the MSFW program eligibility criteria could be derived; and, (2) determine the adequacy of the proposed allocation formula for the distribution of MSFW program funds among grantee jurisdictions in a manner which approximates the distribution of farmworkers within the United States who meet the MSFW program eligibility criteria. Dr. Martin was also asked to provide recommendations, as applicable, for methods by which the allocation formula might be enhanced.

As a result of his review, Dr. Martin concluded that there is no better allocation formula available, essentially because the proposed allocation formula is better than the current formula, represents the best combination of available data sources and satisfies the major requirements for allocation formulae of accuracy, transparency (it is understandable), and reliance on published data.

The DOL knows of no single data source that purports to be the definitive and comprehensive count of MSFW's in the United States. While the DOL is not in a position to make a definitive statement about the total number of farmworkers in the United States, the proposed allocation formula provides the most accurate means currently available to estimate the relative proportion of eligible farmworkers among the States.

II. Response to Public Comments

A total of 66 timely comments were received. Of those, 7 were generally supportive and 59 generally expressed opposition to some part or all of the allocation formula. Twenty-five letters were received after the February 5, 1999 deadline. They were not considered. However, the proportions of these letters in terms of factors such as the degree of support, the sector represented by the author and the message were roughly similar to those of the letters that were received prior to the deadline.

The following is an analysis of the public comments received and ETA's response.

A. General Comments

1. Impact of the Allocation Formula and Reduced Funding on Existing Programs

Almost all individuals commenting about or on behalf of program jurisdictions where the amount of funding would be reduced as a result of the application of this allocation formula, expressed concern about the impact of the allocation formula and funding reductions on the program in place. A few individuals questioned the validity of the proposed allocation formula based on the difference between the results of the current and proposed allocation formula.

The DOL is also concerned about the impact of the allocation formula on jurisdictions where funding amounts would be reduced as a result of the application of this formula. Accordingly, the implementation of this allocation formula incorporates a hold-harmless provision to provide for an orderly phase-in to full implementation. Similarly, DOL is also concerned about the impact of continuing to use an allocation formula based on data, portions of which, are almost twenty years old.

Initially, the DOL had planned to phase in the implementation of the allocation formula over a three year period. In doing so (assuming future funding as at least equal to PY 1998 levels), states would receive no less than 90, 70 and 50 percent, respectively, of PY 1998 funding during the three program years following implementation. The formula would then be fully implemented during the fourth year. Since the total amount of funds available to Alaska, Hawaii and Puerto Rico are based solely on those jurisdictions' share of LLSIL farmworker as reported in the 1990 COP, as applicable, the hold harmless provision will be applied to those jurisdictions to the extent practicable. To minimize disruption, the DOL has decided to phase in the implementation of this allocation formula over a four year period. In doing so (assuming future funding as at least equal to PY 1998 levels), states would receive no less than 95, 90, 85 and 80 percent, respectively, of PY 1998 funding during the four program years following implementation. In 2003, it is expected that updated information will be available from most of the data sources used in this formula.

The current allocation data is based on the 1980 COP and IRCA SAW data

which are almost 20 and 13 years old, respectively. Unlike the current formula, this revised formula does not simply rely on a static, one-time snap-shot of the population. The methodology employed in this revised formula takes more factors that are specifically relevant to the MSFW population into account, such as program eligibility, time and location of activity and turnover. In the current formula, the only adjustment factor available was for LLSIL poverty for eligible farmworker occupations identified in the COP. While it is likely that most IRCA SAW applicants met LLSIL poverty guidelines, data was not available to make that determination or to screen for other relevant eligibility factors.

2. Allocation Formula Results Differ From Results of Locally Available Scientific and Survey Research Data and Other Administrative Data Sources

Several individuals commented that local State sources of survey research data on farmwork, agricultural industry, National and local-level administrative data sources on farmworkers and other locally available information tended to support different conclusions as to the appropriate allocation percentage for their State. In a few instances, individuals offered JTPA, Section 402 participant characteristics or other sources of data, usually resulting from significant outreach efforts, as evidence of their claim. Some individuals argued that, for this reason, the data sources used in the allocation formula should be reconsidered.

For the purposes of a nationally applicable MSFW funding formula, there are several problems with using national or locally developed administrative data resulting from program outreach or service delivery. Administrative data based on outreach or service delivery are often influenced by available services; program biases, resources, capabilities and operating methods; and other factors. Statistically valid conclusions about the universe of farmworkers cannot be developed from a sample drawn from such data. Typically, such data is not derived from random sampling or other techniques designed to ensure that the sample is representative of the population. Statistically sound locally available State data, to be useful, must be nationally available. Accordingly, the use of such data would not provide a consistent basis, across jurisdictions, for allocating program funds. According to Dr. Martin—the independent consultant engaged by the DOL to review the allocation formula—one of the positive qualities of the allocation formula is its reliance on published data.

3. Impact of Section 182 of WIA on Allocation Formula

Several commenters expressed their belief that Section 182 of the WIA requires that this allocation formula be based either exclusively or significantly on the COP. In recognition of the deficiencies associated with the use of the COP as a primary ingredient in the development of the allocation formula, some have recommended that the DOL seek a technical amendment from the Congress to remove any doubt about Congressional intent. Others suggest that the DOL base the allocation exclusively on the COP.

By its own terms, WIA sec. 182(a) applies only to formula ''allotments to States and grants to outlying areas'' and does not apply to grants made under sec. 167. Moreover, even if sec. 182(a) were applicable to sec. 167 grants, it does not mandate that the allocation formula derive exclusively from Census data. Instead, the statute requires that data relating to disadvantaged adults and disadvantaged youth be based on the most recent *satisfactory* Census data available. The formula set forth in this notice is indeed based in part on Census data. However, as discussed in this notice and in the December 22, 1998 notice proposing the formula, Census data alone is not a satisfactory means to accurately determine the number of migrant and seasonal farmworkers in an area. Because of this, it is appropriate and necessary for DOL to supplement the Census data with more accurate data sources. The use of Census data supplemented by other accurate data sources in this formula not only complies with WIA sec. 182(a) it also allocates funds in the most rational manner.

4. Modular Nature of Formula Components

Several individuals commented favorably about the use of the COA and the NAWS and the ability to revise the allocation as these data sources are updated. It was also recommended that the DOL use the 1997 COA as soon as it is available.

One of the characteristics of the revised allocation formula, designed to promote continued currency, is the ability to incorporate revised data from the allocation formula data sources as they are updated. In this regard, the DOL concurs with the recommendation and will use the 1997 COA data for hired and contract crop and livestock workers for the PY 1999 allocation. As other allocation formula data sources are updated and revised, the DOL plans to incorporate that data as well.

5. Supportive Comments

Those who favored the revised allocation formula expressed their support, agreed with the conclusion by the DOL contractor (who conducted the independent evaluation about the adequacy of the allocation formula) that there is no better allocation formula available, stated their opposition to the continued use of a formula based on 1980 COP data, and recommended the implementation of the formula for PY 1999 with a hold harmless provision.

Other supportive comments acknowledged that the revised formula is an improvement over the current formula and can be easily updated. In addition, the DOL's use of an Interagency Task Force and an independent review was praised.

One comment urged the DOL and the MSFW Employment and Training Advisory Committee to use the development of this allocation formula as an opportunity to redefine the size and needs of the customer base. This recommendation will be submitted to the Advisory Committee.

B. Allocation Formula Methodology

1. Differential Treatment of Alaska, Hawaii and Puerto Rico

In the design of the allocation formula, DOL used a different method for allocating funds to Alaska, Hawaii and Puerto Rico than was used in the 48 contiguous States. As described in the December 22, 1998 issuance, this differential treatment was due to the fact that all of the data sources applied to the formula for the contiguous 48 States were not available for those jurisdictions.

One individual expressed opposition to the differential treatment of Alaska, Hawaii and Puerto Rico. Several other individuals offered evidence intended to demonstrate that anomalies in the data sources, as related to their program jurisdictions, were sufficient to justify treatment similar to that which is being applied to Alaska, Hawaii and Puerto Rico.

As much as the DOL would like to treat all jurisdictions exactly the same with respect to the data sources used to allocate funds, since all data sources used in the formula are not available for Alaska, Hawaii and Puerto Rico, it is not possible to accord those jurisdictions similar treatment. Conversely, all of the data sources used in the allocation formula are available for the 48 contiguous states. Furthermore, the DOL does not believe that any limitations in

the quality of the data available for the 48 contiguous states warrant treatment similar to that which is being applied to Alaska, Hawaii and Puerto Rico. As explained in the December 22, 1998 proposal, the DOL believes that the treatment for Alaska, Hawaii and Puerto Rico is a reasonable and equitable alternative.

2. Inclusion of the State of Oklahoma in Delta Southeast Agricultural Region

We received comments in opposition to ETA's decision to include the State of Oklahoma with the Delta Southeast (DSE) agricultural region for the purpose of this allocation formula. The State of Oklahoma is in the Southern Plains (SP) agricultural region. However, when the Interagency Task Force reviewed preliminary allocation formula data, some task force members expressed a concern that because of differences between Oklahoma and Texas in terms of the characteristics of farm laborers, that Oklahoma should be either treated as a separate agricultural region or included with an agricultural region with more similar agricultural labor patterns. Available data was not sufficient to treat Oklahoma as a separate agricultural region. Accordingly, the Task Force recommended, and ETA concurred, that Oklahoma should be included with the DSE agricultural region because of similarities in agricultural labor.

Commenters offered comparisons of crop, labor, harvesting, cultural, and weather patterns and practices between Oklahoma and the SP agricultural region versus Oklahoma and the DSE region to show that Oklahoma had more similarities with the SP region than the DSE region and should, as a result, be included with the SP agricultural region. The validity and applicability of some of the arguments provided was equivocal; however, ETA discussions with USDA and other private agricultural labor specialists suggest that while there are noticeable differences between the agricultural labor patterns in Oklahoma and Texas, there are more similarities between Oklahoma and SP than there are between Oklahoma and DSE. Moreover, since there is not overwhelming evidence to support the decision to include Oklahoma with DSE, the transparency of the allocation formula is enhanced and the principle of consistent treatment is reinforced by not making ad hoc alterations in the agricultural regions for the purpose of this formula. Accordingly, ETA has decided to revise the allocation formula to include Oklahoma within the SP agricultural region.

3. Complexity

Several individuals expressed concern about the complexity of the allocation formula. We acknowledge that the formula is complex. Primarily, this complexity is a result the nature of agricultural labor in the United States, the current status of scholarship on this topic and the lack of a single source of data on JTPA, Section 402/WIA, Section 167 eligible hired and contract farm labor that account for factors such as program eligibility, time and location of activity and turnover. The current approach and an earlier allocation formula proposal relied on a much simpler design. Critiques of both have focused on their lack of relevance to the population. As described earlier, to promote a greater understanding of the formula, DSFP sponsored a series of workshops for representatives of JTPA, Section 402 grantee organizations.

4. Equity and Validity

Another comment suggested that the allocation formula should not be used because it results in unfair allotments among recipients. However, no specific inequities were identified. A comment suggested that, since the number of eligible farmworkers cannot be known, the accuracy of the formula cannot be evaluated.

The DOL believes that, considering the status of scholarship on this topic and the availability of data, the proposed allocation formula is as fair and equitable as possible. The DOL plans to make several adjustments in the allocation formula based on comments from the public and follow-up research. The additional adjustments will enhance the precision and accuracy of the formula. Further, the DOL believes that this allocation formula is vastly superior to the one that is currently in place.

5. Future Consideration

One comment expressed disagreement with a recommendation by Dr. Martin, the DOL contractor who provided the independent evaluation of the allocation formula. Dr. Martin recommended that ''as UI coverage is extended to more farm workers, the DOL may want to consider using UI data on wages paid rather than COA data and thus avoid the issues related to payments made to family members and fringe benefits.'' The commenter objected to this recommendation because of concerns about limited availability of data at the State level and differences in UI coverage for MSFWs among the States. Dr. Martin and the DOL understand the current limitations associated with using UI data for wages paid rather than COA data. However, in the future, these limitations may be overcome. Accordingly, the DOL concurs with Dr. Martin's recommendation and will consider the appropriateness of using UI data as a component of the allocation formula in the future when such use is feasible.

C. Census of Agriculture

1. Appropriateness of Using COA Hired Farm and Contract Labor Farm Production Expense Data

A number of comments questioned the validity and/or appropriateness of using COA hired farm and contract labor farm production expense data for crop and livestock farmworkers as a proxy for wage data. Those commenting on this point raised a number of issues.

