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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–111–2]

Change in Disease Status of Uruguay Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Uruguay from the list of regions considered free of rinderpest and foot-and-mouth disease. We are also removing Uruguay from the list of regions that are declared to be free of these diseases, but that are subject to certain restrictions because of their proximity to or trading relationships with regions affected with rinderpest or foot-and-mouth disease. We are taking this action because the existence of foot-and-mouth disease has been confirmed in 18 departments in Uruguay. The effect of this action is to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Uruguay.

DATES: This interim rule is effective retroactively to April 2, 2001. We invite you to comment on this docket. We will consider all comments that we receive by September 11, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to:

Docket No. 00–111–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–111–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD exists in all other regions of the world not listed. Section 94.11 of the regulations lists regions of the world that have been declared free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

On December 13, 2000, we published in the **Federal Register** an interim rule (65 FR 77771–77773, Docket No. 00–111–1) to remove the Uruguayan department of Artigas, a region in northern Uruguay, from the list of regions considered to be free of rinderpest and FMD because FMD had been confirmed there. Prior to the effective date of that interim rule, Uruguay was among the regions listed in §§ 94.1 and 94.11 as regions considered to be free of rinderpest and FMD.

On April 25, 2001, FMD was confirmed in the Uruguayan department of Soriano. Subsequently, on May 3, 2001, Uruguay's Ministry of Livestock, Agriculture and Fisheries notified the U.S. Department of Agriculture and the Office International des Epizooties (OIE) with clinical confirmation of 123 new cases of FMD. The new outbreaks of FMD were confirmed in the departments of Artigas, Canelones, Colonia, Durazno, Flores, Florida, Paysandu, Rio Negro, Rivera, Salto, San Jose, Soriano, and Treinta y Tres. As of June 22, 2001, there were 1,596 confirmed cases of FMD in the departments of Artigas, Canelones, Cerro Largo, Colonia, Durazno, Flores, Florida, Lavalleja, Maldonado, Paysandu, Rio Negro, Rivera, Rocha, Salto, San Jose, Soriano, Tacuarembo, and Treinta y Tres.

Uruguay maintains a surveillance system capable of detecting FMD should the disease be introduced to other regions of the country, and has the laws, policies, and infrastructure to detect and respond to any occurrence of FMD. Uruguay is taking the following control measures: (1) The movement of all animals, including non-susceptible species, is prohibited; (2) a total of 5,295 cattle, 1,481 sheep, and 332 pigs were slaughtered and their carcasses destroyed before stamping out was suspended on April 30, 2001; (3) an emergency ring vaccination campaign began on April 28, 2001. A containment zone was established, with strategic vaccination of 842,000 cattle in the departments of San Jose, Flores, Duranzo, Tacuarembo, Rio Negro, Paysandu, and Salto; (4) in addition to sanitary measures being applied within the outbreak areas, fixed control and disinfection posts have been strategically placed on the main access routes to the affected areas; and (5) sanitary certificates are being issued for the export of animal products that do not present any risk.

We believe it is necessary, given the spread of FMD outside the department of Artigas, to impose restrictions on all of Uruguay to protect the livestock of the United States from FMD. Therefore,

we are amending the regulations in § 94.1 by removing Uruguay from the list of regions considered to be free of rinderpest and FMD. We are also removing Uruguay from the list in § 94.11 of regions that are considered to be free of these diseases, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. As a result of this action, the importation into the United States of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants and swine from any part of Uruguay is prohibited or restricted. We are making these amendments effective retroactively to April 2, 2001, because the disease may have been present in the affected areas outside of the department of Artigas for some time before it was detected in the department of Soriano on April 25, 2001.

Although we are removing Uruguay from the list of regions considered to be free of rinderpest and FMD, we recognize that Uruguay's Ministry of Livestock, Agriculture and Fisheries responded immediately to the detection of the disease by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from the affected areas and by initiating measures to eradicate the disease. We intend to reassess the situation in accordance with the standards of the OIE. As part of that reassessment process, we will consider all comments received on this interim rule. This future reassessment will enable us to determine whether it is necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Uruguay, or whether we can restore all or portions of Uruguay to the list of regions considered free of rinderpest and FMD.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of FMD into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Uruguay from the list of regions considered to be free of rinderpest and FMD. We are taking this action because the existence of FMD has been confirmed in 18 departments in Uruguay. The effect of this action is to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Uruguay.

FMD is among the most infectious and destructive of all animal diseases. While it rarely kills adult animals, the virus may kill young and weak animals. Production losses are substantial, and costs to eradicate the disease are high. A single outbreak of FMD in the United States has the potential to close our major livestock export markets overnight. During the eradication process, most exports of meat, animals, and animal byproducts would be curtailed. Additionally, if the early signs of an outbreak were not immediately recognized, eradication could take years. Therefore, efforts to reduce the risk of the entry of FMD into the United States continue to be a high priority.

Imports of infected animal products pose the greatest risk of entry for FMD into the United States. The virus can survive in chilled, frozen, salted, cured, and partially cooked meats. Additionally, the virus can also be present in cheese, since the pasteurization process does not completely kill the virus. Strict quarantine regulations minimize the risk of any infected products entering the United States. With the exception of North and Central America (north of Panama), Australia, and New Zealand, FMD is still present in many areas of the world. FMD was last reported in the United States in 1929, in Canada in 1952, and in Mexico in 1954.

The United States livestock industry plays a significant role in international trade. Maintaining favorable trade conditions depends, in part, on continued aggressive efforts to prevent the entry of FMD into the United States. In 1999, the total earnings from exports of live cattle and swine and of beef and veal, pork, and dairy products were approximately $4.818 billion, while the value of imports was $5.671 billion. Livestock and related product exports generated about $11.7 billion in output sales and created about 100,000 jobs in the United States.

However, the value of live animals and animal products imported from Uruguay represents a small percentage of total U.S. imports of these products. Therefore, U.S. price and supply are not expected to be affected by this rule. Further, any shortfall of supply could easily be met from domestic or other sources without any significant effect on producer or consumer prices. Therefore, this rule can be expected to produce economic benefits by minimizing the risk of FMD entering the United States with little to no effect on supply or consumer prices.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule;

(2) has retroactive effect to April 2, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding the word ''and'' after the word ''Tobago,'' and by removing the words '', and Uruguay except the department of Artigas''.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding the word ''and'' after the word ''Sweden,'' and by removing the words ''and Uruguay except the department of Artigas,''.

Done in Washington, DC, this 9th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17554 Filed 7–12–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM189; Special Conditions No. 25–182–SC]

Special Conditions: Gulfstream Model G–V Airplanes; Certification of Cooktops

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Gulfstream G–V airplanes modified by Gulfstream Aerospace Corporation. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an electrically heated surface, called a cooktop. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for addressing the potential hazards that may be introduced by cooktops. 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: July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Transport Standards Staff, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background Information

On July 28, 2000, Gulfstream Aerospace Corporation, 4150 Donald Douglas Drive, Long Beach, CA, 90808, applied for a Supplemental Type Certificate (STC) to modify Gulfstream Model G–V airplanes. The Model G–V is a small transport category airplane powered by two BMW—Rolls Royce Mark BR700–710A1–10 engines, with a maximum takeoff weight of 90,500 pounds. The G–V operates with a 2-pilot crew and can hold up to 19 passengers.

The modification incorporates the installation of an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, special conditions are needed.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Gulfstream Aerospace Corporation must show that the Model G–V airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. A12EA, or the applicable regulations in effect on the date of application for the change. 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 Data Sheet No. A12EA are part 25, as amended by Amendments 25–1 through 25–81, with reversions to earlier Amendments, voluntary compliance to later Amendments, special conditions, equivalent safety findings, and exemptions listed in the Type Certificate Data Sheet.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25 as amended) do not contain adequate or appropriate safety standards for the Gulfstream G–V airplanes modified by Gulfstream Aerospace Corporation 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, these Gulfstream G–V airplanes must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, 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 Gulfstream Aerospace Corporation apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the modification of the Gulfstream G–V airplanes will include installation of a cooktop in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards represented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food, which may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious passenger and airplane safety implications if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically powered burners. The use of an open flame cooktop (for example natural gas) is beyond the scope of these special conditions and requires separate rulemaking action. The requirements identified in the special condition are in addition to those considerations identified in Advisory Circular (AC) 25–10, Guidance for Installation of Miscellaneous Non-required Electrical

Equipment, and those in AC 25–17, Transport Airplane Cabin Interiors Crashworthiness Handbook. The intent of these special conditions is to provide a level of safety that is consistent with that on similar airplanes without cooktops.

Discussion of Comments

Notice of proposed special conditions No. 25–01–03–SC for Gulfstream Model G–V airplanes, modified to incorporate an electrically heated surface, was published in the **Federal Register** on April 6, 2001 (66 FR 18214). No comments were received.

Applicability

As discussed above, these special conditions are applicable to Gulfstream G–V airplanes modified by Gulfstream Aerospace Corporation. Should Gulfstream Aerospace Corporation apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Gulfstream Model G–V airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on the Gulfstream G–V airplanes modified by Gulfstream Aerospace Corporation. It is not a rule of general applicability and 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 supplemental type certification basis for Gulfstream Model G–V airplanes modified by Gulfstream Aerospace Corporation.

Cooktop Installations With Electrically-Powered Burners

1. Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents (soups or sauces, for example) from the effects of flight loads and turbulence.

(a) Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop.

(b) Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable.

(c) Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed which prohibits the use of cooktops (that is, power on any burner) during taxi, takeoff, and landing (TTL).

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop caused by materials or grease inadvertently coming in contact with the burners.

Note: Two acceptable means of complying with this requirement are as follows:

- Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended (this would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered). In addition, a fire detector must be installed in the vicinity of the cooktop, which provides an audible warning in the passenger cabin; and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. A fire on or around the cooktop must not block access to the extinguisher. One of the fire extinguishers required by 25.851 may be used to satisfy this requirement if the total complement of extinguishers can be evenly distributed throughout the cabin. If this is not possible, then the extinguisher in the galley area would be additional.

or

- An automatic, thermally-activated fire suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in an occupied area. The fire suppression system must have a manual override. The automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials that comply with the flammability requirements of Part III of Appendix F of part 25. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils. These procedures and time intervals must be included in the Instructions for Continued Airworthiness (ICA). The ventilation system ducting must be protected by a flame arrestor.

Note: The applicant may find additional useful information in Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, entitled ''Air Conditioning Systems for Subsonic Airplanes,'' dated August 1, 1991.

7. Means must be provided to contain spilled foods or fluids in a manner that will prevent the creation of a slipping hazard to occupants and will not lead to the loss of structural strength due to airplane corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

Issued in Renton, Washington, on July 3, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17565 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–236–AD; Amendment 39–12314; AD 2001–14–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate ST00118SE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate ST00118SE, that requires modification of the in-flight entertainment (IFE) system and revision of the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 17, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Matsushita Avionics System Corporation, 22333 29th Drive SE, Bothell, Washington 98021. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate (STC) ST00118SE was published in the **Federal Register** on March 29, 2001 (66 FR 17115). That action proposed to require modification of the in-flight entertainment (IFE) system and revision of the Airplane Flight Manual (AFM).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 20 Model 767–300 series airplanes modified by STC ST00118SE in the worldwide fleet. The FAA estimates that no airplanes of U.S. registry will be affected by this AD. All airplanes included in the applicability of this AD currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD. However, the FAA considers that this AD is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 50 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be provided at no charge to the operator. Based on these figures, the cost impact of the required modification will be $3,000 per airplane.

Should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour per airplane to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required AFM revision will be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–14–04 Boeing: Amendment 39–12314. Docket 2000–NM–236–AD.

Applicability: Model 767–300 series airplanes modified by Supplemental Type Certificate (STC) ST00118SE; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action; accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the IFE system installed on the airplane in accordance with Matsushita Avionics Systems Corporation Service Bulletin S2GFAB767–23–1, dated February 7, 2001.

(2) Revise the procedures under ''Electrical Smoke or Fire'' in the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

''If Smoke Source Cannot Be Located:

Utility bus switches—Off

Establish communications with cabin crew.

Instruct cabin crew to place in-flight entertainment (IFE) system Master Power Switch in ''OFF'' position.

Obtain confirmation from cabin crew that electrical power to the IFE system has been removed.''

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC ST00118SE on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The modification shall be done in accordance with Matsushita Avionics Systems Corporation Service Bulletin S2GFAB767–23–1, dated February 7, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Matsushita Avionics Systems Corporation, 22333 29th Drive SE, Bothell, Washington 98021. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 17, 2001.

Issued in Renton, Washington, on June 29, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17157 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–12]

Establishment of Class E Airspace at Van Nuys Airport; Van Nuys, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes a Class E Surface Area at the Van Nuys Airport in Van Nuys, CA. The purpose of this action is to provide additional controlled airspace at this high-density airport during hours when the control tower is closed. A Class D Surface Area is in effect daily at Van Nuys Airport during the specific hours when Air Traffic Control Tower (ATCT) is operational. Van Nuys Class D Surface Area hours are published continuously in the Airport/Facility Directory, and existing Class D airspace will not change as a result of this action. However, this action to establish a Class E Surface Area eliminates Class G uncontrolled airspace at Van Nuys Airport during hours when the ATCT is closed.

EFFECTIVE DATE: 0901 UTC November 1, 2001. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before August 13, 2001.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–12, Air Traffic Division, P.O. Box 92007, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Specialist, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: This action establishes Class E airspace designated as a Surface Area at the Van Nuys Airport in Van Nuys, CA. The purpose of this action is to provide additional controlled airspace at this high-density airport during the hours when the air traffic control tower is closed. A Class D Surface Area is in effect daily at Van Nuys Airport during the specific hours when Van Nuys Air Traffic Control Tower is operational. The Van Nuys Call D Surface Area hours are published continuously in the Airport/Facility Directory. Existing Class D airspace will not change as a result of this action. However, this action to establish a Class E Surface Area eliminates Class G uncontrolled airspace at Van Nuys Airport when the control tower is closed. Van Nuys Airport now provides official aviation weather reporting service on a 24-hour daily basis, and meets all criteria for establishment of a Class E Surface Area at this location. The intended effect of this action is to provide adequate Class E controlled airspace to serve the

volume of aircraft operating at Van Nuys Airport during hours when the tower is closed.

Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in that Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 01–AWP–12.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

Paragraph 6002. Class E Airspace Designated as Surfae Areas.

* * * * *

AWP CA E2 Van Nuys, CA [New]

Van Nuys Airport, CA
(Lat. 34°12′35″N, long. 118°29′24″W)
Burbank-Glendale-Pasadena Airport, CA
(Lat. 34°12′02″N, long. 118°29′30″W)
Van Nuys VOR/DME
(Lat. 34°13′24″N, long. 118°29′30″W)
Whiteman Airport, CA
(Lat. 34°15′35″N, long. 118°24′48″W)

That airspace extending upward from the surface to but not inclding 3,000 feet MSL withn a 4.3-mile radius of Van Nuys Airport, excluding that airspace within the Burbank-Glendale-Pasadena Airport, CA, Class C airspace Area, and excluding that airspace between the Van Nuys VOR/DME 219° radial clockwise to the Van Nuys VOR/DME 314° radial extending beyond the Burank-Glendale-Pasadena Airport 10-mile radius, and excluding that airspace within a 1.8-mile radius of Whiteman Airport.

* * * * *

Issued in Los Angeles, California, on June 28, 2001.

Rose Cusic,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 01–17566 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–3–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

Forms, Securities Exchange Act of 1934

CFR Correction

In Title 17 of the Code of Federal Regulations, parts 240 to end, revised as of April 1, 2001, on page 514, part 249 is corrected by removing § 249.1a.

[FR Doc. C1–55521 Filed 7–12–01; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in August 2001. Interest assumptions are also published on the PBGC's Web site (http://www.pbgc.gov).

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) Adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during August 2001, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during August 2001, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during August 2001.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.40 percent for the first 20 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for July 2001) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.75 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for July 2001) of 0.25 percent for the period during which a benefit is in pay status and the seven-year period directly preceding the benefit's placement in pay status; they are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during August 2001, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 94, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
94	8–1–01	9–1–01	4.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 94, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
94	8–1–01	9–1–01	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
August 2001	.0640	1–20	.0625	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of July 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–17574 Filed 7–12–01; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 29

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Treasury, Departmental Offices, is issuing an interim rule and requesting comments on this rule, which implements the provisions of the Balanced Budget Act of 1997, as amended (Act). The Act assigns the Secretary of the Treasury responsibility for payment of benefits (hereafter, Federal Benefit Payments) under the District of Columbia (District) retirement plans for police officers and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997, and under the District retirement plan for judges. The interim rule establishes the general rules for the Treasury Department's processes for (1) debt collections arising from overpayments of Federal Benefit Payments or debt claims by Federal agencies, and (2) waiver of recovery of overpaid benefits or amounts otherwise owed to the retirement plans.

DATES: Interim rule effective August 13, 2001; comments must be received on or before September 11, 2001.

ADDRESSES: Send comments to Ronald A. Glaser, Director, Office of Personnel Policy, Department of the Treasury, Metropolitan Square Building, Room 6075, 15th Street and Pennsylvania Avenue, NW, Washington, DC 20220. Comments may also be submitted by electronic mail to dcpensions@do.treas.gov.

FOR ADDITIONAL INFORMATION CONTACT: Harold L. Siegelman, (202) 622–1540, Department of the Treasury, Metropolitan Square Building, Room 6033, 15th Street and Pennsylvania Avenues, NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552, and as further amended by the Consolidated Appropriations Act of 2001, Public Law 106–554, 114 Stat. 2763, transferred certain unfunded pension liabilities from the District government to the Federal Government. The Act requires the Federal Government to assume responsibility for payment of certain benefits that accrued on or before June 30, 1997, under the retirement plans for District teachers (Teachers Plan) and police officers and firefighters (Police Officers and Firefighters Plan) as they existed on June 29, 1997, and for past and future benefits under the retirement plan for judges (Judges Plan) (collectively, the Retirement Funds). The Act also required the District government to establish replacement retirement plans that will provide retirement benefits for service after June 30, 1997, for current and future teachers, police, and firefighters.

The Office of D.C. Pensions developed the interim rule in consultation with the Department of the Treasury's Financial Management Service and acknowledges its constructive assistance.

1. *Requirement to establish processes for debt collection and waivers of debt collection.* The interim rule implements section 11021(3) of the Act (codified at D.C. Code Ann. 1–763.1) and section 11251 (c)(2)(B) of the Act (amending D.C. Code Ann. 11–1570). These statutes provide for the collection of, or waiver of collection of, overpayments of Federal Benefit Payments.

The interim rule is based in part on the Office of Personnel Management (OPM) regulations with respect to

similar debt collection functions for retirement programs that OPM administers. For the most part, the principles that affect debt collection activities are the same for OPM and the Retirement Funds for which the Treasury Department is responsible. This is especially true for debt collection matters in which OPM and the Treasury Department are implementing the same statute—the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, and implemented by 31 CFR 900.1 et seq., the Federal Claims Collection Standards.

With respect to the collection of, or waiver of collection of, overpayments of Federal Benefit Payments, the Treasury Department intends to follow the practices and guidelines OPM has already established. To that end, the interim rule closely adheres to the OPM debt collection regulations. With respect to the collection of other Federal debts against the payment of Federal Benefit Payments, this interim rule refers to the general debt collection regulations promulgated by the Treasury Department in parts 5 and 285 of Title 31 of the Code of Federal Regulations.

2. *Contracting for administrative services.* Section 11035(a) and (b) and section 11251(b)(1) of the Act provide for the selection of a Trustee to administer the Department's responsibilities for the Retirement Funds under the Act, including collection of, or waiver of collection of, overpayments of Federal Benefit Payments.

Sections 11035(c) and 11251(b)(1) of the Act authorize the Trustee to subcontract with the District government or any person to provide services to the Trustee in connection with the Trustee's performance of its contract with the Secretary.

Section 11035(d) of the Act authorizes the Secretary to perform any function of the Trustee if the Secretary determines that, in the interest of economy and efficiency, the Secretary rather than the Trustee should perform such function.

Section 11041(a) of the Act (codified at D.C. Code Ann. 1–765.1) requires the District to continue to discharge its duties with respect to making Federal Benefit Payments until such time as the Secretary notifies the District that he has directed the Trustee to carry out the duties and responsibilities required under the contract or determines that the Secretary shall carry out those functions.