Many argued that COA hired and contract labor production expenses are not exclusively wages, and, therefore, include workers' compensation, unemployment insurance, other fringe benefits and payroll taxes, and the related salaries, fringe benefits and payroll costs of officers, managers and administrative personnel—which might tend to overstate the relative proportion of wages in some areas and understate them in others. Among those making this point, some suggested that these expenses were greater in Western States where the prevalence of large corporate agricultural establishments is more significant. Others suggested that farmworkers in other parts of the country—the East, Southeast and elsewhere—generally did not receive UI, workers' compensation and other employment benefits to the same degree as farmworkers in the Western States. Further, some commented that it was more likely that hired and contract labor production expenses associated with payments to officers, managers and administrative personnel would be more significant in States with larger agricultural establishments.

A number of recommendations were made. They included:

- Identification and subtraction of UI and workers' compensation payments by State—made on behalf of hired and contract crop and livestock workers from COA hired and contract labor farm production expenses.
- Collaboration with the U.S. Department of Agriculture to collect and use wage only data for crop and livestock workers.
- Use hired labor figures instead of production figures and work with USDA to obtain unduplicated count of hired labor.

It is possible to identify and extract UI payroll tax payments made on behalf of hired crop and livestock workers from COA data. The DOL intends to accomplish this by using 1996 BLS State-level ES–202 data for hired crop and livestock workers to determine the amount of UI payroll tax payments to be subtracted from the COA farm production expense totals for crop and livestock workers in each State.

A similar adjustment is not possible for contract workers because ES–202 data collection and reporting does not always associate UI tax payments made on behalf of contract crop workers with the State where the corresponding work is performed. The State or States where UI payroll tax is reported by labor contractors on behalf of their workers depends on many factors including where the labor contractors form their crews; when and where UI tax liability is established; when and where additional members are added to a crew; and whether or not, where and how often, the crew leader and members function as employees of an agricultural establishment.

The DOL also explored the feasibility of identifying and extracting workers' compensation insurance premiums from COA farm production expenses for crop and livestock hired and contract labor. Unlike with UI, there is no central workers' compensation insurance premium data collection apparatus at the federal level. Data on premiums paid or due is not available by SIC code in every State. Moreover, some agricultural establishments use liability insurance in lieu of workers' compensation. Those premium costs are even more elusive. (These non-workers' compensation insurance costs are also likely to be reported as labor expenses to the COA.) Inasmuch as workers' compensation insurance premiums paid on behalf of hired and contract crop and livestock workers cannot be identified in a uniform manner across the States, an adjustment based on workers compensation premiums will not be made.

Currently, the COA does not include a question that requires agricultural establishments to report only the wages of crop and livestock hired and contract laborers. It is theoretically possible to add a question to the COA requesting agricultural establishments to provide the wages of their hired workers.

Obtaining the wages of contract workers through a question posed to agricultural establishments would present a significant challenge, since owners of agricultural establishments would only have access to their cost of procuring contract labor and not the wages paid by the contractor to the crew. As such, the value of data resulting from such a question would be limited.

Obtaining wage-only information for hired farmworkers could be done by adding the question to a future sample survey of agricultural producers or adding the question to the 2002 COA. The costs associated with adding a wage question to a future sample survey or the next COA is prohibitive given the size of the appropriation for this program. However, the USDA could decide to add such a question in the future if that action was consistent with its research interest or if the addition of such a question satisfied a significant public interest. At this point, wage-only data is not available and the DOL is not prepared to defer the implementation of this allocation formula pending the possible future availability of this data.

It was also suggested that the DOL consider using the number of hired farm labor workers reported in the COA who worked less than 150 days in lieu of using farm production expenses. This suggestion was considered and rejected, since the suggested data are actually the number of job slots that were filled for less than 150 days. It is not reasonable to use this figure as a count of farmworkers as it is rife with duplication. Further, these data exclude contract labor. Another comment suggested that the DOL work with USDA to eliminate the duplication from the hired farm labor worker figure. This is a daunting task and no one consulted by the DOL had a clear idea of how it could be accomplished in an economically reasonable fashion.

Some of those commenting expressed a concern about piece rate wages relative to hourly wages because of potential under-reporting of hours by employers in order to mask potential wage and hour violations. The DOL is not aware of any data available to adjust COA production expense data for hired and contract labor which can account for under-reporting of labor hours worked paid at piece rate wages. In addition, the severity of this problem varies from region to region. The DOL is not aware of any data which allows adjustments to the geographic variances in the under-reporting of piece rate labor hours.

Some of those commenting expressed concerns about the use of COA production expense data for hired and contract labor because it is based on a 25 percent sample of agricultural employers. Despite these concerns, the COA sample size is adequate to produce statistically valid production expense data for hired and contract labor.

Many individuals expressed concerns that COA hired and contract labor expense data may not include:

- Sharecroppers, farmworkers paid for their agricultural labor in cash, farmworkers paid for their agricultural labor with commodities and services, and other individuals who perform farmwork through unspecified informal arrangements;
- Farmworkers employed by third-party harvesters (processing firms and packing houses) and independent buyers (pinhookers), intermediaries (bird dogs), crew leaders, and other similar agricultural entrepreneurs; and
- Farmwork performed by homeless individuals.

With respect to the requirement to report the production expense costs associated with the labor of crop workers hired by third-party harvesters and independent buyers in the COA, the following has been learned. Where the employer is a third-party harvester or independent buyer and also operates an agricultural establishment, the production expenses associated with the crop workers employed to do harvesting, are includable in that harvester's or buyer's COA survey. Where the employer is an independent buyer, who does not operate an agricultural establishment but purchases the crops harvested by the producer, labor costs are reportable by the producer.

The DOL is not aware of any data that could be used to adjust the COA hired or contract labor production expense data to account for the degree to which owners of agricultural establishments might fail to report or inaccurately report production expenses for farm labor costs in the COA for some types of workers. Similarly, the DOL is not aware of any scientific data which would provide a basis for adjustment for crop or livestock workers who are paid in cash or through other informal means. Therefore, while this is a valid concern, we are unable to perform a statistically valid adjustment to account for this kind of labor practice.

D. National Agricultural Workers Survey

Generally, comments received pertaining to the NAWS can be grouped in two categories: (1) methodology and limitations, and (2) applicability to the allocation formula. Comments pertaining to the NAWS and DOL's response are described below.

1. National Agricultural Workers Survey Methodology and Limitations

(a) Lack of Public Access to the NAWS Raw Data

Some comments expressed concerns about the lack of public access to the NAWS raw data. The NAWS raw data is protected by privacy restrictions, and therefore cannot be provided.

(b) Scope of the NAWS

Some of those providing comments argue that the NAWS was designed to develop a National estimate of demographic earnings and mobility patterns, etc. and was never intended to count farmworkers or provide State and local labor market information.

Some commenters expressed concerns about using the NAWS in the allocation formula because the NAWS surveys were not done in every State within every agricultural region. Generally, those comments questioned the validity of the result of the NAWS-based adjustments because they do not agree that agricultural labor and cultural practices within their State and/or among the States in their respective agricultural regions are sufficiently homogeneous to support the use of the methodology employed in this allocation formula. Related to this concern, one commenter suggested that, because of the limited scope of the NAWS, the eligibility adjustment should only be used as a temporary measure until the quality of the survey data are verified as reasonable and consistent across States.

In response to this concern, the DOL will provide information on the statistical validity of the NAWS adjustments at the time the PY 1999 preliminary state planning estimates are published.

(c) Inclusiveness of the NAWS Data

Some of those commenting suggest that the NAWS does not include dependents of farmworkers, misidentifies female farmworkers, and fails to include fruit packinghouse workers. A few of those noted that they based this conclusion on a comparison of the characteristics of JTPA, Section 402 participants served by their program and the NAWS survey results. Contrary to these concerns, the NAWS survey does include farmworkers who may also be dependents, properly identifies females and includes fruit packinghouse workers. The NAWS also includes information on family size and composition. It should be noted, however, that the DOL made the determination not to explicitly include dependents, other than those who also are identified consequent to their own farmwork status.

It is not surprising that the results from the NAWS would tend to be different from JTPA, Section 402 administrative records. The NAWS is a scientifically drawn sample of the universe of MSFW. Conversely, administrative records of participants served are not a representative sample of the population and as such cannot be used to draw valid conclusions about the composition of the universe.

(d) Expansion of the NAWS to Include Livestock and Other Workers

One individual recommended that the NAWS be expanded to incorporate livestock and other workers. This recommendation was provided to the DOL economist responsible for the NAWS.

2. Use of the National Agricultural Workers Survey in This Allocation Formula

(a) NAWS-Based Adjustment Factors

A substantial number of comments were received about the DOL's use of the NAWS data in the allocation formula to make adjustments for program eligibility, time and location of activity, and turnover. One comment suggested that the use of the NAWS data for adjustment purposes is a weakness in the formula. Some recommended that the DOL should not use the NAWS in the allocation formula. A number of people suggested that the NAWS should only be used to adjust to COA data for program eligibility and not for migration and turnover—which were characterized by some as so-called *policy-driven* adjustments.

Some of those commenting believe Florida is penalized by these adjustments because of its long growing season and internal migration. Some advocate that a special adjustment be made for Florida. Some advocate that Florida should be treated in the same manner as Alaska, Hawaii and Puerto Rico. Others advocate either that all adjustments or adjustments 2 and 3 only, not be applied to COA data for Florida. Other comments suggested that the result of adjustment 2 and 3 was to place a higher value on migrants.

Adjustment 2 (time and location of activity or ''downtime'') accounts for time spent by eligible crop workers in a particular region while they are engaged in non-agricultural employment or are not working. This adjustment is relevant to an allocation formula related to the distribution of resources for a migrant and seasonal farmworker program because these farmworkers are JTPA 402/WIA 167 eligible when not doing farmwork. Unlike a more single-point-in-time or snap-shot type data source such as the COP, this NAWS-based adjustment accounts for the time an eligible farmworker spends in a region while he or she is not engaged in agriculture.

Adjustment 3 (turnover rate) accounts for the difference in length of employment by crop farmworkers. This adjustment is relevant to an allocation formula related to the distribution of funds for a migrant and seasonal farmworker program because not all farmwork jobs are for the same duration of time and the number of farmworkers employed for a unit of time varies by agricultural region. This adjustment allows the formula to determine the relative number of eligible workers in each region as opposed to total time spent by eligible workers in the region. As with Adjustment 2, a snap-shot data source, such as the COP, is not capable of accounting for this variance.

Using data from the COA alone, such adjustments would not be possible. If any of the three NAWS-based adjustments were eliminated from the allocation formula methodology, there would be far less relationship between the resulting allocations and the distribution of the farmworker population in terms of MSFW program eligibility, migration patterns, and regional/State characteristics of agricultural employment.

Florida is not penalized by the adjustments because of its long growing season or internal migration pattern. A major influence on Florida's allocation is based on the tendency of Florida farmworkers to leave the State immediately after their agricultural employment. Moreover, the data show that a relatively high percentage of Florida farmworkers do not meet program eligibility. Furthermore, the DOL does not believe that any limitations in the quality of the data available for the 48 contiguous states warrant treatment similar to that which is being applied to Alaska, Hawaii and Puerto Rico.

(b) Work Authorization

Some comments expressed concerns about the high percentage of crop workers in their respective region who, according to the NAWS data, lack work authorization.

Statistically valid conclusions pertaining to work authorization and other related factors can be drawn from the NAWS data. The statistical validity of the NAWS findings related to their use in this allocation formula are

presented in Section II. D1 (b) of this notice.

(c) Relationship Between the NAWS Data and JTPA, Section 402/WIA, Section 167 Eligibility

Some comments expressed concern with the use of the NAWS data for eligibility adjustment purposes because the NAWS data does not exactly match the JTPA, Section 402 eligibility criteria.

Available NAWS data does not exactly match the JTPA, Section 402/WIA, Section 167 eligibility criteria. Under JTPA, Section 402/WIA, Section 167, a determination of qualifying farmwork can include any consecutive 12 month period out of the 24-month period prior to enrollment.[1] The NAWS respondent work history only includes the 12-month period prior to the conduct of the survey interview. Further, under JTPA, Section 402/WIA, Section 167, to be considered a farmworker, an individual would have to have earned at least $400 from farmwork. The NAWS can determine if someone earned at least $500 from farmwork.

The NAWS is the only relevant, statistically valid, national source of demographic and socio-economic information on the farmworker population. Since there is no source of data specifically designed to enumerate JTPA, Section 402/WIA, Section 167 eligible farmworkers, it is not surprising that there would not be an exact match between data source elements and MSFW eligibility criteria. The DOL is aware of the differences between the NAWS data elements and MSFW program eligibility. The differences are considered to be minor and insignificant.

(d) Other NAWS Use Issues

Some comments challenge the validity of the allocation formula based on a comparison of the relative geographical sizes of States. No component of this allocation formula is based on the relationship among States in terms of geographical size. The relevant issue is a State's proportional share of the relative number of eligible farmworkers and not the size of an area.

Another comment expressed a concern about a NAWS finding that the DSE agricultural region has a higher than average wage rate. However, the finding question was not derived from the NAWS. The finding results from FLS and COA data.

E. Other Farmworkers

One individual recommended the elimination of forestry and fishery workers from the allocation formula and that the weight assigned to crop and livestock workers be redistributed excluding other workers. The individual argued that forestry and fishery workers are not farmworkers. Including forestry and fishery workers as farmworkers would confuse the definition of farmwork and stretch its credibility.

The DOL concurs with this comment. Accordingly, the final allocation formula will not include forestry and fishery workers. The weight assigned to crop workers and livestock workers in the final allocation will be based on the relative share of COP LLSIL crop and livestock workers only.

F. Minimum Funding Provision

Several individuals commented that the DOL should continue the use of the minimum funding level. Using arguments based on economy of scale and the practices of other funding sources, those commenting on this issue suggested that the minimum funding amount be increased from $120,000 to between $240,000 and $300,000.

This allocation formula is designed to allocate funds based on the DOL's best assessment of the relative distribution of MSFW's among the States. If the existing $120,000 minimum funding allocation strategy were used, based on the results of the allocation formula, some States would receive funding in excess of twice the amount of their formula-based allocation. In situations where the allocation for a particular area would be insufficient to qualify it for a separate grant, the DOL does not believe that reasonable combinations of geographically-contiguous jurisdictions would compromise the provision of high quality workforce investment activities benefitting farmworkers.

III. Final Allocation Formula—Detailed Description

A detailed description of the proposed JTPA, Section 402/WIA, Section 167 allocation formula follows:

A. Standardized or Adjusted Hours of Farmwork by State

The standardized or adjusted hours of farmwork by State involves determining the relative number of hours worked by Crop Workers and by Livestock Workers in each State.

1. Establish The Total Wage[2] Bill for Each State for Crop and Livestock Work

Data from the 1997 Census of Agriculture[3] provide the total agricultural labor production expenses (SICs 01 and 02) by State, and the total crop labor (SIC 01) production expenses, by State. The livestock labor (SIC 02) production expenses are calculated by subtracting the crop labor production expenses from the total labor production expenses.[4]

COA production expense data is used as a proxy for agricultural wages as data on wages paid to hired and contract agricultural crop and livestock workers is not available on a National basis. It has been argued that agricultural production expense data include elements that are not applied on a uniform basis to all crop and livestock worker wages. Since it is possible to identify unemployment insurance contributions paid on behalf of hired crop and livestock workers by State, with a strong degree of precision, Unemployment Insurance payments made on behalf of hired crop and livestock workers will be subtracted from the State production expense totals.

2. Calculate the Hours Worked in Crop Work and in Livestock Work for Each State

The Farm Labor Survey (FLS) as reported in USDA's Farm Labor provides information by region on the average hourly wage, separately, for crop workers and livestock workers. To calculate an approximate number of hours worked by crop workers and livestock workers, the total production expense for each State is divided by the hourly wage for that State's region. These calculations were made for both crop workers and livestock workers. This calculation was done for all States except for Alaska and Hawaii.[5]

[1] Under certain circumstances (military service, hospitalization, incapacitation, incarceration, etc.), the period in which the 12-month eligibility determination is made may be extended beyond two years.

[2] Hired and contract labor agricultural production expenses for crop and livestock farmworkers are used as a proxy for wages as wage only is not available.

[3] Data from the 1997 Census of Agriculture was not available when the allocation formula proposal was published.

[4] This reported data includes hired and contract labor. The contract labor data includes the contractor's management expenses.

[5] In the design of the allocation formula, DOL used a different method for allocating funds to Alaska, Hawaii and Puerto Rico than was used in the 48 contiguous States because all of the data sources applied to the formula for the contiguous 48 States were not available for those jurisdictions.

$$\text{State crop labor hours} = \frac{\text{State total crop payroll}}{\text{Average hourly Regional}^{6}\text{ wage rate}}$$

$$\text{State livestock labor hours} = \frac{\text{State total livestock payroll}}{\text{Average hourly Regional wage rate}}$$

3. Determination of the Relative Share of Labor Hours for Each State

The percentage of labor hours (for crop work, and for livestock work) that each State contributes to the United States' total was calculated. This is done by dividing each State's total for crop labor bill by the State's average for crop wages and each State's total for livestock labor bill by the State's average for livestock wages. The percentage for crop and livestock hours of each State is calculated by dividing the State's hours for each into the total for all States for each.

B. Crop Hours Adjustments

The crop hours adjustment accounts for JTPA, Section 402/WIA, Section 167 program eligibility, time and location of activity by eligible farmworkers and turnover rate.

1. Adjustment 1—Eligibility for JTPA, Section 402/WIA, Section 167 Program

Adjustment 1 applies JTPA, Section 402/WIA, Section 167 eligibility criteria to the NAWS information for the purpose of adjusting the crop worker figures for JTPA, Section 402/WIA, Section 167 eligibility.

(a) Primary Employment in Agriculture: 50 Percent of Income Derived From Crop Farmwork

Eligibility for the JTPA, Section 402 program requires that at least 50 percent of a farmworker's income be derived from agricultural employment. For the WIA, Section 167 program, the comparable requirement calls for primary employment in agriculture. For the purpose of this allocation formula, deriving at least 50 percent of income from crop farmwork, is being used as the basis for this facet of the adjustment.

The NAWS collects information from all respondents regarding their total personal income, including their income derived exclusively from agricultural employment. In lieu of specifying an exact dollar amount, the NAWS respondents are asked to choose from among a number of stated ranges within which he or she believes his/her total family income falls (most ranges cover a span of $2,500).

To determine the percentage of a farmworker's income that is derived from agricultural employment, reported agricultural income was divided by total earned income. A result of 50 percent or greater indicates that half or more of the farmworker's income came from agricultural employment.

In order to formulate a number that could be used in such an equation, the midpoint of the income range was assigned as the dollar value of the farmworker's income. For example, a respondent indicates that his total income for the previous year fell in the range of $10,000 to $12,499, and his income from agricultural employment fell within the $7,500 to $9,999 range. The dollar value assigned as the respondent's total income would be the midpoint of $10,000 to $12,499, or $11,250, and the dollar value assigned as the respondent's agricultural income would be the midpoint of the $7,500 to $9,999 range, or $8,750. The percentage of total income that came from agricultural income would be calculated using the two mid-point figures by dividing the agricultural income figure of $8,750 by the total income figure of $11,250. The result in this example being 78 percent, would qualify the hypothetical farmworker as meeting this eligibility criterion.

The LLSIL poverty criteria values used are the highest national (except Alaska, Hawaii and Puerto Rico) non-metro limit for each family size. The calculation uses the higher of the Health and Human Services or LLSIL values. For example, for family sizes of 1 to 6, the values applied, are as follows: $7,360, $10,520, $14,440, $17,820, $21,030, and $24,600.

(b) Primary Employment in Agriculture: 25 Days or $400 of Crop Farmwork in Previous 24 Months

To be eligible for the JTPA, Section 402 program, a farmworker must be employed at least 25 days in farmwork for any consecutive 12-month period within the 24 months preceding application for enrollment, or have earned $400 in farmwork and have been primarily employed in farmwork on a seasonal basis. For the WIA, Section 167 program, the comparable requirement calls for primary employment in agricultural labor characterized by chronic unemployment or underemployment (seasonal employment). For the purpose of this allocation formula, working at least 25 days in crop agriculture or earning at least $400 from crop agriculture during the previous 12 months, is being used as the basis for this facet of the adjustment.

The NAWS collects information on farmworkers' periods of employment and non-employment for the twelve months prior to the interview. From this information, one is able to construct the number of days during these twelve months that the NAWS respondent worked in farmwork.

For months 13 through 24 prior to the interview, the respondent is asked to estimate the number of months in which he or she worked in farmwork; one day or more worked per month equals one month. A NAWS respondent who stated that he/she had worked for two or more months in farmwork during the 13 through 24 month period is considered to have worked 25 days in agricultural employment.

As mentioned previously, the NAWS collects information on farmworkers' income from agricultural employment from the previous year. As the responses to this question are categorical (as discussed above), the NAWS does not have exact amounts earned by farmworkers. The lowest category is ''under $500.'' Thus, $500 is used as the minimum amount earned from farmwork (rather than $400). Income information is available only for the one year period preceding the NAWS interview.

To satisfy this criterion for eligibility for the JTPA, Section 402/WIA, Section 167 program, a farmworker must fulfill one of the three standards elaborated above: either he/she worked 25 days or more in the 12 months prior to the interview; or he/she worked two months during the 13 through 24 month period prior to the interview; or he/she earned $500 or more from farmwork in the past year.

(c) Below the LLSIL Poverty Line

Eligibility for the JTPA, Section 402/WIA, Section 167 program requires that a crop farmworker and his/her family fall below the LLSIL poverty line. Because the NAWS collects information

[6] Data organized under the US Department of Agriculture Regions.

on the number of members in a farmworker's household as well as the farmworker's total family income, the NAWS is able to estimate whether the income of the farmworker's family places the family below the LLSIL poverty line. A family was determined to fall within the LLSIL poverty line when the family income fell within an income category below the one in which the LLSIL poverty line fell. For example, the LLSIL poverty line for a family of 4 individuals was $18,740. This amount falls in the income range of $17,500 to $19,999. Thus, a family of 4 individuals whose family income falls below this range was considered to satisfy the criterion of falling below the LLSIL poverty line.[7]

(d) Legal or Pending Status

The NAWS collects information on crop farmworkers' citizenship and work authorization status. A farmworker was considered to satisfy the criterion of legal status for the JTPA, Section 402/WIA, Section 167 program if he/she was determined to be a citizen or a legal permanent resident, or if he/she held a valid form of work authorization. A farmworker who was determined to be undocumented was not considered to fulfill this eligibility criterion.

Individuals who met all four of the criteria stated above were coded as eligible for the JTPA, Section 402/WIA, Section 167 program.

In summary, adjustment 1 (the JTPA, Section 402/WIA, Section 167 eligibility ratio) is a ratio which adjusts total crop hours worked to account for hours worked by JTPA, Section 402/WIA, Section 167 eligible farmworkers. This ratio is the total number of farmwork days (as measured in the NAWS) worked by JTPA, Section 402/WIA, Section 167 eligible crop workers divided by the total number of farmwork days worked by all crop workers. This ratio is always less than one, and it is multiplied by the hours worked by all crop workers to produce the estimated hours worked by JTPA, Section 402/WIA, Section 167 eligible farmworkers for each region.

$$\text{JTPA, Section 402/WIA, Section 167 eligibility ratio} = \frac{\text{eligible crop days}}{\text{total crop days}}$$

2. Adjustment 2—Time and Location of Activities

For all the NAWS respondents, the following data are collected separately by geographic location:

the number of days that respondents spent doing crop farmwork and doing the other activities reported under the NAWS, consisting of non-farmwork, not working, or living abroad.

These data permit adjusting for State-to-State movements of crop workers during a 12 month period. For each of these items except living abroad, the days were accumulated under the regions[8] in which the respondents indicated they occurred. These regions are the regions used for the wages in the previous step.

Adjustment 2 (time and location of activity) accounts for the time spent by crop workers in non-agricultural employment and time not employed to provide a percentage of JTPA, Section 402/WIA, Section 167 eligible non-crop work time in each region. This is a ratio always greater than 1 that is calculated for each USDA region by dividing the sum of the number of days JTPA, Section 402/WIA, Section 167 eligible respondents reported working as crop workers, not working and working in nonagricultural work by the total number of days reported working as crop workers.

$$\text{nonfarm adjustment ratio} = \frac{\text{eligible farm and nonfarm days in the region}}{\text{eligible farm days in the region}}$$

To compute the total time that crop workers spent in each State, the number of hours worked by JTPA, Section 402/WIA, Section 167 eligible crop workers (the result of applying adjustment 1) is multiplied by Adjustment 2 to provide the time spent in each State by eligible crop workers.

$$\text{time and location computation} = (\text{adjustment } 1 \times \text{adjustment } 2)$$

3. Adjustment 3—Annual Crop Employment

To this point, the figures are aggregations that could be converted into annual units of eligible hours for each State, but such units do not translate directly into the numbers of jobs or of farmworkers. This is due to regional variations in the seasonal, short-term nature of farmwork employment and the high probability of farmworkers holding multiple farmwork jobs during each agricultural season. The number of workers needed to make up the eligible worker hours in an annualized unit (e.g., 2,000 hrs.) varies from region to region. Although a number of workers are represented in an annualized unit (i.e., a year's worth of hours), due to the regional differences in crop agriculture, there are fractional differences in every 1,000 hours of eligible crop work represented for each region/State. As already stated, the NAWS records have the total number of eligible farmworkers in each region and the total number of days worked annually (in agriculture and non-agricultural employment) and the total number of days present, but not working by the eligible farmworkers. These data provide the total sum of time eligible crop workers are present in each region/

[7] The LLSIL consists of differing metropolitan and rural levels reflective of varying costs-of-living among differing metropolitan and rural regions. However, to facilitate the application of the NAWS data to this formula, and since many farmworkers earn income in more than one State, a single national standard is applied for each family size that is the highest rural level for each family size. For a family size of one, however, the HHS poverty level was used, as it is higher than the LLSIL.