Because it is likely that, after the interim period is over, the Retirement Funds will be administered by the Trustee, a subcontractor of the Trustee, or another agent of the Secretary, the interim rule uses the term ''Benefits Administrator'' throughout this subpart to denote the entity charged with recovering or recouping overpayments of Federal Benefit Payments and collecting other Federal debts against the payment of Federal Benefit Payments. The term ''Benefits Administrator'' is also used in the interim regulations in subpart D to identify the entity charged with making Federal Benefit Payment determinations. It is anticipated that, after the interim period is over, the same entity will act as Benefits Administrator for purposes of this subpart and subpart D. It should be noted, however, that potentially the Secretary may be the Benefits Administrator for the purpose of this subpart.

3. *Development of these procedures.* Subpart E establishes debt collection procedures and standards for waiver of collection of overpayments of Federal Benefit Payments. This subpart is in three groups of sections.

Sections 29.501 through 29.506 provide general information helpful in understanding the regulations throughout subpart E. This information includes a description of the purpose and scope of the subpart, definitions of terms used in the subpart, and statements of general principles that apply throughout the subpart. This information also refers to regulations that govern other aspects of debt collection not addressed in this subpart, specifically those governing the compromise, suspension, or termination of collection action, and the procedures for Federal agencies to submit requests to the Department to offset Federal Benefit Payments to collect a debt.

Sections 29.511 through 29.520 establish procedures for collection of debts due the Retirement Funds. The procedures are intended to fulfill the Department's obligations under the Federal Claims Collection Standards, 31 CFR 900.1 et seq. These sections establish safeguards to, in most cases, allow recipients to administratively appeal the determination of a debt or seek waiver or compromise of the debt before offset of Federal Benefit Payments occurs. See section 29.516(e). This interim rule also establishes a limit to the amount that can be offset from monthly Federal Benefit Payments to protect those recipients who depend upon these payments for all or a substantial part of their income. Section 29.516(d) establishes a formula for calculating the maximum amount which may be offset from a monthly Federal Benefit Payment. This formula is identical to one set forth in 31 CFR 285.4(e), which limits the amount that can be offset from benefit payments under the Social Security Act, the Black Lung Benefits Act, and laws administered by the Railroad Retirement Board. It is intended that section 29.516(d) be interpreted in an identical manner as 31 CFR 285.4(e).

Sections 29.521 through 29.526 establish standards for the waiver of collection of overpayments of Federal Benefit Payments. The standards are intended to have the same general effect as the corresponding OPM regulations.

Pursuant to section 553(b)(3)(B) of title 5, United States Code, it has been determined that good cause exists for waiving a general notice of proposed rulemaking for the rule. Overpayments of Federal Benefit Payments must be collected expeditiously to protect and maintain the integrity of the Trust Funds from which Federal Benefit Payments are made. Delaying implementation of this rule could forestall efforts to collect overpayments promptly. Moreover, beneficiaries who are subject to debt collection action to collect overpayments of Federal Benefit Payments need the clear procedures provided in the rule for seeking review of such decisions or waiver of the overpayments. Delaying implementation of these provisions would be contrary to the public interest.

E.O. 12866, Regulatory Review

Because the interim rule is not a significant regulatory action for purposes of E.O. 12866, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Teachers.

Department of the Treasury.

James Flyzik,

Acting Assistant Secretary of the Treasury.

Accordingly, the Department of the Treasury is amending part 29 of Title 31 of the Code of Federal Regulations, as follows:

1. The authority citation for part 29 is amended to read as follows:

Authority: Sections 11083 and 11251(a) of Public Law 105–33, 111 Stat. 730 and 756, as amended by Public Law 105–277, 112 Stat. 2681–530 through 538, and as further amended by Public Law 106–554, 114 Stat. 2763; subpart D also issued under section 11022 of Public Law 105–33, 111 Stat. 730 and 756, as amended by Public Law 105–277, 112 Stat. 2681–530 through 538, and as further amended by Public Law 106–554, 114 Stat. 2763.

2. In section 29.102, paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 29.102 Related regulations.

(a) This part contains the following subparts:

(1) General Provisions (Subpart A);

(2) Coordination with the District Government (Subpart B);

(3) Split Benefits (Subpart C); [1]

(4) Claims and Appeals Procedures (Subpart D); and

(5) Debt Collection and Waivers of Collection (Subpart E).

* * * * *

(f) Parts 835 and 845 and subparts M, N, and R of part 831 of title 5, Code of Federal Regulations, contain information about debt collection and waiver of collection under the Civil Service Retirement System and the Federal Employees Retirement System.

3. In § 29.103, paragraph (a) is revised by adding in alphabetical order definitions of the terms ''Act,'' ''Benefits Administrator,'' ''Reconsideration,'' and ''Retirement Funds'' to read as follows:

§ 29.103 Definitions.

(a) * * *

Act means the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552, and by the Consolidated Appropriations Act of 2001, Public Law 106–554, 114 Stat. 2763.

Benefits Administrator means:

(1) During the interim administration period under section 11041(a) of the Act, the District of Columbia government; or

(2) After the end of the interim administration period,

(i) The Trustee selected by the Department under section 11035(a) of the Act;

(ii) The Department if a determination is made under section 11035(d) of the Act that, in the interest of economy and efficiency, the Trustee's functions shall be performed by the Department rather than the Trustee; or

(iii) Any other agent of the Department designated to make initial benefit determinations and to recover or recoup or waive recovery or recoupment of overpayments of Federal Benefit Payments, or to recover or recoup debts owed to the Federal Government by annuitants.

* * * * *

Reconsideration means the process of reexamining an individual's entitlement to benefits or liability for a debt to determine whether—

(1) The law and regulations were properly applied; and/or

(2) The mathematical computation of the benefit or liability is correct.

Retirement Funds means the District of Columbia Federal Pension Liability Trust Fund established under section 11031 of the Act (codified at D.C. Code Ann. 1–764.1), the Federal Supplemental District of Columbia Pension Fund established under section 11051 of the Act (codified at D.C. Code Ann. 1–766.1), and the District of Columbia Judicial Retirement and Survivors Annuity Fund established under section 11252 of the Act (codified at D.C. Code Ann. 1–714).

* * * * *

4. Subpart E is added to read as follows:

Subpart E—Debt Collection and Waivers of Collection

Sec.
29.501 Purpose; incorporation by reference; scope.
29.502 Definitions.
29.503 Prohibition against collection of debts.
29.504 Status of debts.
29.505 Compromise of claims; termination and suspension of collection actions.
29.506 Recovery of other debts owed to the United States.

Collection of Overpayments

29.511 Demand letters.
29.512 Reconsideration by the Benefits Administrator.
29.513 Appeals to the Department.
29.514 Requests for waiver and/or compromise.
29.515 Judicial review.
29.516 Collection of overpayments.
29.517 Collection by offset.
29.518 Reporting delinquent debts to credit bureaus.
29.519 Referral to a collection agency.
29.520 Referral for litigation.

Standards for Waiver of Overpayments

29.521 Conditions for waiver and other adjustments.
29.522 Fault.
29.523 Equity and good conscience.
29.524 Financial hardship.
29.525 Ordinary and necessary living expenses.
29.526 Waiver precluded.

Subpart E—Debt Collection and Waivers of Collection

§ 29.501 Purpose; incorporation by reference; scope.

(a) This subpart regulates—

(1) The recovery of overpayments of Federal Benefit Payments;

(2) The standards for waiver of recovery of overpayments of Federal Benefit Payments; and

(3) The use of Federal Benefit Payments to recover certain other debts due the United States.

(b) The regulations of this subpart incorporate by this reference all provisions of the Federal Claims Collection Standards (FCCS) (parts 900–904 of Title 31, Code of Federal Regulations), and supplement those regulations by the prescription of procedures and directives necessary and appropriate for the operation and administration of the Retirement Funds. To the extent they are not inconsistent with the regulations contained in this subpart, the regulations in part 5 of title 31, Code of Federal Regulations, also apply to the collection of debts under this subpart.

(c)(1) *Debts based on fraud, misrepresentation, or the presentation of a false claim.* This subpart does not apply to any overpayments of Federal Benefit Payments which arose, in whole or in part, due to fraud, misrepresentation, or the presentation of a false claim by the debtor or any party having an interest in the claim. Such debts should be referred by the Benefits Administrator immediately to the U.S. Justice Department for action pursuant to 31 CFR 900.3.

(2) *Tax debts.* This subpart does not apply to tax debts.

(d)(1) Sections 29.501 through 29.506 state the rules of general applicability to this subpart.

(2) Sections 29.511 through 29.520 prescribe procedures to be followed by the Benefits Administrator which are consistent with the FCCS in the collection of debts owed to the Retirement Funds.

(3) Sections 29.521 through 29.526 prescribe the standards that the

[1] The effective date for section 29.102(a)(3) and Subpart C, originally scheduled for March 31, 2001, has been postponed indefinitely.

Department will apply in decisions to waive recoupment or recovery of overpayments from the Retirement Funds under sections 11021(3) and 11251(c)(2)(B) of the Act.

§ 29.502 Definitions.

For purposes of this subpart—

Additional charges means interest, penalties, and/or administrative costs owed on a debt.

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the United States.

Agency means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department, as defined in section 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

Annuitant means a retired participant, former spouse, spouse, widow(er), child or other beneficiary receiving recurring Federal Benefit Payments.

Annuity means the monthly benefit (including a retirement salary under the Judges Plan) of indefinite duration payable to an annuitant.

Anticipated expenses means expenditures which are expected to occur and for which the debtor can provide documentation of the estimated cost.

Beneficiary means an individual designated by a participant, or by the terms of the Judges Plan, Police Officers and Firefighters Plan, or Teachers Plan, who is or may become entitled to a benefit under those plans.

Change of position for the worse means an individual would be left in a worse financial position after recovery of the overpayment than prior to the receipt of the overpayment because the individual reasonably relied on the amount of the overpayment to his or her detriment. For example, an individual has ''changed position for the worse'' if he or she made expenditures or assumed new liabilities that he or she would not have otherwise done, and he or she is unable to withdraw from the commitment without incurring significant financial loss.

Compromise means accepting less than payment in full in satisfaction of a debt.

Consent means the debtor has agreed in writing to administrative offset of one or more Federal Benefit Payments after receiving notice of the available rights under 31 U.S.C. 3716 and this subpart; to Federal salary offset after receiving notice of the available rights under 5 U.S.C. 5514 and 31 CFR part 5; and to judgment offset under section 124 of Public Law 97–276, 96 Stat. 1195–1196.

Credit bureau has the same meaning as the definition of ''consumer reporting agency'' provided in 31 U.S.C. 3701(a)(3).