[8] The Regions were used because there were some States with few or no observations and the data is not reliable below the regional level. Alaska and Hawaii, each single State regions, were not included in this calculation.

State. The ratio of the total number of these farmworkers to the total number of days present in each region/State jurisdiction is an expression of the annual average number of days worked per farmworker in crop work. Differences among the regions that are due to the geographic differences in employment and residency/presence in the jurisdiction, are accounted for by the application of this ratio.

Adjustment 3 (annual crop employment) accounts for relative differences in the length of time engaged in crop employment and other eligible activities by eligible workers annually. This is the ratio of the number of eligible workers divided by the number of eligible days. The longer the annual number of days worked in crops, the lower the ratio and the fewer the number of workers represented by every time unit, such as 10,000 hours or an estimated annualized unit. (The reciprocal produces an estimated annual number of days worked in crops, or present in other eligible activities, per eligible farm worker.) Adjustment 3 converts the final COA/FLS numbers into a people denominated index.

C. Livestock Adjustments

Livestock adjustments involve determining the State relative share of livestock workers expressed as percentages.

The State relative share of livestock hours from the *Standardized or Adjusted Hours of Farmwork*, described above, is adjusted by the COP data for economically disadvantaged criteria. The number of economically disadvantaged (LLSIL) livestock workers is divided by the total number of livestock workers in each State. This JTPA, Section 402/WIA, Section 167-eligibility rate for livestock workers in each State is multiplied by the State's percentage share of livestock worker hours. This product expresses the share of livestock worker hours performed by those living below the LLSIL. The products of these calculations for each State are adjusted to sum to 100 so that they express the percentage each State's JTPA, Section 402/WIA, Section 167-eligible livestock workers comprise of the national total.

D. Combining the State Distributions of the Farm Occupations

The formula computes the ratio of JTPA, Section 402/WIA, Section 167-eligible crop workers to livestock workers. Because differing approaches are used for determining each State's relative shares of crop workers and livestock workers, it is necessary to weight the relative relationship of the two groups of data. The COP counts crop and livestock workers, thus it is used to determine the relative distribution of the two, as follows. Using COP data on farmworkers meeting the LLSIL criteria, the formula computes the percentage that the US total of economically disadvantaged (LLSIL) crop workers comprise of total (LLSIL) farmworkers. Similarly, the percentage that LLSIL livestock workers comprise of total LLSIL farmworkers and that the other LLSIL farmworkers comprise of total LLSIL farmworkers is computed. The sum of the State percentages is the relative weight of each group, expressed as the percentage the group represents of the total. The sum of the two national percentages equals 100 percent.

E. Alaska, Hawaii and Puerto Rico

FLS (QALS) data on Alaska, Hawaii and Puerto Rico are either incomplete or nonexistent. The COA is not taken in Puerto Rico and the NAWS data are not available for Alaska, Hawaii, and Puerto Rico, where Census data must be relied on for measuring the populations of crop and livestock workers as well as other farmworkers. The basic objection to the Census, its failure to adequately locate and count migratory farmworkers, would not appear to be as significant an issue for the two island jurisdictions where, relative to conditions found on the mainland, the farmworker population tend to live at fixed addresses. However, there is a potential bias of Census under-count that remains for those areas, but at present the Department has no data with which to address this deficiency. Consequently, the necessity of relying on Census data for determining the numbers of combined crop and livestock workers in these two jurisdictions is considered to be the best alternative to complement the approach in the contiguous 48 States.

F. Special Tabulation of COP Data

To collect data for the COP portion of the proposed formula the DOL used a special tabulation of 1990 COP data from the Bureau of the Census in the form of a selection of Standard Occupational Classification (SOC) and Standard Industrial Classification (SIC) codes for farmworkers falling below 70 percent of the LLSIL poverty guidelines.

G. SOC and SIC Codes

COP equivalents were used to capture individuals in the following Standard Occupational Classification codes:

477—supervisors, farm workers
479—farm workers
484—nursery workers
485—supervisors, related agricultural occupations
488—graders and sorters, agricultural products
489—inspectors, agricultural products

COP equivalents were used to capture individuals in the following Standard Industrial Classification codes:

001—agricultural production, crops
002—agricultural production, livestock
007—agricultural services

IV. Description of the Hold-Harmless Provision

For Program Years 1999, 2000, 2001 and 2002 the DOL intends to apply a hold-harmless provision to the allocation formula in order to allow a staged transition from the application of the old formula to the new one. Since the total amount of funds available to Alaska, Hawaii and Puerto Rico are based solely on those jurisdictions' share of LLSIL farmworker as reported in the 1990 COP, as applicable, the hold harmless provision will be applied to those jurisdictions to the extent practicable. The staged transition of the hold-harmless provision will be implemented as follows:

(1) In PY 1999, each State service area will receive an amount equal to at least 95 percent of their PY 1998 allotments, as applied to the PY 1999 formula funds available. In the event the total amount available for PY 1999 allotments is less than the total amount available for PY 1998 allotments, each State will receive an amount equal to at least 95 percent of what they would have received had the PY 1998 allotment been equal to the PY 1999 allotment.

(2) In PY 2000, each State service area will receive an amount equal to at least 90 percent of their PY 1998 allotments, as applied to the PY 2000 formula funds available. In the event the total amount available for PY 2000 allotments is less than the total amount available for PY 1998 allotments, each State will receive an amount equal to at least 90 percent of what they would have received had the PY 1998 allotment been equal to the PY 2000 allotment.

(3) In PY 2001, each State service area will receive an amount equal to at least 85 percent of their PY 1998 allotments as applied to the PY 2001 formula funds available. In the event the total amount available for PY 2001 allotments is less than the total amount available for PY 1998 allotments, each State will receive an amount equal to at least 85 percent of what they would have received had the PY 1998 allotment been equal to the PY 2001 allotment.

(4) In PY 2002, each State service area will receive an amount equal to at least 80 percent of their PY 1998 allotments

as applied to the PY 2002 formula funds available. In the event the total amount available for PY 2002 allotments is less than the total amount available for PY 1998 allotments, each State will receive an amount equal to at least 80 percent of what they would have received had the PY 1998 allotment been equal to the PY 2002 allotment.

Thereafter, allocations to each State service area would be for an amount resulting from a direct allocation of the proposed funding formula without adjustment.

V. Minimum Funding Provisions

A State area which would receive less than $60,000 by application of the formula will, at the option of the DOL, receive no allocation or, if practical, be combined with another adjacent State area. Funding below $60,000 is deemed insufficient for sustaining an independently administered program. However, if practical, a State jurisdiction which would receive less than $60,000 would be combined with another adjacent State area.

VI. Program Year 1999 Preliminary State Planning Estimates

The state allotments set fourth in the Table appended to this notice reflect the distribution resulting from the allocation formula described above. For PY 1998, $71,017,000 was appropriated for JTPA, Section 402 migrant and seasonal farmworker programs, of which $67,123,818 was allocated on the basis of the old formula. The remaining $3,893,182 of the PY 1998 JTPA, Section 402 appropriation was retained in the JTPA, Section 402 national account to fund the farmworker housing program; the Hope, Arkansas Migrant Rest Center; Training and Technical Assistance Mini-Grants; and other training and technical assistance projects and initiatives. The figures in the first numerical column show the actual PY 1998 formula allocations to State service areas. The next column shows the percentage of each allocation.

For PY 1999, $71,571,000 was appropriated for the JTPA, Section 402 migrant and seasonal farmworker program, of which $67,596,408 will be allocated. The remaining $3,974,592 will be retained in the National account for farmworker housing ($3,000,000) and other training and technical assistance projects and initiatives ($974,592). For purposes of illustrating the effects of the proposed allocation formula, the third column of the Table shows the allocations based on the proposed formula without the application of the hold-harmless or minimum funding provisions. The percentages are reported in column 4. The State service area allocations with the application of the first-year (95 percent) hold-harmless and minimum funding provisions, followed by the percentages, are shown in columns 5 and 6.

Signed at Washington, D.C., this 14th day of May, 1999.

Raymond Bramucci,

Assistant Secretary of Labor.

BILLING CODE 4510–30–P

U.S. Department of Labor
Employment and Training Administration
Migrant and Seasonal Farmworker Program
Impact of Proposed PY 1999 Formula Allotments To States

	PY 1998		PY 1999			
	Allotment	Percentage Share	With hold harmless		Without hold harmless	
			Allocation	Percentage Share	Allocation	Percentage Share
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	791,835	1.23853	752,243	1.16482	437,632	0.67766
Arizona	1,519,645	2.37692	1,595,288	2.47025	1,719,287	2.66226
Arkansas	1,167,409	1.82598	1,109,039	1.71731	724,893	1.12247
California	14,591,138	22.82241	15,474,045	23.96107	20,067,526	31.07393
Colorado	805,523	1.25994	849,188	1.31494	992,449	1.53678
Connecticut	206,024	0.32225	219,385	0.33971	303,689	0.47025
Delaware	118,334	0.18509	123,873	0.19181	125,899	0.19495
District of Columbia	0	0.00000	0	0.00000	0	0.00000
Florida	4,631,415	7.24413	4,399,844	6.81302	2,465,700	3.81806
Georgia	1,711,615	2.67719	1,626,034	2.51786	876,499	1.35723
Idaho	877,438	1.37243	924,919	1.43221	1,079,184	1.67108
Illinois	1,425,808	2.23015	1,424,912	2.20643	1,424,912	2.20643
Indiana	781,615	1.22255	822,409	1.27347	927,202	1.43574
Iowa	1,314,394	2.05588	1,248,674	1.93353	1,078,955	1.67073
Kansas	697,839	1.09151	745,302	1.15408	1,078,783	1.67046
Kentucky	1,352,613	2.11566	1,284,982	1.98975	1,043,179	1.61533
Louisiana	796,032	1.24510	756,230	1.17100	484,907	0.75086
Maine	327,397	0.51209	311,027	0.48162	174,702	0.27052
Maryland	306,291	0.47908	322,297	0.49907	363,789	0.56332
Massachusetts	351,027	0.54905	333,476	0.51638	298,012	0.46146
Michigan	878,641	1.37431	920,193	1.42489	944,430	1.46242
Minnesota	1,274,775	1.99391	1,211,036	1.87525	879,095	1.36125
Mississippi	1,449,044	2.26649	1,376,592	2.13161	571,321	0.88467
Missouri	1,094,524	1.71198	1,039,798	1.61009	976,379	1.51189
Montana	667,189	1.04357	633,830	0.98147	461,861	0.71518
Nebraska	774,884	1.21202	822,946	1.27431	1,092,397	1.69154
Nevada	200,795	0.31407	190,755	0.29538	159,091	0.24635

	PY 1998		PY 1999			
	Allotment	Percentage Share	With hold harmless		Without hold harmless	
			Allocation	Percentage Share	Allocation	Percentage Share
	(1)	(2)	(3)	(4)	(5)	(6)
New Hampshire	112,600	0.17612	106,970	0.16564	100,958	0.15633
New Jersey	400,038	0.62571	430,772	0.66704	698,545	1.08167
New Mexico	598,720	0.93647	639,856	0.99080	934,978	1.44778
New York	1,850,667	2.89468	1,758,134	2.72241	1,088,774	1.68593
North Carolina	3,006,003	4.70177	2,855,703	4.42197	1,897,104	2.93761
North Dakota	468,362	0.73258	495,178	0.76677	609,496	0.94379
Ohio	904,951	1.41546	960,585	1.48744	1,264,492	1.95803
Oklahoma	608,145	0.95122	664,324	1.02868	1,276,891	1.97723
Oregon	1,087,697	1.70130	1,151,594	1.78321	1,452,311	2.24886
Pennsylvania	1,221,441	1.91049	1,289,635	1.99696	1,549,985	2.40010
Rhode Island	0	0.00000	1,709	0.00265	38,832	0.06013
South Carolina	1,080,106	1.68942	1,026,101	1.58888	391,046	0.60552
South Dakota	692,869	1.08374	658,226	1.01924	456,831	0.70739
Tennessee	957,799	1.49812	909,909	1.40897	720,217	1.11523
Texas	5,979,800	9.35317	6,274,480	9.71583	6,697,752	10.37126
Utah	245,354	0.38377	258,030	0.39955	288,106	0.44612
Vermont	213,134	0.33337	202,477	0.31353	105,217	0.16293
Virginia	1,036,441	1.62113	984,619	1.52465	708,789	1.09754
Washington	1,705,576	2.66774	1,805,106	2.79515	2,262,216	3.50297
West Virginia	219,325	0.34305	208,359	0.32264	100,275	0.15527
Wisconsin	1,229,201	1.92263	1,167,741	1.80821	953,157	1.47593
Wyoming	201,911	0.31581	212,127	0.32847	232,207	0.35957
Continental U.S.	63,933,384	100.00000	64,579,952	100.00000	64,579,952	100.00000
Alaska	0	0.00000	0	0.00000	0	0.00000
Hawaii	251,607	7.88629	224,571	7.44486	204,254	6.77132
Puerto Rico	2,938,827	92.11371	2,791,885	92.55514	2,812,202	93.22868
Non-Continental U.S.	3,190,434	100.00000	3,016,456	100.00000	3,016,456	100.00000
Total	67,123,818	----------	67,596,408	----------	67,596,408	----------