Creditor agency means the agency to which a debt is owed.

Debt has the same meaning as the definition of ''debt'' provided in 31 U.S.C. 3701(b)(1), and includes an overpayment of Federal Benefit Payments.

Debtor means a person who owes a debt or from whom a debt is to be recovered, including an annuitant.

Delinquent means delinquent as defined in 31 CFR 900.2(b).

Department means the Secretary of the Treasury or a designee authorized to exercise the Secretary's authority with respect to Federal Benefit Payments under the Act.

FCCS means the Federal Claims Collection Standards (parts 900–904 of Title 31, Code of Federal Regulations).

Liquid asset means cash or other property readily convertible into cash with little or no loss of value.

Lump-sum credit means:

(1) Under the Judges Plan, the Police Officers and Firefighters Plan, and the Teachers Plan, the unrefunded amount consisting of—

(i) Retirement contributions from the basic salary of a participant;

(ii) Amounts deposited covering earlier creditable service; and

(iii) Such interest as authorized by statute to be included in the payment of refunds of retirement contributions; and

(2) Under the Judges Plan, ''lump-sum credit for survivor annuity'' is defined in section 11–1561(10) of the D.C. Code.

Offset means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

Ordinary and necessary living expenses means such expenses as rent, mortgage payments, utilities, maintenance, food (including expenses for dining out), clothing, insurance (life, health, and accident), taxes, installment payments, medical expenses, reasonable expenses for recreation and vacations, expenses for support of a dependent when the debtor holds primary or joint legal responsibility for such support, and other miscellaneous expenses that the debtor can establish as being ordinary and necessary.

Overpayment or *overpayment debt* means a payment of one or more Federal Benefit Payments to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

Participant means an individual who is or may become eligible to receive a benefit under the Police Officers and Firefighters Plan or Teachers Plan based on credit for service accrued as of June 30, 1997, or under the Judges Plan, or whose beneficiaries may be eligible to receive any such benefit.

Refund means the payment of a lump-sum credit to an individual who meets all requirements for payment and files an application for it.

Relinquish a valuable right means the individual has relinquished a valuable privilege, claim, entitlement, or benefit having monetary worth because of the overpayment or because of notice that such a payment would be made.

Repayment schedule means the amount of each payment and the number of payments to be made to liquidate the debt as determined by the Department or the Benefits Administrator.

Salary offset means any offset authorized by 5 U.S.C. 5514 and 31 U.S.C. 3716.

Substantially all, as used in § 29.524, means that a debtor's income is less than or equal to his or her ordinary and necessary expenses plus a reasonable monthly allowance for unexpected or emergency expenses and does not allow for the deduction of a reasonable monthly installment payment to recover the debt.

Voluntary repayment agreement means an agreement wherein the debtor makes installment payments to repay an overpayment debt in accordance with a repayment schedule agreed to by the Benefits Administrator or the Department.

Waiver means a decision not to recover all or part of an overpayment debt owed to the Retirement Funds under authority of sections 11021(3) or 11251(c)(2)(B) of the Act.

§ 29.503 Prohibition against collection of debts.

(a) Debts may be collected from Federal Benefit Payments only to the extent expressly authorized by Federal debt collection statutes and any other applicable Federal law.

(b) When collection of a debt from Federal Benefit Payments is authorized under paragraph (a) of this section, the collection will be made in accordance with this subpart and other applicable federal law.

§ 29.504 Status of debts.

A payment of a Federal Benefit Payment to a debtor because of an error on the part of the Department or Benefits Administrator, or the failure of the creditor agency to properly and/or timely submit a debt claim, does not erase the debt or affect the validity of the claim by the creditor agency.

§ 29.505 Compromise of debts; termination and suspension of collection actions.

The procedures for compromise of a claim for an overpayment or the termination or suspension of a collection action seeking to recover an overpayment, other than waiver of an overpayment under §§ 29.521 through 29.526, are controlled exclusively by the FCCS and 31 CFR part 5.

§ 29.506 Recovery of other debts owed to the United States.

(a) *Procedures for Creditor Agencies.* Agencies seeking to recover a debt by offset of Federal Benefit Payments payable to the debtor must comply with the offset procedures set forth in 31 U.S.C. 3716 and the FCCS. A creditor agency may seek to collect a debt through offset of Federal Benefit Payments pursuant to the Department's procedures for administrative offset set forth in 31 CFR part 5.

(b) *Offset by the Benefits Administrator.* As required by 31 U.S.C. 3716(c), the Benefits Administrator must compare payment records of the Retirement Funds with records of debts submitted to the Financial Management Service for collection by administrative offset, and must offset payments to satisfy, in whole or in part, debts owed by any annuitant.

Collection of Overpayments

§ 29.511 Demand letters.

Except as provided in § 29.516(e), before starting collection action to recover an overpayment, the Benefits Administrator must send a demand letter that informs the debtor in writing—

(a) That an overpayment has occurred, the amount of the overpayment, and the facts giving rise to the overpayment;

(b) The date by which payment of the debt should be made to avoid additional charges (i.e., interest, penalties and administrative costs) permitted by the FCCS and enforced collection;

(c) The requirement that any overpayment debt delinquent for more than 180 days be transferred to the Department of the Treasury's Financial Management Service for collection;

(d) The name, address, and phone number of the appropriate person or office the debtor may contact about the debt;

(e) The remedies which may be used to enforce payment of the debt, including assessment of interest, administrative costs and penalties; administrative wage garnishment; the use of collection agencies; Federal salary offset; tax refund offset; administrative offset; and litigation.

(f) Whether offset is available and, if so, the types of payment(s) to be offset or eligible for offset, the repayment schedule (if any), the right to request an adjustment in the repayment schedule, and the right to request a voluntary repayment agreement in lieu of offset;

(g) An explanation of the Department's policy on interest, penalties, and administrative costs as set forth in 31 CFR part 5, the FCCS, and 31 U.S.C. 3717, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(h) The debtor's opportunity to request repayment in installments if the debtor can show an inability to repay the debt in one lump sum;

(i) The debtor's opportunity to inspect and/or receive a copy of the records relating to the overpayment;

(j) The method and time period (60 calendar days) for requesting reconsideration, waiver, and/or compromise of the overpayment;

(k) That all requests for waiver or compromise must be accompanied by a disclosure of the debtor's financial condition and ability to pay the debt;

(l) The standards used by the Department in deciding requests for waiver (set forth in §§ 29.521 through 29.526) and compromise (set forth in 31 CFR 902.2); and

(m) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a subsequent timely appeal of a reconsideration decision, will stop collection proceedings, unless—

(1) Failure to take the offset would substantially prejudice the Federal Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of these procedures.

§ 29.512 Reconsideration by the Benefits Administrator.

(a) *Right to reconsideration of overpayment determinations.* Individuals who receive a demand letter and who wish to contest the existence or amount of the overpayment may ask the Benefits Administrator to reconsider the determination.

(b) *Requests for waiver or compromise.* Individuals who wish to seek waiver or compromise of the overpayment may file such requests with the Department under § 29.514. An individual may file a request for reconsideration in addition to a request for waiver or compromise.

(c) *Form and timing of requests for reconsideration.* (1) A request for reconsideration must be in writing and must state the basis for the request. Individuals requesting reconsideration will be given a full opportunity to present any pertinent information and documentation supporting their position and should, to the extent possible, include such information and documentation in their request.

(2) A request for reconsideration must be received by the Benefits Administrator within 60 calendar days of the date of the demand letter. The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(3) When a request for reconsideration covered by this subpart is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(d) *Reconsideration decisions.* (1) The Benefits Administrator's decision on a request for reconsideration will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) A reconsideration decision by the Benefits Administrator must—

(i) Be in writing;

(ii) Provide notice of the extent of the individual's liability for the overpayment, if any;

(iii) If the individual is determined to be liable for all or a portion of the overpayment, reaffirm or modify the conditions for the collection of the overpayment previously proposed in the demand letter;

(iv) Provide notice of the right to appeal the Benefits Administrator's decision to the Department, the address to which such an appeal must be submitted, and the time limits applicable to such an appeal; and

(v) State that a timely appeal of the Benefits Administrator's decision to the

Department will suspend action to collect the debt.

(e) *Appeal of reconsideration decisions.* The Department will review an appeal of a reconsideration decision under § 29.513.

§ 29.513 Appeals to the Department.

(a) *Form of appeal.* An appeal of a reconsideration decision under § 29.512 must be in writing and must state the basis for the appeal.

(b) *Time limits on appeals.* (1) An appeal must be received by the Department within 60 calendar days from the date of the reconsideration decision.

(2) The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(c) *Final decision.* After consideration of the appeal, the Department will issue a final decision. The Department's decision will be in writing, will fully set forth the Department's findings and conclusions on the appeal, and will contain notice of the right to judicial review provided in § 29.515. If the Department determines that the individual is liable for all or a portion of the overpayment, the decision also will contain the conditions for the collection of the overpayment. Copies of the final decision will be sent to the individual seeking appeal and to the Benefits Administrator.

§ 29.514 Requests for waiver and/or compromise.

(a) *Right to request waiver and/or compromise.* Individuals who receive a demand letter regarding an overpayment may ask the Department to waive and/or compromise, in whole or part, the amount of the overpayment.

(b) *Requests for reconsideration.* Individuals who have filed a request for reconsideration under § 29.512 may also request a waiver and/or compromise under this section.

(c) *Form and timing of requests for waiver and/or compromise.* (1) A request for waiver and/or compromise must be in writing and must state the basis for the request. Individuals making such requests will be given a full opportunity to present any pertinent information and documentation supporting their position and should, to the extent possible, include such information and documentation in their request. Individuals seeking waiver or compromise of an overpayment must also submit required financial information identified in the demand letter.

(2) A request for waiver or compromise must be filed with the Department. If the request is sent by mail, it must be postmarked within 60 calendar days of the date of the demand letter. If the request is hand delivered or delivered electronically, it must be received within 60 calendar days of the date of the demand letter. The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(3) When a request for waiver and/or compromise under this section is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(d) *Waiver and/or compromise decisions.* (1) The Department's decision on a request for waiver and/or compromise will be based upon the individual's written submissions, evidence of record, and other pertinent available information. An individual's request for waiver will be evaluated by the standards set forth in § 29.521 through § 29.526. An individual's request for compromise will be evaluated by the standards set forth in the FCCS in 31 CFR part 902.