[FR Doc. 99–12554 Filed 5–18–99; 8:45 am]
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federal register

Wednesday
May 19, 1999

Part IV

Department of Education

34 CFR Part 611

Teacher Quality Enhancement Grants Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 611

RIN 1840–AC67

Teacher Quality Enhancement Grants Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Assistant Secretary for Postsecondary Education (Assistant Secretary) proposes to develop regulations that would apply the eight percent (8%) indirect cost limitation for the Department's educational training grants to all States and local educational agencies (LEAs) receiving funds under the Teacher Quality Enhancement Grants Program for States and Partnerships authorized by sections 201–205 of the Higher Education Act (HEA), as amended by the Higher Education Amendments of 1998. These proposed regulations would ensure that the limited funding available to support program activities is concentrated on direct support for improvements in teacher licensing, certification, preparation, and recruitment, rather than for recipient ''overhead.''

DATES: We must receive your comments on or before June 18, 1999.

ADDRESSEES: All comments concerning these proposed regulations should be addressed to: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, 400 Maryland Ave. SW., Portals Building, Room 6234, Washington, DC 20202–5131: Telephone: (202) 708–8847, or by FAX to: (202) 260–9272. If you prefer to send your comments through the Internet use the following address: comments@ed.gov.

You must include the term ''Indirect Costs'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Venuto, Higher Education Programs, Office of Postsecondary Education, 400 Maryland Avenue, SW, Portals Building, Room 6234, Washington, DC 20202–5131: Telephone: (202) 708–8847; FAX (202) 260–9272. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations at the Department of Education, 1250 Maryland Avenue, SW., Room 6234, Portal Building, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

General

Background: On October 8, 1998, the President signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244). Title II of this law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the Higher Education Act, Teacher Quality Enhancement Grants for States and Partnerships. The new Teacher Quality Enhancement Grants programs provide an historic opportunity to effect positive change in the recruitment, preparation, licensing, and on-going support of teachers in America. The programs are designed to increase student achievement by implementing comprehensive approaches to improving teacher quality.

More specifically, the Teacher Quality Enhancement Grants Program include three new competitive grant programs:

State Grants Program: Competitive grants to States will support the implementation of comprehensive statewide reforms to improve the quality of a State's teaching force. By law, State activities must include one or more of the following activities: reforming teacher certification or licensure standards; implementing reforms to hold institutions of higher education accountable for preparing teachers who are highly competent in their subject areas; providing prospective teachers with alternative pathways into teaching; implementing programs of support for teachers during their initial periods of teaching and establishing, expanding, or improving alternative routes to State certification; developing effective methods of recruiting and rewarding highly competent teachers and removing incompetent or unqualified teachers; recruiting teachers for high-poverty urban and rural areas; and developing ways teachers can address the problem of social promotion.

Partnership Grants for Improving Teacher Preparation Program: The purpose of the Partnership program is to bring teacher preparation programs, schools of arts and sciences, and high-need school districts and schools together (as appropriate, with other stakeholders) to create fundamental change and improvement in traditional teacher education programs—thereby increasing teachers' capacity to help *all* students learn to high standards. Designed to support highly committed partnerships that will accelerate the change process in teacher education, the program will (1) strengthen the vital role of K–12 educators in the design and implementation of effective teacher education programs; and (2) increase collaboration between departments of arts and sciences and schools of education.

The program is designed to make an important impact on teacher education and thereby to increase significantly the number of new teachers emerging from programs that have been redesigned to ensure that new teachers have the content knowledge and teaching skills to be effective.

Teacher Recruitment Grants Program: In addition, there is a great need, especially in high-poverty communities, to recruit and prepare more people to become teachers. The Teacher Recruitment Grants—awarded either to States or to partnerships among high-need LEAs, teacher preparation institutions, and schools of arts and sciences—are designed to reduce shortages of highly qualified teachers in high-need school districts.

Local partnerships between school districts and teacher preparation institutions have been found to be very effective at providing teachers for communities where they are most needed. The ''grow your own'' approach is also effective for these communities because individuals who are already members of a community are likely to remain there after they become teachers. The recruitment grants will allow individual communities to determine their needs for teachers and to recruit and prepare teachers who meet those needs. States can also play an important role in ensuring that high-need school districts are able to recruit highly qualified teachers, and they can use the recruitment grants to develop and implement effective mechanisms to do so.

The Department announced the initial competitions for grants under these three programs by publishing a notice in the **Federal Register** on February 8, 1999 (64 FR 6139). The Department expects to make awards under the State and Teacher Recruitment programs by mid-July 1999, and awards under the Partnership program by early September 1999.

Need to Regulate: More than ever before in our history, teaching is the profession that is shaping the Nation's future—molding the skills of our future workforce and laying the foundation for good citizenship and full participation in community and civic life. Accordingly, what teachers know and are able to do is critically important. Yet, we face daunting challenges as we seek to ensure a national teaching force of the highest quality. America's schools will need to hire 2.2 million teachers over the next decade, more than half of whom will be first-time teachers. As classrooms grow more challenging and diverse, these teachers will need to be well prepared to teach all students to the highest standards. Contemporary classrooms and social conditions confront teachers with a range of complex challenges previously unknown in the profession. New education goals and tougher standards, more rigorous assessments, site-based management, greater interest in parental involvement, the continuing importance of safety and discipline, and expanded use of technology increase the knowledge and skills that teaching demands.

The three new Teacher Quality Enhancement Grants programs offer an opportunity to improve teacher quality in America by effectively addressing these challenges. However, success will depend upon how well we use the resources that Congress provides to make sustained and meaningful improvements in teacher licensure, certification, preparation, and recruitment. For fiscal year 1999, Congress appropriated $75 million for these three component programs. If these funds, and funds that Congress will appropriate for use in future years, are to achieve their purposes, we need to ensure that they are used as effectively as possible. To do so, it is necessary to place a reasonable limitation on the amount of program funds that Title II grant recipients may use to reimburse themselves for the ''indirect costs'' of program activities.

Sections 75.560–75.564 and 80.22 of the Education Department General Administrative Regulations (EDGAR) incorporate and apply cost principles developed by the Office of Management and Budget (OMB) for government-wide grant activities to projects and activities that States and local governments undertake with funds awarded under the Department's discretionary grants. These regulations provide that costs of project activities may be charged to grant funds in two forms: as direct costs and indirect costs. The direct costs of a grant are charges that are directly allocable to grant activities. Indirect costs, on the other hand, are charges that are incurred by so many programs or cost objectives that it would be either impossible or prohibitively expensive to calculate the precise amount of charges allocable to a particular program or grant activity. Examples of typical indirect costs are heat, electricity and other utilities, building services and depreciation, and general administration.

Generally, the formula for determining the amount of indirect costs that may be charged to any grant is based on application of a negotiated indirect cost rate to the grant's direct costs. Thus, the higher the indirect cost rate the more grant funds that will be charged for these ''overhead'' expenses, and the fewer grant funds that remain available for the costs of direct services. By their own terms, EDGAR regulations in sections 75.560–75.564 and 80.22 (which incorporate applicable OMB cost principles for determining a grant's allowable costs) provide that an agency's or institution's indirect cost rate depends, subject to EDGAR definitions, on the agency's or institution's own overall cost structure.

The best data available to the Department indicate that over 20 States have indirect cost rates of over 15 percent; two States has an indirect cost rates of 34 percent. If peer reviewers recommend these States for award of State or Teacher Recruitment Program grants, over 15 percent or more of the funds that Congress has appropriated for these programs may support the States' indirect costs rather than the direct costs of activities designed to improve teacher quality. While recognizing the legitimacy of indirect costs, the Secretary believes that having these large amounts of funds compensate States and other recipients for their general overhead and related expenses is inconsistent with the purpose of the programs and the expectations that Congress and the Nation have for their success. Therefore, given (1) the pivotal significance of the Teacher Quality Enhancement Grants programs, (2) the national need that these programs have a maximum impact on the quality and quantity of highly-qualified new teachers, and (3) the fact that these programs are competitive, the Secretary has determined that a reasonable limitation on the indirect cost rate that States and LEAs may charge to their Teacher Quality Enhancement Grants program funds is appropriate.

Section 75.562 of EDGAR limits the indirect cost rate that institutions of higher education (IHEs) and nonprofit agencies may charge for educational training grants to eight percent of modified total direct costs. By the notice published in the **Federal Register** on February 8, 1999 (64 FR 6145–6146) that will govern the initial competition and awards under the Teacher Quality Enhancement Grants programs, the Secretary extended this eight percent cap on indirect cost rates to all grantee IHE and nonprofit agencies, regardless of whether the Partnership or Teacher Recruitment programs for which they receive funding are educational training grants. Section 75.562(a) of EDGAR acknowledges that educational training grants typically have a large proportion of their funds available for direct costs, since these grants largely implement previously developed materials and methods, rather than ''support activities involving research, development, and dissemination of new educational materials and methods.'' The Secretary believes that Teacher Recruitment grants fit the category of educational training grants but that, depending on how they are implemented, Partnership program grants may not. Still, the Secretary believes that, as is the case with educational training grants, IHEs and nonprofit agency grantees that receive Partnership program grants will not have the need to support their activities with high indirect cost rates.

Similarly, the Secretary believes that States and LEAs that receive Teacher Quality Enhancement Grants program funds do not need to exercise high

indirect cost rates in order to fairly compensate themselves for the activities they will conduct under the State, Partnership, or Teacher Recruitment grant programs. Rather, given the important role that each grant recipient has in making the maximum impact with the program funds it receives, the Secretary believes that it is appropriate that *all* Teacher Quality Enhancement Grants program grant recipients have the same cap—eight percent—on the indirect costs they may charge. Combined with the rule published in the **Federal Register** on February 8, 1999, the regulation proposed in proposed § 611.30 would do just that.

This proposal strikes a reasonable balance between the need to focus as much funding for the Teacher Quality Enhancement Grants programs as possible on direct services to improve teacher licensure, certification, preparation, and recruitment, and the reality that, to do so, recipients invariably must encounter some indirect costs. In addition, because these programs are competitive, States and LEAs (as well as IHEs and nonprofit agencies) that believe that they need additional indirect costs to implement these needed grant activities simply need not apply or accept grant awards. Therefore, this proposed regulation would not impose any non-reimbursed indirect costs on unwilling recipients.

If proposed § 611.30 becomes final, it will apply to all funding that States and LEAs receive under the three Teacher Quality Enhancement Grants programs, both under the initial and any subsequent program competitions. With regard to the initial competition being conducted in the spring of 1999, the Teacher Quality Enhancement Grants program application packages made available in February 1999 advised the public of the Department's intent to publish these proposed regulations. The application packages also advised States that, given the need for these programs to produce significant results, peer reviewers might rate applications that did not limit their indirect costs less competitively.

If these proposed regulations become final, it would in essence establish this guidance as a program requirement.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities that would be affected by these regulations are States and State agencies and LEAs. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act. Small LEAs are small entities for purposes of the Regulatory Flexibility Act. The final regulations would not have a significant impact on these small entities because the regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the appropriate expenditure of funds.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the 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.

Note: The official version of the document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1021 *et seq.*

List of Subjects in 34 CFR Part 611

Colleges and universities, Elementary and secondary education, Grant programs—education.

Dated: May 14, 1999.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.336: Teacher Quality Enhancement Grants Program)

For reasons stated in the preamble, the Secretary proposes to amend Chapter VI of title 34 of the Code of Federal Regulations by adding the following new part 611 to read as follows:

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

Sec.

Subparts A—[Reserved]

Subpart D—What Conditions Must Be Met by a Grantee?

611.30 What is the maximum indirect cost rate for States and local educational agencies?

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

Subparts A [Reserved]

Subpart D—What Conditions Must Be Met by a Grantee?

§ 611.30 What is the maximum indirect cost rate for States and local educational agencies?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that a State or local educational agency receiving funding under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of —

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent.

(Authority: 20 U.S.C. 1021 *et seq.*)

[FR Doc. 99–12603 Filed 5–18–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Wednesday
May 19, 1999

Part V

Department of Education

Office of Vocational and Adult Education, National Research Centers; Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.051]

Office of Vocational and Adult Education, National Research Centers (National Centers and Centers); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

NOTICE TO APPLICANTS: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a cooperative agreement under these competitions.

SUMMARY: The Secretary invites applications for two new awards for FY 1999 under the National Research Centers authority of sections 114(c)(5) and (6) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Act) and announces deadline dates for the transmittal of applications for funding under that program authority. The Secretary plans to hold two separate competitions for the National Centers, with the same closing date. Applicants may apply under one or both competitions.

PURPOSE OF PROGRAM: Sections 114(c)(5) and (6) of the Act authorize the Secretary to establish one or more National Centers for the purpose of conducting research, development, evaluation, dissemination, and professional development activities, designed to improve the quality and effectiveness of academic, vocational, and technical education in secondary and postsecondary institutions.

Given this flexibility, the Secretary has endeavored to design Centers that would best address the statutory requirements while meeting the most important needs of the vocational and technical education community. For assistance in accomplishing this goal, the Secretary sought the views of interested parties. First, the Secretary invited public comments and suggestions on how to configure the National Center or Centers through a notice published in the **Federal Register** (March 1, 1999 (64 FR 10076)). Second, the Secretary actively solicited the views of prospective customers of the Centers, especially those of States, in accordance with section 114(c)(5)(A) of the Act. The Secretary held individual and group consultation sessions with representatives of community colleges and State vocational and technical education programs, practitioners, researchers, policy makers, and disseminators. The interest and enthusiasm of persons expressing views provided for a very rich exchange of very thoughtful ideas that the Secretary found invaluable when making decisions about the scope and structure of the National Centers. A summary of the comments and suggestions received by the Secretary are on the Internet at: http://www.ed.gov/offices/OVAE/ncrperk111.html.

One of the most substantive decisions facing the Secretary in implementing sections 114(c)(5) and (6) of the Act was to determine the most effective structure for the National Center or Centers. The Secretary considered the clear meaning of the Act; congressional intent; the suggestions of stakeholders; and possible activities, focuses, and audiences to be served by the National Center or Centers and weighed the advantages and opportunities of a variety of possible options for configuring a National Center or Centers.

The Act clearly highlights (1) research and (2) dissemination and professional development as two of the most important functions of the National Center or Centers. Moreover, the Act challenges the Secretary to support high quality research, development, evaluation, dissemination, and professional development activities while, at the same time, minimizing duplication of effort among these required activities. Section 114(c)(5) of the Act requires a Center to perform specifically identified research activities. Section 114(c)(5)(A)(iii)(II) of the Act authorizes a Center to carry out dissemination and professional development activities and section 114(c)(5)(C) of the Act requires all Centers established under section 114(c)(5) of the Act to conduct dissemination and professional development activities based upon the research described in section 114(c)(5)(A) of the Act. Further, sections 114(c)(6)(A) and (B)(ii) of the Act authorize the Secretary to provide for technical assistance upon request of a State and for the dissemination of best practices information through a National Center or Centers. The emphasis Congress placed on (1) research and (2) dissemination and professional development activities lends support to the establishment of two Centers.

The Secretary believes that Congress intended, through the use of numerous references in the Act (sections 114(c)(5)(A)(iii)(I), 114(c)(5)(A)(iii)(II), and (C), and 114(c)(6)(A) and (B)(ii)), to emphasize the critical importance of dissemination and professional development activities, especially those involving the research of the National Centers. Most significantly, in view of section 114(c)(5)(C) of the Act, the Secretary believes Congress intended that research conducted by the Centers contribute to the efforts of State and local agencies to improve the quality and effectiveness of vocational and technical education.

Through their correspondence and during consultation sessions with the Secretary, stakeholders overwhelmingly identified needs that would be best met through National Centers that focus on dissemination and research activities. While agreeing that basic and applied research are needed, many stakeholders expressed the view that dissemination of information for practitioners is the most important function a National Center should perform. Stakeholders thought that researchers typically used presentations at conferences and articles in research journals as the primary vehicles for sharing research findings. These stakeholders thought that the National Centers should be responsive to the needs of the field and use a variety of proactive dissemination strategies to reach target audiences.

Further, a majority of stakeholders thought the National Centers should use a variety of innovative approaches for carrying out all of the Centers' functions; be responsive to the needs of constituencies, especially by focusing on activities that have practical applications; involve the field when establishing research and dissemination agendas; and leverage available resources, including partnering and coordinating with exiting networks, professional organizations, and research and dissemination efforts at the Federal, State, and local levels.

After much deliberation, and following the consultations discussed earlier, the Secretary has determined that two Centers are needed for the most effective implementation of the Act and to meet the distinct needs of the vocational and technical education community. Therefore, the Secretary plans to establish: (1) the National Research Center for Career and Technical Education (Research Center) and (2) the National Dissemination Center for Career and Technical Education (Dissemination Center). The Secretary believes this configuration will result in the most effective services being offered by the Centers and will ensure that the work of the Centers will be of high quality, relevant, timely, and accessible to the vocational and technical education community. In addition, the research and dissemination activities provided for in

sections 114(c)(5) and (6)(A) of the Act are more likely to be appropriately addressed by two Centers since each activity will be the focus of a separate Center.

While there was no clear preference expressed by stakeholders on the number of Centers the Secretary should establish, the types of activities stakeholders viewed as being most beneficial to them strongly suggests that it is preferable to establish two Centers. In addition, the Secretary believes the complexity and magnitude of the research and dissemination activities required by the Act provide strong support for the establishment of two Centers. The Secretary also believes that significant benefits would be derived from having one of these Centers focus on dissemination and professional development activities, which were identified by stakeholders as their most critical need. In sum, a few advantages of two Centers are:

(a) Providing a nationally recognized and centralized mechanism for a broad and comprehensive dissemination and professional development effort;

(b) Providing access, via technology, networking, and brokering, to research best practices developed by entities other than the National Centers supported under section 114(c) of the Act; and

(c) Allowing the National Research Center for Career and Technical Education to focus on the important work of research, and at the same time minimize the amount of resources it would use to support dissemination and professional development activities.

The establishment of a Center to focus on dissemination and professional development will certainly reduce the amount of resources the Secretary expects a Research Center to devote to carrying out dissemination and professional development activities. However, in light of the requirement in section 114(c)(5)(C) of the Act, the Secretary expects the Research Center to play a key role in dissemination and professional development efforts. The Secretary believes that a researcher's knowledge of his or her research activities is invaluable when translating that research into practice—it enhances the product being disseminated. For this reason, the Secretary believes that researchers of the Research Center shall be involved in dissemination and professional development activities. The nature and extent of that role would depend on the activities proposed by successful applicants under this competition. However, the Secretary expects, at a minimum, that an entity entering into a cooperative agreement with the Department for the Research Center will (1) make its research and researchers available for the translation of research into practice that is carried out by the Dissemination Center and (2) disseminate information on its work through a wide variety of means, including research and practitioner journals, conference presentations, newspapers and magazines, newsletters, and technology, as appropriate.

Further, the Secretary expects, as a part of the overall coordination of all activities of the Centers, that both Centers will coordinate their dissemination and professional development activities to ensure that any duplication of effort is reduced or eliminated. A more detailed discussion of coordination to be carried out by the Centers is in paragraph (b) of the ''Program Requirements'' section of this notice.

The Secretary plans to make awards for the Research Center and Dissemination Center using cooperative agreements. The Secretary expects the Department's interaction with the recipients of awards to be characterized by continuing and regular participation in the project, unusually close collaboration with the recipient, and intervention or direct operational involvement in the review and approval of project activities.

Eligible Applicants: The following entities are eligible for an award under this program:

(a) An institution of higher education.

(b) A public or private nonprofit organization or agency. (See 34 CFR 75.51, How to prove nonprofit status.)

(c) A consortium of institutions, organizations, or agencies in paragraphs (a) or (b) of this section of this notice. Eligible applicants seeking to apply for funds as a consortium should read the regulations in 34 CFR 75.127–75.129, which discuss group applications.

TRANSMITTAL OF APPLICATIONS

Title and CFDA No.	Deadline for transmittal of applications	Available funds per year	Number of awards	Project period in months
National Research Center for Career and Technical Education.	August 2, 1999	$2,250,000 (est.). Funding for the second through fifth 12-month period of the 60-month project period is subject to the availability of funds and to the grantee meeting the requirements of 34 CFR 75.253.	1	60
National Dissemination Center for Career and Technical Education.	August 2, 1999	$2,250,000 (est.). Funding for the second through fifth 12-month period of the 60-month project period is subject to the availability of funds and to the grantee meeting the requirements of 34 CFR 75.253.	1	60

Note: The Department is not bound by any estimates in this notice.

SUPPLEMENTARY INFORMATION: The Secretary believes National Centers have a unique role that enables them to serve as effective catalysts for program improvement. In this regard, the Secretary believes that in carrying out section 114(c)(5) and (6) of the Act, both National Centers should—

(a) Build a knowledge base that is critical to increasing the quality and improving the effectiveness of vocational and technical education programs;

(b) Help to redefine vocational education and spearhead conversations on reform;

(c) Conduct activities that show a balanced agenda that addresses secondary and postsecondary vocational and technical education issues;

(d) Contribute significantly to both theory and practice, especially in areas that are relevant to practitioners and in emerging areas of practice that are not well defined; and

(e) Translate research into practice for teachers, counselors, administrators, and policy makers through dissemination, professional development, and technical assistance.

Center Activites

Under section 114(c) of the Act, the Secretary will award cooperative agreements to establish (1) a National Research Center for Career and

Technical Education and (2) a National Dissemination Center for Career and Technical Education.

National Research Center for Career and Technical Education

The purpose of the National Research Center is to design and conduct, using a variety of approaches, research, development, and evaluation activities that are consistent with the purposes of the Act. The National Research Center shall design and conduct—

(a) Research for the purpose of developing, improving, and identifying the most successful methods for addressing the education, employment, and professional development needs of participants in vocational and technical education programs, including research and evaluation in such activities as—

(1) The integration of vocational and technical instruction, and academic, secondary and postsecondary instruction;

(2) Education technology and distance learning approaches and strategies that are effective in the delivery of vocational and technical education;

(3) ''State-adjusted levels of performance'' and ''State levels of performance'' that serve to improve vocational and technical education programs and student achievement; and

(4) Academic knowledge and vocational and technical skills required for employment or participation in postsecondary education.

(b) Research to increase the effectiveness and improve the implementation of vocational and technical education programs, including—

(1) Conducting research and development; and

(2) Carrying out studies that provide longitudinal information or formative evaluation with respect to vocational and technical education programs and student achievement.

(c) Research that can be used to improve pre-service and in-service professional development and enhance learning in the vocational and technical education classroom.

(d) Research the Secretary determines appropriate to assist State and local recipients of funds under the Act and research in such a manner and with methods that are responsive to the changing and unanticipated needs of the vocational and technical education community.

(e) Dissemination and professional development activities based upon the research described in paragraphs (a) through (d) of this section of this notice, including coordination with the Dissemination Center and information sharing through a wide variety of approaches, including research and practitioner journals, conference presentations, newspapers and magazines, newsletters, and technology, as appropriate.

National Dissemination Center for Career and Technical Education

The purpose of the National Dissemination Center is to design and conduct, using a variety of approaches, national level dissemination and professional development activities that are consistent with the purposes of the Act. The National Dissemination Center shall design and conduct—

(a) Comprehensive dissemination and professional development activities that are—

(1) Related to the applied research and demonstration activities described in section 114(c) of the Act, which may also include serving as a repository for information on vocational and technical skills, State academic standards, and related materials; and

(2) Based upon the research carried out by the National Research Center.

(b) Effective in-service and pre-service professional development to assist vocational and technical education systems.

(c) The dissemination of best practices information and the provision of technical assistance, for the purposes of developing, improving, and identifying the most successful methods and techniques for providing vocational and technical education programs assisted under the Act.

Priorities: Using as a basis the suggestions that were provided by stakeholders on the scope and structure of the Centers, the Secretary has identified a number of issues that are important as initial foci for the National Research and Dissemination Centers. The issues have been separated into two types of priorities: competitive and invitational. Although extra points will be awarded to applicants addressing competitive priorities, the Secretary encourages applicants to incorporate as many as possible of both types of priorities into their applications.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(ii), the Secretary gives preference to applications that meet the following competitive priorities. The Secretary awards up to five points to an application that meets the competitive priority in a particularly effective way. These points are in addition to any points an application earns under the selection criteria for the program.