(2) A waiver or compromise decision by the Department will—

(i) Be in writing;

(ii) Provide notice of whether the overpayment will be waived or compromised, and the extent to which the individual is still liable for the overpayment, if at all;

(iii) If the individual is determined to be liable for all or a portion of the overpayment, reaffirm or modify the conditions for the collection of the overpayment previously proposed in the demand letter; and

(iv) Be issued within 120 calendar days from the Department's receipt of a timely request for waiver and/or compromise. This time limit does not apply to requests for compromise that are referred to the Department of Justice for consideration pursuant to 31 CFR 902.1(b).

§ 29.515 Judicial review.

An individual whose request for reconsideration has been denied (in whole or part) in a final decision by the Department under § 29.513 may, within 180 days of the date of the final decision, file a civil action in the United States District Court for the District of Columbia. Any such civil action must be filed in accordance with the rules of that court.

§ 29.516 Collection of overpayments.

(a) *Means of collection.* Collection of an overpayment may be made by means of offset under § 29.517, or under any statutory provision providing for offset of money due the debtor from the Federal Government including, but not limited to, Federal Benefit Payments. Collection may also be effected by referral to the Justice Department for litigation, as provided in § 29.520, or referral to a collection agency as provided in § 29.519, or by other means authorized by federal law.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the overpayment in accordance with standards established in 31 U.S.C. 3717 and 31 CFR 901.9. Additional charges will be waived when required by the FCCS. The Department will waive the collection of interest on the overpayment pending the Benefits Administrator's consideration of a request for reconsideration and the Department's consideration of a request for waiver and/or compromise or the appeal of a reconsideration decision. In addition, such charges may be waived when the Department determines—

(1) Collection of those charges would be against equity and good conscience under the standards prescribed in §§ 29.523 through 29.525; or

(2) Waiver of those charges would be in the best interest of the United States.

(c) *Collection in installments.* (1) Whenever feasible, overpayments will be collected in one lump sum.

(2) However, installment payments may be effected when—

(i) The debtor establishes that he or she is financially unable to pay in one lump sum; or

(ii)(A) The benefit payable is insufficient to make collection in one lump sum;

(B) The debtor fails to respond to a demand for full payment; and

(C) Offset is available.

(d) *Offset Amount.* (1) The amount offset from a monthly Federal Benefit Payment will be the lesser of:

(i) The amount of the debt, including any interest, penalties and administrative costs;

(ii) An amount equal to 15 percent of the monthly Federal Benefit Payment; or

(iii) The amount, if any, by which the monthly Federal Benefit Payment exceeds $750.

(2) For purposes of this subsection, the ''monthly Federal Benefit Payment''

is the amount of the gross monthly benefit after any reductions or deductions required under law, including reductions made to recover overpayments of Federal Benefit Payments.

(e) *Commencement of collection.* (1) Except as provided in paragraph (e)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 29.512 through § 29.514 expire and no such requests have been made, or after the Benefits Administrator and/or the Department have issued decisions on all timely requests for or appeals of those rights, unless failure to make an offset would substantially prejudice the Department's ability to collect the overpayment and the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 29.511 through § 29.514 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 29.511 through § 29.514 will not be applied when the overpayment is caused by—

(i) A retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or

(ii) interim estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the later of—

(A) The last interim payment or

(B) The date the formal determination is made.

(f) *Collection of delinquent debts.* (1) *Debts delinquent over 180 days.* The Benefits Administrator must refer all overpayment debts that are over 180 days delinquent to the Secretary for collection pursuant to 31 U.S.C. 3711(g) and 3716, and 31 CFR part 901.

(2) *Debts delinquent less than 180 days.* Once an overpayment debt becomes delinquent, the Benefits Administrator should refer it to the Secretary for collection by centralized administrative offset pursuant to 31 CFR 901.3, unless collection of the debt by some other means is likely to occur in a more timely and efficient manner.

(3) Once a debt is referred under this subsection, the Benefits Administrator has no further obligation to collect the debt.

§ 29.517 Collection by offset.

(a) *Offset from retirement payments.* An overpayment may be collected in whole or in part from any refund payment or recurring Federal Benefit Payments.

(b) *Offset from other payments*—(1) *Administrative offset.* When offset under subsection (a) is not available, an overpayment may be offset from other Federal payments due the debtor from other agencies under the procedures set forth in 31 CFR part 5 and 31 CFR 901.3(c).

(2) *Salary offset.* When the debtor is an employee of the Federal Government, the Department may effect collection of an overpayment by offset of the debtor's pay in accordance with regulations published to implement such offsets under 5 U.S.C. 5514 (see 5 CFR part 550, subpart K; 31 CFR 285.7; and 31 CFR Part 5). Due process described in the federal salary offset regulations of 31 CFR part 5 will apply. When the debtor did not receive a hearing under those regulations and requests such a hearing, one will be conducted in accordance with 5 CFR part 550, subpart K and 31 CFR part 5.

(3) *Tax refund offset.* The Department may effect collection of an overpayment by offset of the debtor's tax refund in accordance with the Department's tax refund offset regulations found at 31 CFR part 5.

§ 29.518 Reporting delinquent debts to credit bureaus.

(a) *Notice.* If a debtor's response to the demand letter does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to the Benefits Administrator, and the debtor's rights under § 29.512 through § 29.514 have been exhausted, the Benefits Administrator must report the debtor to a credit bureau. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule must result in a report to a credit bureau. Before making a report to a credit bureau, the Benefits Administrator must notify the debtor in writing that—

(1) The payment is overdue;

(2) The Benefits Administrator intends, after 60 days, to make a report as described in paragraph (b) of this section to a credit bureau;

(3) The debtor's right to dispute the liability has been exhausted under § 29.512 through § 29.514; and

(4) The debtor may avoid having the Benefits Administrator report the debtor to a credit bureau by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* If, after being sent the notice described in paragraph (a) of this section, the debtor does not pay the overpayment debt or make payments current under a repayment schedule or fails to respond to the notice, and 60 days have elapsed since the notice was mailed, the Benefits Administrator will report to a credit bureau that the debtor is responsible for an unpaid debt and provide the following information:

(1) The debtor's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of Federal Benefit Payments under a District Retirement Fund.

(c) *Subsequent reports.* The Benefits Administrator must update its report to the credit bureau whenever it has knowledge of events that substantially change the status or the amount of the liability.

(d) *Other reporting of delinquent debts.* Pursuant to 31 CFR 901.4, delinquent overpayment debts should be reported to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS).

(e) *Privacy Act considerations.* A delinquent debt may not be reported under this section unless a notice issued pursuant to the Privacy Act, 5 U.S.C. 552a(e)(4), authorizes the disclosure of information about the debtor to a credit bureau or CAIVRS.

§ 29.519 Referral to a collection agency.

(a) The Department retains the responsibility for resolving disputes, compromising debts, referring overpayment debts for litigation, and suspending or terminating collection action.

(b) The Department may not refer overpayment debts to commercial collection agencies until all procedures required by or requested under § 29.511 through § 29.514 have been completed.

§ 29.520 Referral for litigation.

The Department may refer to the Justice Department for litigation overpayment debts which cannot be compromised or waived, or on which collection activity cannot be suspended or terminated, and which the Department has been unable to recover pursuant to the collection activity described in § 29.511 through § 29.519. (See 31 CFR part 904.) Such debts

should be referred to the Justice Department as early as possible, but at least within 1 year of the date such debts last became delinquent. In the case of overpayments arising from fraud, misrepresentation, or the presentation of a false claim, referral should be made to the Justice Department immediately. (See 31 CFR 900.3(a).) Referral of a debt to the Justice Department will suspend processing under § 29.511 through § 29.519 of this subpart.

Standards for Waiver of Overpayments

§ 29.521 Conditions for waiver and other adjustments.

(a) *General.* Overpayments made from the Retirement Funds will be recovered unless there is substantial evidence that the individual from whom recovery is to be made is eligible for waiver.

(b) *Waiver.* The Department may waive an overpayment from the Retirement Funds (provided there is no indication of fraud, misrepresentation, or lack of good faith on the part of the debtor) under sections 11021(3) or 11251(c)(2)(B) of the Act when it is established by substantial evidence that the individual from whom recovery is to be made—

(1) Is not at fault in causing or contributing to the overpayment, and

(2) Recovery would be against equity and good conscience.

(c) *Adjustment in the installment schedule.* (1)(i) An overpayment will not be waived because of financial hardship if a reasonable installment schedule can be established for repayment of the debt by adjusting the installment schedule originally established.

(ii) For example, if the Department finds that the original installment schedule—24 installments at $125 each—causes the debtor financial hardship, but that repayment in 60 installments at $50 each does not, it may adjust the installments and recover the debt in full.

(2) Where it has been determined that an individual is ineligible for a waiver, but the individual has shown that collection action pursuant to the original installment schedule would cause him or her financial hardship, the Department may—

(i) Adjust the installment schedule if the individual shows that it would cause him or her financial hardship to make payments at the rate initially scheduled by the Department; or

(ii) Terminate the collection action under 31 CFR 903.3 if the costs of collecting the debt are anticipated to exceed the amount recoverable.

§ 29.522 Fault.

(a) *General rule.* A debtor is considered to be at fault if he or she, or any other person having an interest in obtaining a waiver of the claim, caused or contributed to the accrual of the overpayment. The Department considers a debtor or any other person having an interest in obtaining a waiver of the claim to have caused or contributed to the accrual of an overpayment if—

(1) Payment resulted from the individual's incorrect but not fraudulent statement, which the individual knew or should have known to be incorrect; or

(2) Payment resulted from the individual's failure to disclose facts in his or her possession which the individual knew or should have known were material, when the Department has identified that the individual has a duty to report and has clearly notified the individual of this reporting requirement.

(3) The following factors may affect the decision as to whether the debtor is or is not at fault where the debtor submitted an incorrect statement, or the debtor failed to disclose material facts in his or her possession—

(i) The debtor's age;

(ii) The debtor's physical and/or mental condition; and

(iii) The availability and nature of the information provided to the debtor by the Department.

(b) *Knowledge of an overpayment.* (1) Individuals who are aware that they are not entitled to a payment or are aware that a payment is higher than the payment to which they are entitled are not considered to have contributed to the overpayment if they promptly contact the Benefits Administrator and question the correctness of the payment and take no further action in reliance of the overpayment.

(2) Any contact made with the Benefits Administrator concerning the overpayment within 60 days of receipt (if the overpayment is a recurring payment, contact must be made within 60 days of the initial payment) will satisfy the prompt notification requirement.

(c) *Reasonable person standard.* The Department will use a reasonable person standard to determine whether an individual should have known that a statement was incorrect or that material facts in the individual's possession should have been disclosed. The reasonable person standard will take into account the objective factors set forth is paragraph (a)(3) of this section.

§ 29.523 Equity and good conscience.

Recovery is against equity and good conscience when there is substantial evidence that—

(a) It would cause financial hardship to the person from whom it is sought no matter what the amount and length of the proposed installment;

(b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

§ 29.524 Financial hardship.

Financial hardship may be deemed to exist when the debtor needs substantially all of his or her current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary living expenses during the projected period of collection. Financial hardship will not be found to exist when the debtor merely establishes that the repayment causes a financial burden, i.e., when it is inconvenient to repay the debt. If there are anticipated changes in income or expenses that would allow for the recovery of the overpayment at a later date, the Department may suspend collection action until a future date.

(a) *Considerations.* Pertinent considerations in determining whether recovery would cause financial hardship include the following:

(1) The debtor's financial ability to pay at the time collection is scheduled to be made, and

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the debtor.

§ 29.525 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments for which the individual is already liable, medical expenses, support expenses for which the individual is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

§ 29.526 Waiver precluded.

Waivers will not be offered or granted when—

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

[FR Doc. 01–17545 Filed 7–12–01; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 668

Report On Use of Employees of Non-Federal Entities To Provide Services to Department of the Army

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), and Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), Department of Army, DOD.

ACTION: Final rule.

SUMMARY: This action removes the Department of the Army regulations on Contractor Manhour Reporting Requirement. The Director of Defense Procurement directed the Department of the Army to withdraw the regulations pending approval of, and further rulemaking on, the repetitive use provisions employed in covered Army contracts. In addition, the Office of Management and Budget concluded that the final rule made significant changes to the interim rule in apparent conflict with the Paperwork Reduction Act.

DATES: Effective July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Conklin, at *john.conklin@saalt.army.mil,* or Dr. John C. Anderson at 703–614–8247 or John.Anderson@hqda.army.mil.

SUPPLEMENTARY INFORMATION: 1. *Applicability:* No new contract actions containing the requirements cited in 32 CFR Part 668 may be awarded after the effective date of this rule. Contracting officers shall timely notify, in writing, all contractors whose existing contracts contain 32 CFR Part 668 requirements, that the requirement has been eliminated and that no further reporting is required under those contract actions. Any actual modification of such contracts to formally eliminate the requirement must take into account such issues as consideration and best interest of the Government on a case-by-case basis.

2. *Background:* The Department of the Army, in the **Federal Register** (65 FR 13906) dated Wednesday, March 15, 2000, announced an interim rule to establish and implement basic contractor-reporting requirements to identify the number and value of direct, and associated indirect, labor work year equivalents for contracted services in support of the Army. This requirement was Army's implementation of statutory mandates and FY 2000 Congressional data requirements (10 U.S.C. 129a, 10 U.S.C. 2461(g) and Section 343 of the FY 2000 DoD Authorization Act).

Army contracting officers were directed to include the reporting requirements in all covered contracts involving services for Research and Development or Other Services and Construction. The interim rule was effective on the date of publication. A final rule, published at 65 FR 81357–81362, December 26, 2000, codified regulations at 32 CFR Part 668 that mandated the inclusion of a reporting requirement in certain contract actions as described in the rule.

As a result of a number of legal and technical/procedural issues and significant complaints from industry about the scope and methodology of the Army final rule and the rulemaking process, the Director of Defense Procurement (DDP) in memorandums dated May 5, and June 5, 2001, directed the Army to cease using the standard contract requirements language (''repetitive use clause'') in covered contracts absent approval by the DDP and rulemaking in 40 CFR (covering acquisition regulations supplementing and implementing the Federal Acquisition Regulations System). The Office of Management and Budget concluded that the final rule made significant changes to the interim rule without changing the Paperwork Reduction Act estimates and assumptions, and without allowing for additional public comment thereon, in apparent conflict with the requirements of the Paperwork Reduction Act.

Based on the foregoing, the Army hereby removes the resulting regulations from the Code of Federal Regulations (32 CFR Part 668).

General: The Army's requirement for information on unit level contractor manpower equivalents, as stated in the December 26, 2000, final rule, remains. The Army needs this information for a host of reasons, including planning, programming and budgeting, and priortization and allocation of resources. From March 2000 to the present, the Army collected over $9.2 billion in contract data from approximately 1,200 contractors. Although this data has yet to be validated and analyzed in depth, initial indications are that the numbers of contract manpower equivalents reported by contractors were lower (for the associated values) than those estimated employing algorithms currently used by the Department of the Army and the Department of Defense for reporting to Congress.

List of Subjects in 32 CFR Part 668

Government contracting, Reporting and recordkeeping requirements.

PART 668—[REMOVED AND RESERVED]

Accordingly, for the reasons set out in the preamble, 32 CFR Chapter V, Subchapter L, Part 668, *Contractor Manhour Reporting Requirement*, is removed in its entirety.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–17613 Filed 7–12–01; 8:45 am]

BILLING CODE 3710–08–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

Miscellaneous Rules Relating to Common Carriers

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of Oct. 1, 2000, in § § 64.2103, 64.2104 and 64.2105 remove the effective date note.

[FR Doc. 01–55520 Filed 7–12–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No.010710169–1169–01; I.D. 060401B]

RIN 0648–AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues an emergency rule closing the Northeast Distant Statistical Reporting (NED) Area to pelagic longline fishing. Additionally, this emergency rule requires operators of all vessels that use pelagic longline gear and have been issued, or are required to have, Federal highly migratory species (HMS) limited access fishing permits and that fish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, to follow certain requirements in deploying their gear. Finally, all operators of vessels that have been issued, or are required to have, HMS fishing permits must post in the wheelhouse safe handling guidelines for sea turtles captured in pelagic longline fisheries to be supplied by NMFS. This rule is necessary to reduce the bycatch and bycatch mortality of loggerhead and leatherback sea turtles in the Atlantic pelagic longline fishery as required by the June 8, 2001, Biological Opinion (BO).

DATES: This emergency rule is effective July 11, 2001, through January 9, 2002, except for amendments to: § 635.21(a)(3), effective September 15, 2001, local time, through January 9, 2002; § 635.21(c)(2) and § 635.21(c)(6), effective from July 15, 2001, local time through January 9, 2002; and § 635.21(c)(5)(iii), effective August 1, 2001, local time, through January 9, 2002.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East–West Highway, Silver Spring, MD 20910; or faxed to 301–713–1917. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Tyson Kade at the address listed here.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Karyl Brewster-Geisz at 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

Pelagic Longline Fishery

Pelagic longline gear is a type of commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target yellowfin tuna, bigeye tuna, or swordfish.

Data collected through observer and vessel logbook programs indicate that pelagic longline fishing for Atlantic swordfish and tunas often results in the catch of non-target finfish species, including sharks, bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and endangered sea turtles. The bycatch of protected species (sea turtles or marine mammals) may significantly impair the recovery of these species. Consistent with national standard 9 of the Magnuson-Stevens Act, NMFS has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery.

Sea Turtle Bycatch Reduction

Under the Endangered Species Act (ESA), NMFS is required to address the fishery-related take of sea turtles that are listed as threatened or endangered. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries of turtles taken by pelagic longline gear.

In a Biological Opinion (BO) prepared under section 7 of the ESA, completed June 30, 2000, NMFS concluded that operation of the pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. After the June 30, 2000, BO was issued, NMFS concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles were needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS re-initiated consultation on September 7, 2000. The new BO, issued on June 8, 2001, incorporates information from the February 2001 Stock Assessment of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on the Loggerhead and Leatherback Sea Turtles of the Western North Atlantic.

The June 8, 2001, BO concludes that the operation of the U.S. pelagic longline fishery jeopardizes the continued existence of loggerhead and leatherback sea turtles. The June 8, 2001, BO estimates that a 55-percent reduction in bycatch mortality from the pelagic longline fishery is necessary to allow for the recovery of these two species. It is anticipated that this level of reduction can be achieved by implementing an area closure and by modifying how pelagic longline gear is deployed.

Area Closure and Gear Modifications

The intent of this emergency rule is to reduce the incidental take and mortality of sea turtles captured by pelagic longlines. The first measure is a closure of the NED area effective July 15, 2001. The NED area has the highest incidental take rate of sea turtles by the U.S. pelagic longline fleet. This emergency regulation will close the NED area to vessels that have been issued, or are required to have, Federal HMS limited access permits and/or use pelagic longline gear. The closed area is bounded by the following coordinates: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long. This closure comprises an area of 2,631,00 square nautical miles (nm^2), including the Grand Banks and other fishing locations. Only larger vessels, primarily fishing out of ports in the northeast, travel to this area on a seasonal basis, from June to October. Although the NED area is large, vessels fishing in that area primarily utilize only about 168,000 nm^2 or less than 10 percent of the total area subject to the closure.

The second measure, effective August 1, 2001, is designed to reduce the mortality rate of captured sea turtles year-round and in all fishing areas. All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are prohibited from setting gangions within two gangion lengths of the floatline. Specifically, while the gear is deployed, gangions may not be attached to floatlines, nor to the mainline except at a distance from the attachment point of the floatline to the mainline of at least twice the length of the average gangion length in the set. Based on information from the Hawaii longline fleet, hooks that are beneath or adjacent to floatlines have a much higher incidental take of sea turtles than hooks one or more positions away from the floatline. NMFS projects that this measure will result in reductions of 22 percent for loggerhead interactions and 24 percent for leatherback interactions.

In addition to restricting the gangion placement relative to the floatline, all Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits must deploy the gear during shallow sets so that the length of the gangion is greater than the length of the floatline. The intent of this requirement is to ensure that hooked or entangled turtles have sufficient slack line to be able to reach the surface and avoid drowning. For longline sets in which the combined depth of the floatline plus the gangion is 100 meters or less, the length of the gangion must be at least 10 percent longer than the length of the floatline. For sets over 100 meters, the requirement does not apply.