Research Center

Competitive Priority 1—Program Improvement (up to 5 Points)

Activities that promote reform and improvement in instructional practices; that promote learning that effectively transfers from the classroom to the workplace; and that result in measurable student achievement of academic and technical knowledge and skills needed to prepare for further education and careers (e.g., integrated academic and technical learning, skills competencies, career pathways and school-wide restructuring).

Competitive Priority 2—Professional Development (up to 5 Points)

Activities that investigate, validate, and promote professional development, such as effective models of pedagogy and models of applied learning.

Competitive Priority 3—Effective Links Between Employment Knowledge and Skills and Academic Competencies (up to 5 Points)

Activities that investigate and validate the most successful methods and techniques for improving student achievement through effective links between employment knowledge and skills and academic competencies that support transitions to employment, post secondary education, and life-long learning.

Dissemination Center

Competitive Priority 1—Translating Research to Practice (up to 5 Points)

Activities that translate research into promising or best practices, including synthesizing research and technical reports into applied tools and practitioner-oriented documents and materials.

Competitive Priority 2—Most Successful Practices (up to 5 Points)

Activities that identify and share the most successful products, programs, and practices for enhancing student achievement and performance, including participation in non-traditional training, and that address the immediate needs of practitioners.

Competitive Priority 3—Professional Development (up to 5 Points)

Professional development activities that lead to high-quality and effective professionals providing services and programs under the Act.

Invitational Priorities

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following

invitational priorities. However, an application that meets an invitational priority does not receive competitive or absolute preference over other applications.

Research Center

Invitational Priority 1—Technology

Activities that investigate and validate the appropriate use of technology to facilitate the learning process and provide a basis for adoption/adaptation by others.

Invitational Priority 2—Evaluation

Activities that develop and validate appropriate evaluation methods and tools that assess student achievement and educational effectiveness at the State and local levels.

Dissemination Center

Invitational Priority—Technical Assistance

Activities to deliver technical assistance to States and ''eligible recipients'' for the purposes of developing, improving, and identifying the most successful methods and techniques for providing programs and activities under the Act.

Selection Criteria: Except as noted, the Secretary uses the following selection criteria to evaluate applications for new awards under both the competition for the National Research Center for Career and Technical Education and the competition for the National Dissemination Center for Career and Technical Education.

Note: Under the criterion ''Quality of project design'', the elements in paragraph (a)(1) will be used to evaluate only applications for the National Research Center. Under the criterion ''Quality of project design'', the elements in paragraph (a)(2) will be used to evaluate only applications for the National Dissemination Center.

(a)(1) *(For use in evaluating only applications for the National Research Center.) Quality of project design* (40 points). (i) The Secretary considers the quality of the project design.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the proposed project represents an approach that is exceptional for each of the required research, development, dissemination, and professional development activities provided for in section 114(c)(5)(A)(i), (ii), (iii)(I), and (iv); (B); and (C) of the Act, and under the heading National Research Center for Career and Technical Education in this notice.

(B) The importance or magnitude of the research proposed by the project, especially as it relates to improvement in teaching and student achievement.

(C) The extent to which the proposed activities constitute a coherent, sustained program of research and development in the field of vocational and technical education, including, as appropriate, a substantial addition to an ongoing line of inquiry.

(D) The extent to which the proposed research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical models and methodological tools, including those of a variety of approaches.

(E) The extent to which the professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(F) The potential contribution of the proposed project to increased knowledge and understanding of educational issues, or effective strategies to improve vocational and technical programs.

(G) The extent to which the project proposes models of dissemination that incorporate approaches that meet the needs of different communities of users.

(H) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(I) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or ability.

(a)(2) *(For use in evaluating only applications for the National Dissemination Center.) Quality of project design* (40 points). (i) The Secretary considers the quality of the project design.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the proposed project represents an approach that is exceptional for each of the required dissemination and professional development activities described in section 114(c)(5)(A)(iii)(II); (B); (C); and (6)(A) of the Act and under the heading National Dissemination Center for Career and Technical Education in this notice.

(B) The extent to which the proposed dissemination design includes a thorough, high-quality review of the relevant literature, a high-quality plan for dissemination activities, and the use of appropriate models that include a variety of approaches.

(C) The extent to which the technical assistance services to be provided by the proposed project involves the use of efficient strategies, including the use of technology.

(D) The extent to which the professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(E) The potential contribution of the proposed project to increased knowledge and understanding of educational issues, or effective strategies to improve vocational and technical programs.

(F) The extent to which the project proposes models of dissemination that incorporate approaches that meet the needs of different communities of users.

(G) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(H) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or ability.

(b) *Institutional capability* (5 points). (1) The Secretary considers the institutional capability of the proposed applicant and consortium members, if any.

(2) In determining the quality of the institutional capability, the Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to vocational and technical education, as evidenced by its experience in and capacity for conducting—

(i) Research, development, evaluation, dissemination, and professional development activities described in section 114(c)(5)(A)(i), (ii), (iii)(I), and (iv); (B); and (C) of the Act and under the heading National Research Center for Career and Technical Education in this notice; or

(ii) Dissemination and professional development activities described in section 114(c)(5)(A)(iii)(II); (B); (C); and (6)(A) of the Act and under the heading

National Dissemination Center for Career and Technical Education in this notice.

(c) *Management plan* (20 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks and a plan for continuous improvement.

(iii) The adequacy of procedures for coordination and communication among staff, subcontractors, members of the consortium, if any, the U.S. Department of Education, and any other National Center funded under the Act.

(iv) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(v) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project.

(d) *Quality of personnel* (10 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the following:

(i) The extent to which the proposed director of the National Center has appropriate qualifications, including relevant project management experience and administrative skills, a commitment to work full-time as director of the National Center, and sufficient authority to effectively manage the activities of the National Center.

(ii) The qualifications, including relevant training and experience, of key project personnel, and the extent to which their time commitments are appropriate and adequate to meet proposed project objectives.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(e) *Adequacy of resources* (10 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant and consortium members, if any.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(f) *Evaluation* (15 points). (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Program Requirements: To ensure the high quality of the Centers and achievement of the goals and purposes of sections 114(c)(5) and (6) of the Act, the Secretary establishes the following program requirements:

(a) *Project Director.* Each Center shall have a full-time director who is appointed by the institution serving as the grantee.

(b) *Coordination.* (1) Each Center funded under section 114(c) of the Act shall coordinate its activities with the other Center funded under the Act.

(2) To the extent practicable, each Center shall coordinate its professional development activities with the professional development activities carried out—

(i) By ''eligible agencies'' and ''eligible recipients'' under the Act; and

(ii) Under title II of the Elementary and Secondary Education Act of 1965 and title II of the Higher Education Act of 1965.

(3) To the extent practicable, each Center shall coordinate its activities with similar or related activities of the Department's Office of Educational Research and Improvement, Office of Elementary and Secondary Education, Office of Postsecondary Education, Office of Special Educational and Rehabilitative Services, and National Library of Education; the National Science Foundation; national professional associations or organizations; and activities funded under the Work Force Investment Act, the Adult Education and Family Literacy Act, the School-to-Work Opportunities Act, the Improving Americas Schools Act, the Personal Responsibility and Work Opportunities Act of 1995; and other similar or related agencies, organizations, and activities in order to exchange information, avoid duplication of effort, pool resources, and improve the effectiveness of the Center's activities.

(c) *Needs Assessment and Customer Satisfaction.* Each Center shall establish effective procedures to be implemented annually to help to ensure that the work of the Center is relevant to the needs of vocational and technical education practitioners and continues to be effective. The Centers might involve researchers, practitioners, including persons knowledgeable about providing preparation for non-traditional training and employment, policymakers, employers, unions, parents, and other concerned vocational and technical educators in their efforts.

Note: The Secretary plans to hold regularly scheduled activities to obtain the views of practitioners on the research and dissemination needs of the field. Each Center should be prepared to employ the information obtained by the Secretary in the course of these consultations to shape its agenda.

(d) *Evaluation.* Each Center shall conduct an ongoing evaluation of the Center's effectiveness. As required in paragraph (f)(1)(v) of the ''Program Requirements'' section of this notice, the results of this evaluation must be submitted to the Secretary in an interim evaluation report in the third year of the award and a final evaluation report in the fifth year of the award.

(e) *Contingency Plan.* During the final year of the award cycle, each National Center shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services and activities to a successor during the twelfth month of that year.

(f) *Reporting.* (1) Each Center shall submit to the Secretary the following reports—

(i) Monthly exception reports that describe—

(A) Any problems, delays, or adverse conditions that materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(B) Any favorable developments that will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(ii) Semi-annual performance reports.

(iii) Quarterly financial status reports within 30 days of the end of each quarter.

(iv) Ten printed copies and one electronic copy (pdf) of all substantive reports and products.

(v) An interim evaluation report in the third year of the award and a final evaluation report in the fifth year of the award.

(2) Each Center shall annually prepare and submit a report of key research findings of the Center to the Secretary, the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, the Library of Congress, and each ''eligible agency'' as defined in section 3(9) of the Act.

Waiver of Relemaking

While it is generally the practice of the Secretary to offer interested parties the opportunity to comment on a regulation before it is implemented, section 437(d)(1) of the General Education Provisions Act exempts from formal rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The program authority for the National Centers was substantially revised on October 31, 1998 by Pub. L. 105–332. In order to make awards on a timely basis, the Secretary has decided to publish this notice in final form under the authority of section 437(d)(1).

Applicable Statute and Regulations

(a) Relevant provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998, 20 U.S.C. 2301 *et seq.*, in particular, sections 114(c)(5) and (6)(A), 20 U.S.C. 2324(c)(5) and (6)(A).

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act —Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

Definitions

Applicants are encouraged to take particular note of the following statutory definition:

''Institution of Higher Education'' means—

(a) An educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) The term also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (a)(1), (2), (4), and (5) of this definition.

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in paragraph (a)(1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located. (See 20 U.S.C. 1141(a).)

Definitions of the terms ''nonprofit'', ''private'', and ''public'' are contained in 34 CFR 77.1.

Applicants are encouraged to review all applicable definitions in section 3 of the Act.

Instructions for Transmittal of Applications

Applicants are required to submit one original signed application and two copies of the application. All forms and assurances must have ink signatures. Please mark applications as ''original'' or ''copy''. To aid with the review of applications, the Department encourages applicants to submit four additional paper copies and one electronic copy (in Department of Education standard program format) of the application. The Department will not penalize applicants who do not provide additional copies.

(a) If an applicant wants to apply for a cooperative agreement under this competition, the applicant must either—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.051), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.051), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an

applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

To apply for an award under this program competition, your application must be organized in the following order and include the following five parts. The parts and additional materials are as follows:

Part I: Application for Federal Education Assistance (ED Form 424 (Rev. 1–12–99)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Budget Narrative.

Part IV: Program Narrative.

Estimated Public Reporting Burden.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014, 9/90) and instructions.

(**Note:** ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL), if applicable, and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

e. Notice to All Applicants.

No cooperative agreement may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Ricardo Hernandez, Program Improvement Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone (202) 205–5977. Internet address: ricardo__hernandez@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Department

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the 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 at (202)512–1530 or toll free at 1–888–293–6498.

Additionally, this notice, as well as other documents concerning the implementation of the national Centers, is available on the World Wide Web at the following site: http://www.ed.gov/offices/OVAE/ncrperk111.html.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 2324(c)(5) and (6)(A).

Patricia W. McNeil,

Assistant Secretary, Office of Vocational and Adult Education.

Appendix A—Part II—Budget Information

Instructions for Part II—Budget Information

Sections A and B—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid to personnel for each budget year.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits for each budget year.

3. *Travel:* Indicate the amount requested for both local and out of State travel of project staff for each budget year.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a cost of $5,000 or more per unit for each budget year.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period for each budget year.

6. *Contractual:* Show the amount to be used for: (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts for each budget year.

7. *Construction:* Not Applicable.

8. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants and capital expenditures for each budget year.

9. *Total Direct Costs:* Show the total for Lines 1 through 8 for each budget year.

10. *Indirect Costs:* Indicate the rate and amount of indirect costs for each budget year.

11. *Training/stipend Cost:* Indicate cost per student.

12. *Total Costs:* Show the total for lines 9 through 11 for each budget year.

Please be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, why, and how, of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is based on the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and EDGAR rules governing the program, eligibility requirements, Center activities, priorities, selection criteria, and program requirements for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your project. Then describe the project in detail, addressing each selection criterion in order. Be sure to number consecutively ALL pages in your application.

You may include supporting documentation as appendices to the program narrative. Be sure that this material is concise and pertinent to this program competition.

You are advised that—

(a) The Secretary considers only information contained in the application in ranking applications for funding consideration.

(b) The technical review panel evaluates each application solely on the basis of the Center activities, selection criteria, and competitive priorities contained in this notice.

(c) Letters of support included as appendices to an application, that are of direct relevance to or contain commitments that pertain to the established selection criteria, such as commitment of resources, will be reviewed by the panel. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond

to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1830–0538. (Expiration date: 4/30/02). The time required to complete this information collection is estimated to average 90 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Ricardo Hernandez, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 4512, Mary E. Switzer Building), Washington DC 20202–7242.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this section is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in Braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Appendix B—Questions and Answers

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants, the Department has assembled the following most commonly asked questions followed by the Department's answers.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and must apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Applicants are required to submit one original and two copies of the application. To aid with the review of applications, the Department encourages applicants to submit four additional paper copies and one electronic copy (in Department of Education standard program format) of the application. The Department will not penalize applicants who do not provide additional copies. The binding of applications is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any such questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand, however, that prior contact with the Department is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 2 months of the application closing date, depending on the number of applications received.

Q. Once the review panel has reviewed my application, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have a legitimate reason for needing to know the outcome of the panel review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made, even at the point where all applications have been read, we cannot share information about the results of panel review with anyone.

Q. Will my application be returned if I am not funded?

A. No. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of their application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the staff of funded projects to attend an initial meeting with the Department's staff and provide an annual briefing to the Department on the project's activities, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when the purpose of the conference will be of benefit and relates to the project.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. In addition to the rank order of an application, the Secretary determines which applications will be selected for grants by considering—

(a) Information in the application, including any additional information submitted by an applicant to clarify budgetary or programmatic questions raised by the Secretary; and

(b) Other information relevant to a criterion, priority, or other requirement that

applies to the selection of applications for new grants or cooperative agreements, including information concerning the applicant's use of funds under a previous award under the same Federal program. (34 CFR 75.217)

Q. What happens during pre-award clarification discussions?

A. During pre-award clarification discussions, technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as ''conditions.'' These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because an application contains inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all issues under discussion have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, ''Assurances—Non-Construction Programs,'' you may provide an assurance simply by stating in writing that you are meeting a prescribed requirement.

Q. Where can copies of the **Federal Register**, regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. Or you may obtain copies of the material referenced in this notice in the following manner:

(a) A copy of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Pub. L. 105–332) may be obtained (1) from the Government Printing Office by writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954 or telephoning (202) 512–1800, or (2) online from the Library of Congress at: http://thomas.loc.gov.

(b) A copy to the Code of Federal Regulations that contains the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86, may be obtained from the Government Printing Office by writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954 or on the Internet at: http://www.access.gpo.gov/su__docs or http://www.access.gpo.gov/nara/cfr.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name: _____

Address: _____

_____

City _____ State _____ County _____ ZIP Code + 4 _____ - _____

Organizational Unit

2. Applicant's D-U-N-S Number: |_|_|_|_|_|_|_|_|_|_|

3. Catalog of Federal Domestic Assistance #: **84.** 0 5 1 ➔

Title: National Research Centers

4. Project Director: _____

Address: _____

City _____ State _____ Zip code + 4 _____

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ___Yes ____No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State	H - Independent School District
B - County	I - Public College or University
C - Municipal	J - Private, Non-Profit College or University
D - Township	K - Indian Tribe
E - Interstate	L - Individual
F - Intermunicipal	M - Private, Profit-Making Organization
G - Special District	N - Other *(Specify)*: _____

7. Novice Applicant ___Yes ____ No

Application Information

8. Type of Submission:

-PreApplication	*-Application*
____Construction	____Construction
____Non-Construction	____Non-Construction

9. Is application subject to review by Executive Order 12372 process?
____ Yes *(Date made available to the Executive Order 12372 process for review):* ____/____/_____

____ No *(If "No," check appropriate box below.)*
____ Program is not covered by E.O. 12372.
____ Program has not been selected by State for review.

10. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

11. Are any research activities involving human subjects planned at any time during the proposed project period? ____Yes _____No
a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:

_____ ***OR*** _____

c. IRB approval date: _____ ____ Full IRB or ____ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$ _____	.00
b. Applicant	$ _____	.00
c. State	$ _____	.00
d. Local	$ _____	.00
e. Other	$ _____	.00
f. Program Income	$ _____	.00
g. TOTAL	$ _____	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. **Signature of Authorized Representative**

_____ Date: ___/___/_____

ED 424 (rev 1.12.99)

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" <u>or</u> "No". If research activities involving human subjects are <u>not</u> planned <u>at any time</u> during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, <u>are</u> planned <u>at any time</u> during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If <u>all</u> the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If <u>some or all</u> of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of

the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Protection of Human Subjects in Research (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 11 on the application "Yes" and designated exemptions in 11a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an

individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. ∋∋4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. ∋∋1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. ∋794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. ∋∋ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) ∋∋ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. ∋ 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. ∋∋1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. ∋∋276a to 276a-7), the Copeland Act (40 U.S.C. ∋276c and 18 U.S.C. ∋∋874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. ∋∋ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in

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floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ɜɜ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ɜɜ1721 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ɜɜ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title	
Applicant Organization		Date Submitted

SF 424 (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ACertification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,≡ without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee, Enter** Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99–12605 Filed 5–18–99; 8:45 am]
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federal register

Wednesday
May 19, 1999

Part VI

The President

Proclamation 7196—World Trade Week, 1999

Proclamation 7197—National Defense Transportation Day and National Transportation Week, 1999

Federal Register
Vol. 64, No. 96
Wednesday, May 19, 1999

Presidential Documents

Title 3—

The President

Proclamation 7196 of May 17, 1999

World Trade Week, 1999

By the President of the United States of America

A Proclamation

World Trade Week provides a valuable opportunity to recognize the enormous importance of exports to the United States economy and our way of life. In recent years, exports have contributed to almost one-third of our economic growth, helping to make today's economy the strongest in a generation. Unemployment is at a 30-year low, business investment is booming, and private sector growth is on the rise. Every day, an increasing number of U.S. companies and farmers realize how crucial exports are to their bottom lines. Every day, more and more American workers benefit from the fact that exporting firms pay higher salaries, experience fewer closings, and generate jobs at a faster rate than do firms that do not export. That is why we must continue to open markets and expand trade opportunities. At the same time, we must work to ensure that increased international trade benefits the world's people, promotes the dignity of work, and protects the environment and the rights of workers.

As important as world trade is to our economy today, we are only beginning to utilize the commercial potential of the newest international marketplace: the World Wide Web. Today the Internet connects nearly 150 million people around the world. Each day 52,000 additional Americans join that number, and users are making as many as 27 million purchases on the Web each day. Forecasts predict that, in just a few years, global electronic commerce—e-commerce—will grow to more than $300 billion annually. By 2005 Internet usage in countries around the world may account for more than $1 trillion worth of global commerce.

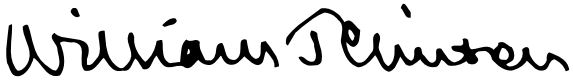
Recognizing the enormous power and promise that e-commerce holds for American businesses and consumers, my Administration is working to build a framework for global electronic commerce that will keep competition free and vigorous, protect consumers, guarantee privacy, and give users—not governments—the responsibility of supervising Internet trade. Working with the Congress, industry, and State and local officials, we have enacted legislation that places a 3-year moratorium on new and discriminatory taxes on electronic commerce. We also ratified an international treaty to protect intellectual property online. Last year, representatives of 132 countries followed our lead and signed a WTO Ministerial Declaration to refrain from imposing customs duties on electronic commerce.

Working with our trading partners, industry, and consumer advocates, we are extending traditional consumer protections to the arena of electronic commerce. Without imposing burdensome regulations that might stifle growth and innovation, we have offered incentives to online companies to give consumers the protections they need to conduct business on the Internet with security and confidence. Finally, we are working to speed the completion of the global information infrastructure, a series of networks that sends messages and images at the speed of light.

Appropriately, the theme of this year's World Trade Day observance is ''Trade, a Worldwide Web of Opportunity.'' Linking businesses and customers around the clock, 7 days a week, the Web provides even the smallest companies with the opportunity to do business on a global scale. We are about to enter a new and unprecedented era in world trade, and America's businesses, workers, and consumers are poised to embrace this opportunity and continue our leadership of the world economy.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 16 through May 22, 1999, as World Trade Week. I invite the people of the United States to observe this week with events, trade shows, and educational programs that celebrate the benefits of international trade to our economy.

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



[FR Doc. 99–12842
Filed 5–18–99; 11:25 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7197 of May 17, 1999

National Defense Transportation Day and National Transportation Week, 1999

By the President of the United States of America

A Proclamation

Throughout America's history, our transportation system has played a profound role in the security and development of our Nation. As early as the Revolutionary War, America's merchant marine carried cargo to help defend our national interests and uphold our democratic ideals. In the 1800's, as many Americans migrated westward, new roads and canals facilitated travel and trade, helping to unify our young country and to bolster our growing economy. And in the 20th century, few innovations have had the same far-reaching effect on our society as the airplane—now a critical part of our national defense and our robust economy.

Representing 11 percent of the U.S. economy and related to one in every seven American jobs, today's transportation industry continues to grow and thrive. Millions of Americans rely on its readiness for business and leisure travel. And we can be pleased by the improved safety of our transportation system. In 1998, the rate of traffic fatalities in America fell to its lowest level since record-keeping began in 1966. Last year also marked a milestone in aviation safety when, for the first time in our history, there were no reported passenger fatalities on scheduled U.S. air carriers.

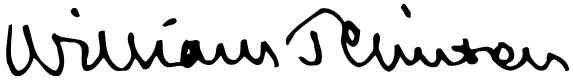
Securing the continued strength and safety of our transportation system is among my highest priorities as President. My Administration has acted aggressively to improve the security of our rail system, and, by initiating a new program to encourage Americans to buckle their seat belts, we are working to improve the safety of vehicular travel. As we face the challenges of a new century, we must build on these achievements to ensure that our transportation system remains the finest in the world.

Last year, I was proud to sign into law the Transportation Equity Act for the 21st Century (TEA–21), the largest public works legislation in our Nation's history. TEA–21 invests $198 billion in our transportation infrastructure. The Livable Communities for the 21st Century Initiative represents another integral part of our transportation strategy for the coming century, providing communities with tools and resources to ease traffic congestion, preserve green space, and pursue wise regional growth strategies. These comprehensive programs will help communities across America create a higher quality of living and secure sustainable economic growth as we work to forge more livable communities for ourselves and for the next generation of Americans.

In recognition of the ongoing contributions of our Nation's transportation system and in honor of the devoted professionals who work to sustain its tradition of excellence, the United States Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 120), has designated the third Friday in May of each year as ''National Defense Transportation Day'' and, by joint resolution approved May 14, 1962 (36 U.S.C. 133), declared that the week in which that Friday falls be designated ''National Transportation Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Friday, May 21, 1999, as National Defense Transportation Day and May 16 through May 22, 1999, as National Transportation Week. I urge all Americans to observe these occasions with appropriate ceremonies, programs, and activities.

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



[FR Doc. 99–12843
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federal register

Wednesday
May 19, 1999

Part VII

The President

Notice of May 18, 1999—Continuation of Emergency With Respect to Burma

Federal Register
Vol. 64, No. 96
Wednesday, May 19, 1999

Presidential Documents

Title 3—

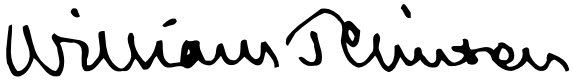
The President

Notice of May 18, 1999

Continuation of Emergency With Respect to Burma

On May 20, 1997, I issued Executive Order 13047, effective at 12:01 a.m., eastern daylight time on May 21, 1997, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons, contained in that section. I also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706).

The national emergency declared on May 20, 1997, must continue beyond May 20, 1999, because the Government of Burma continues its policies of committing large-scale repression of the democratic opposition in Burma. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Burma. This notice shall be published in the **Federal Register** and transmitted to the Congress.



The White House,
May 18, 1999.

[FR Doc. 99–12861
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Wednesday, May 19, 1999

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 453/P.L. 106–27

To designate the Federal building located at 709 West 9th Street in Juneau, Alaska, as the "Hurff A. Saunders Federal Building". (May 13, 1999; 113 Stat. 52)

S. 460/P.L. 106–28

To designate the United States courthouse located at 401 South Michigan Street in South Bend, Indiana, as the "Robert K. Rodibaugh United States Bankruptcy Courthouse". (May 13, 1999; 113 Stat. 53)

Last List May 7, 1999

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