Finally, all Atlantic vessels that have been issued, or are required to have, Federal HMS permits for any gear type and/or target species are required to post inside the wheelhouse the guidelines for the safe handling of sea turtles captured in a pelagic longline interaction. This measure will allow vessel captains to refer to the appropriate handling and release guidelines in the event a sea turtle is accidentally hooked or entangled. The requirement to post sea turtle handling instructions is effective September 15, 2001. NMFS will distribute the guidelines via mail to all HMS permit holders and announce this requirement and the availability of the guidelines via the fax network. If a vessel owner does not receive the document by September 1, 2001, it will be available for downloading by that date from the Internet at: http://www.nmfs.noaa.gov/sfa/hmspg.html, or NMFS can be contacted to request a copy requested (see **ADDRESSES**).

Experimental Fishery

Consistent with the BO, NMFS expects to undertake a research program, in consultation and cooperation with the domestic pelagic longline fleet, to develop and evaluate the efficacy of new technologies and changes in fishing practices to reduce sea turtle interactions. The experimental fishery will use a limited number of qualifying commercial fishing vessels as cooperative research platforms in the NED area. To provide for the maximum amount of transparency and public participation in the process of developing the experimental fishery, NMFS has applied for an ESA section 10 permit to conduct this scientific research (June 4, 2001, 66 FR 29934). Any research plan approved for this experimental fishery, as stated in the BO, will comply with four conditions: the sea turtle target mortality reduction will be 55 percent, the duration will be 3 years, all measures that are tested must be exportable to international fleets, and the level of mortality reduction may be achieved through reducing take rates or improving post-release survival for captured sea turtles.

Classification

This emergency rule is issued under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act. The Acting Assistant Administrator for Fisheries, NOAA (AA) has determined that these regulations are necessary to comply with the requirements of the June 8, 2001, BO.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact would result. This emergency rule is of limited duration. NMFS plans to undertake rulemaking, including preparation of an environmental impact statement, that will propose measures necessary to meet the requirements of the June 8, 2001, BO on a permanent basis.

To comply with Executive Order 12866, NMFS also prepared a Regulatory Impact Review for this action which assesses the net economic costs and benefits of this action. In 1999, 10 vessels fished in the NED area and accounted for 18.5 percent of the total number of swordfish landed by the entire fleet. Tuna are also caught by vessels fishing in this area, but the percentage is minuscule compared to the amount of swordfish landed by these vessels. The estimated total annual ex-vessel gross revenues from swordfish for the 10 vessels in the NED area were approximately $3.2 M in 1999, with an estimated average of $323,532 ex-vessel revenues per vessel. The estimated total annual ex-vessel revenues from swordfish for all areas except the NED area is $13.9 M for 1999.

Thus, closing the NED area could reduce the total annual ex-vessel gross revenues of the swordfish fishery by almost 20 percent. This reduction would likely cause some individual fishermen who normally fish in the NED area (10 vessels in 1999) to experience a large decrease in gross revenues. This reduction would also likely cause some individual processors, dealers, and suppliers to experience a slight increase in costs if they need to relocate, and possibly a decrease in gross revenues if they rely mostly on landings from the NED area. However, this closure should not affect the fleet as a whole. It is anticipated that some of the vessels that have historically fished in the NED area will participate in the planned experimental fishery. It is intended that participants in the research program will be compensated by NMFS for costs not covered through sale of swordfish, shark, and tunas caught during fishing operations.

The gear modifications required by this emergency rule are not expected to incur significant economic costs other than the potential effect on catch rates for target species. In many cases, the fishermen would be required to purchase these expendable supplies (monofilament and hooks) in the normal course of business. Posting the sea turtle handling guidelines is not expected to incur any additional expense. Thus, this emergency rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS issues this emergency rule, effective for 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This emergency rule may be extended for an additional 180 days provided the public has had an opportunity to comment on the emergency rule and, at the time of extension, a plan amendment or proposed regulations to address sea turtle bycatch and bycatch mortality on a permanent basis is being actively pursued. Public comments on this emergency rule will be considered in determining whether to extend this emergency rule to reduce sea turtle bycatch. Responses to comments will be provided if the emergency rule is revoked, modified, or extended.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule, the analytical requirements of the Regulatory Flexibility Act are not applicable and no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as providing prior notice and an opportunity for public comment would be contrary to the public interest. Public comments were received regarding the April 11, 2001 draft BO, which indicated the measures to be implemented by this emergency rule. This emergency rule is necessary to reduce the anticipated impacts of the pelagic longline fishery on listed sea turtles and to implement the provisions of the June 8, 2001, BO, prepared under section 7 of the ESA. To avoid jeopardy to listed sea turtles, the NED area closure must be in effect by July 15, 2001, the gangion placement and length requirements must be in effect by

August 1, 2001, and the sea turtle safe handling guidelines must be posted in the wheelhouse of all vessels with an HMS permit by September 15, 2001. The months of July through October, are historically high periods of sea turtle interactions. If these actions are delayed, the highest level of fishing activity in the NED area will have already occurred for the 2001 fishing year and the expected reduction in sea turtle bycatch and associated mortality will not be achieved.

The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the NED area closure for the 30 days normally required. The AA finds that this measure is necessary to reduce sea turtle bycatch and bycatch mortality that otherwise would occur this fishing season and that fishermen do not need time in order to comply with this regulation. Given NMFS's ability to communicate regulations to fishing interests through the HMS Fax network, NOAA weather radio, press releases, mailing lists, the Internet, and the HMS Infoline, and because NMFS has previously notified the public via fax network and **Federal Register** notice of the results and requirements of the June 8, 2001, BO and that the agency will promulgate an emergency rule, the AA has determined there is good cause to waive the 30-day delay in the effective date because such delay would be contrary to the public interest.

Similarly, the AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the gear modifications for all of the 30 days normally required. The AA finds that this measure is also necessary to reduce sea turtle bycatch and bycatch mortality that would otherwise occur during this fishing season. The AA also finds that a small delay is justified so that fishermen can modify the gear as required by this emergency rule. However, because the modifications should not be difficult to make, because NMFS has previously notified the public via fax network and **Federal Register** notice of the results and requirements of the June 8, 2001, BO, and because the fishing season has already started, the AA has determined there is good cause to waive part of the 30-day delay in the effective date because such delay would be contrary to the public interest.

Given the time required for NMFS to print and distribute the sea turtle handling and release guidelines, the BO allowed for delayed effectiveness of the posting requirement.

The AA has determined that this emergency rule is consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Carribean coastal states that have approved coastal zone management programs. NMFS notified the states as soon as the June 8, 2001, BO was released and requested that they notify the agency with respect to concurrence with the consistency determination.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 10, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, new definitions for ''floatline,'' ''gangion,'' and ''northeast distant closed area'' are added alphabetically to read as follows:

§ 635.2 Definitions.

* * * * *

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

* * * * *

Northeast Distant closed area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long.

* * * * *

3. In § 635.21, paragraph (c)(2) is suspended and paragraphs (a)(3), (c)(5)(iii), and (c)(6) are added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *

(3) Effective September 15, 2001, through January 9, 2002, operators of all vessels issued, or required to have, a permit under this part must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(c) * * *

(5) * * *

(iii) *Gear modifications*. The following measures to reduce the incidental capture and mortality of sea turtles are effective August 1, 2001, through January 9, 2002.

(A)*Gangion placement*. Pelagic longline gear must be deployed such that gangions may not be attached to floatlines nor to the mainline except at a distance from the attachment point of the floatline to the mainline, along the mainline, of at least twice the length of the average gangion length in the set.

(B) *Gangion length*. Pelagic longline gear must be deployed such that the length of the gangion is at least 10 percent greater than the length of the floatline for longline sets in which the combined length of the floatline and the gangion is 100 meters or less.

(6) If pelagic longline gear is on board a vessel issued, or required to have, a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calender year;

(ii) In the Charleston Bump closed area from March 1 through April 30, 2001, and from February 1 through April 30 each calender year thereafter;

(iii) In the East Florida Coast closed area at any time beginning at 12:01 a.m. on March 1, 2001;

(iv) In the DeSoto Canyon closed area at any time beginning at 12:01 a.m. on November 1, 2000;

(v) In the Northeast Distant closed area from July 15, 2001, through January 9, 2002.

* * * * *

[FR Doc. 01–17657 Filed 7–11–01; 12:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 135
Friday, July 13, 2001

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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 950 and 952

[No. 2001–15]

RIN 3069–AA99

Amendment of Community Investment Cash Advance Programs Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on Community Investment Cash Advance (CICA) Programs (CICA Regulation) to make certain technical revisions clarifying CICA Program requirements and improving the operation of CICA Programs. The proposed rule would clarify that the Federal Home Loan Banks (Banks) may offer grants, in addition to advances, under certain CICA Programs, and add a definition of ''median income for the neighborhood'' in connection with the funding of manufactured housing park projects and economic development projects located in a neighborhood.

DATES: Comments on this proposed rule must be received in writing on or before August 13, 2001.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408–2537, or Melissa L. Allen, Program Analyst, (202) 408–2524, Program Assistance Division, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(10) of the Federal Home Loan Bank Act (Bank Act) authorizes the Banks to establish CICA Programs to support community investment. *See* 12 U.S.C. 1430(j)(10). In order to facilitate and encourage targeted community lending under section 10(j)(10), in 1998, the Finance Board adopted a final regulation providing the Banks with parameters for the establishment of CICA Programs. *See* 63 FR 65536 (Nov. 27, 1998); 12 CFR part 952 (formerly 12 CFR part 970).

In the course of implementing CICA Programs under the new CICA Regulation, the Banks and Finance Board staff have identified several technical issues, the resolution of which would clarify CICA Program requirements and improve the effectiveness of CICA Programs. These issues are discussed in the Analysis of the Proposed Rule section below.

II. Analysis of the Proposed Rule

A. Providing Grants Under Certain CICA Programs—§§ 950.1, 952.2, 952.3, 952.5, 952.7

A number of Banks have asked whether the CICA Regulation does or could authorize the Banks to provide grants, in addition to advances, to members under certain CICA Programs. The current CICA Regulation defines an ''RDA program or Rural Development Advance program'' and a ''UDA program or Urban Development Advance program'' as a program offered by a Bank for community lending in rural or urban areas, respectively. *See* 12 CFR 952.3. Even though these programs are styled as ''advance'' programs in the CICA Regulation, the definitions do not specify the types of financing, such as advances or grants, that a Bank may offer under such programs nor do they limit financing to advances. Accordingly, the Finance Board has interpreted these definition provisions to mean programs under which a Bank offers advances or grants to members. *See* Finance Board Regulatory Interpretation 2000–RI–2 (April 10, 2000).

The proposed rule would amend the definitional provisions and terminology in § 950.1 of the Finance Board's Advances Regulation and §§ 952.2, 952.3, 952.5 and 952.7 of the CICA Regulation to incorporate the Finance Board's interpretation, thereby specifying and clarifying the grant authority in the rule.[1] Specifically, references to the authority to provide grants under RDA and UDA Programs would be added, and the word ''funding,'' which incorporates the concept of grants, would be substituted for the word ''advance,'' where applicable. Thus, the ''RDA program or Rural Development Advance program'' would be renamed the ''RDF program or Rural Development Funding program,'' and the ''UDA program or Urban Development Advance program'' would be renamed the ''UDF program or Urban Development Funding program.'' The definitions of ''RDA or Rural Development Advance'' and ''UDA or Urban Development Advance'' would be deleted as redundant. Certain other technical amendments would be made to provide greater clarity to the language.

Under the current CICA Regulation, members receiving grants from a Bank must use the proceeds of such grants to ''provide financing'' to targeted beneficiaries, which is defined to include certain types of financing, including making loans to targeted beneficiaries. *See* 12 CFR 952.3. If a Bank chooses to provide grants under its RDF or UDF Programs, the Bank may establish requirements with which members must comply in order to obtain and use the grants.

B. Definition of ''Median Income for the Neighborhood''—§ 952.3

Under the current CICA Regulation, economic development projects and manufactured housing parks are eligible for CICA funding if they are located in areas or neighborhoods with a median income at or below the targeted income level of the specific CICA Program (*e.g.,* 80% for CIP, 100% for UDA Programs, 115% for RDA Programs). *See* 12 CFR 952.3. Section 952.3 defines ''median income for the area'' generally as one or more of the following, as determined by the Bank: (1) The median income for the area, as published annually by the Department of Housing and Urban Development (HUD); (2) the applicable median family income, as determined under 26 U.S.C. 143(f) and published by a state mortgage revenue bond program;

[1] This interpretation and the proposed amendments, however, would not apply to the Banks' Community Investment Programs (CIP), which remain exclusively advance programs.

(3) the median income for the area, as published by the U.S. Department of Agriculture; or (4) the median income for any definable geographic area, as published by a Federal, state or local government entity for purposes of that entity's housing and economic development programs, and approved by the Finance Board, at the request of a Bank. *See* 12 CFR 952.3. These are the same median income data sources as those adopted by the Finance Board in the revised Affordable Housing Program (AHP) Regulation in 1997. *See* 12 CFR 951.1 (formerly 12 CFR 960.1). However, the AHP Regulation does not incorporate the concept of ''neighborhood'' in its median income standards. A ''neighborhood'' is defined in the CICA Regulation as a small geographic area, *i.e.,* a census tract, block numbering area, unit of local government with a population of 25,000 or less, rural county, or other geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation that is within, but smaller than, a unit of general local government. 12 CFR 952.3.

The Finance Board has determined that the median income data provided by the above sources for determining the median income for an area are not sufficient for the Banks to determine the median income for a neighborhood, as defined in the CICA Regulation. The sources provide current median income data on an annual basis for areas, such as counties, Metropolitan Statistical Areas and states, but not for smaller geographical areas defined as ''neighborhoods'' in the CICA Regulation. HUD does publish annually the 1990 Census information for median income for census tracts, but this data is not updated from the 1990 figures. The Finance Board believes that up-to-date income data will enhance the Banks' capacity to implement effectively the ''neighborhood'' provisions of the CICA Regulation, an important tool in meeting local economic development needs. Consequently, the proposed rule would add a definition of ''median income for the neighborhood'' to the CICA Regulation that would enable the Banks to obtain median income data for neighborhoods from: (1) The Federal Financial Institutions Examination Council (FFIEC); or (2) other public or private sources with the approval of the Finance Board. The proposed rule specifies FFIEC because it is a Federal government source that publishes such median income data. The proposed rule does not specify any of the possible private sources, but allows the Banks to obtain Finance Board approval for the use of a source other than FFIEC if one can be identified.

The proposed rule would allow the use of these additional sources of data only for economic development projects and manufactured housing parks located in neighborhoods, as defined in the CICA Regulation, and only when current median income data for the applicable neighborhood is unavailable from the sources prescribed in the definition of ''median income for the area'' in the CICA Regulation.

C. Technical Clarification of Definition of ''Housing Projects''—§ 952.3

Section 952.3 of the current CICA Regulation defines ''Housing projects'' as projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for, certain types of housing. *See* 12 CFR 952.3. Section 952.5(c) of the current CICA Regulation states that CICA funding other than AHP funding also may be used to refinance economic development projects and housing projects under certain conditions. *See* 12 CFR 952.5(c). The proposed rule would add refinancing (subject to the conditions in § 952.5(c)) to the definition of ''Housing projects'' in § 952.3 to clarify, consistent with § 952.5(c), that housing projects involving refinancing also are eligible projects for CICA funding.

D. Technical Clarification of Definition of ''Geographically Defined Beneficiaries''— § 952.3 (par. (1)(ix))

A ''Geographically defined beneficiary'' is defined in the current CICA Regulation to include a ''project [that] is located in a state declared disaster area, or qualifies for assistance under another Federal or state targeted economic development program, approved by the Finance Board.'' 12 CFR 952.3 (definition of ''Targeted beneficiaries'' (par. (1)(ix))). The proposed rule would insert the words ''other area that'' before the word ''qualifies'' in this sentence to clarify that, to be a geographically defined beneficiary, it is not the project itself, but rather the area in which the project is located, that must qualify for such targeted economic development assistance.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 950

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 952

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby proposed to be amended, as set forth below:

Subchapter G—Federal Home Loan Bank Assets and Off-Balance Sheet Items

PART 950—ADVANCES

1. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

§ 950.1 [Amended]

2. Amend § 950.1 in the definition of *Community Investment Cash Advance or CICA* by:

a. Removing the words ''advances for targeted community lending'' and adding, in their place, the words ''funding for targeted community lending''; and

b. Removing the words ''Rural Development Advance (RDA)'' and ''Urban Development Advance (UDA)'' and adding, in their place, the words ''Rural Development Funding (RDF)'' and ''Urban Development Funding (UDF)'', respectively.

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

3. The authority citation for part 952 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 952.2 [Amended]

4. Amend § 952.2 by:

a. Removing the words ''Rural Development Advance (RDA)'' and ''Urban Development Advance (UDA)'' and adding, in their place, the words ''Rural Development Funding (RDF)'' and ''Urban Development Funding (UDF)'', respectively; and

b. Adding a sentence at the end of the section to read as follows:

§ 952.2 Purpose.

* * * A Bank may provide advances or grants under its CICA programs except for CIP programs, under which a Bank may only provide advances.

§ 952.3 [Amended]

5. Amend § 952.3 by:

a. In the definition of *CICA program* or *Community Investment Cash Advance program,* in paragraph (3), removing the term ''REA'' and adding, in its place, the word ''A'', and removing the terms ''RDA'' and ''UDA'' and adding, in their place, the terms ''RDF'' and ''UDF'', respectively, and in paragraph (4), adding the words ''advance or grant'' before the word ''program'';

b. In the definition of *CIP,* removing the words ''a CICA program'' and adding, in their place, the words ''an advance program under CICA'';

c. In the introductory text of the definition of *Housing projects,* removing the words ''purchase, construction or rehabilitation'' and adding, in their place, the words ''purchase, construction, rehabilitation or refinancing (subject to § 952.5(c) of this part)'';

d. Adding, in alphabetical order, a definition of ''Median income for the neighborhood'';

e. In the definition of *Provide financing,* removing the words ''an advance'' in paragraphs (4) and (5) and the word ''advance'' in paragraph (6), and adding, in their place, the word ''funding'';

f. Removing the definition of *RDA* or *Rural Development Advance;*

g. In the definition of *RDA program* or *Rural Development Advance program,* removing the terms ''RDA'' and ''Advance'' and adding, in their place, the terms ''RDF'' and ''Funding'', respectively, and removing the words ''a program'' and adding, in their place, the words ''an advance or grant program'';

h. In paragraph (1)(ix) of the definition of *Targeted beneficiaries,* adding the words ''or other area that'' before the word ''qualifies'';

i. In the definition of *Targeted income level,* amending the introductory text of paragraph (3) by removing the term ''CICA''; and amending paragraph (4) by removing the words ''CICA advances'' and adding, in their place, the words ''advances or grants'';

j. Removing the definition of *UDA* or *Urban Development Advance;* and

k. In the definition of *UDA program* or *Urban Development Advance program,* removing the terms ''UDA'' and ''Advance'' and adding, in their place, the terms ''UDF'' and ''Funding'', respectively, and removing the words ''a program'' and adding, in their place, the words ''an advance or grant program'', to read as follows:

§ 952.3 Definitions.

* * * * *

Median income for the neighborhood. In the case of manufactured housing park projects and economic development projects located in a neighborhood, for which current median income data listed in the definition of ''median income for the area'' in this section is unavailable, median income for the neighborhood means the median income for the neighborhood published by the Federal Financial Institutions Examination Council, or the median income for the neighborhood obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

* * * * *

§ 952.5 [Amended]

6. Amend § 952.5 by:

a. In paragraph (a)(3), removing the terms ''RDA'' and ''UDA'' and adding, in their place, the terms ''RDF'' and ''UDF'', respectively;

b. In paragraph (c), removing the word ''advances'' and adding, in its place, the word ''funding'';

c. In the heading of paragraph (d), and in paragraphs (d)(2) and (d)(3), removing the term ''CICA'' wherever it appears; and

d. In paragraphs (d)(5) and (d)(6)(i), removing the words ''CICA advances'' wherever they appear and adding, in their place, the words ''advances made under CICA programs''.

§ 952.7 [Amended]

7. Amend § 952.7 by:

a. In paragraph (a), removing the words ''by a CICA advance'' and adding, in their place, the words ''under a CICA program''; and

b. In paragraph (c), removing the word ''lending'' and adding, in its place, the word ''funding''.

Dated: June 29, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–17417 Filed 7–12–01; 8:45 am]

BILLING CODE 6725–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD059/71/98/114–3068; FRL–7011–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Rate of Progress Plans, Contingency Measures and Corrections to the Base Year Inventories for the Maryland Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and withdrawal of previous proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions establish the three percent per year emission reduction rate-of-progress (ROP) requirement for the period from 1996 through 2005 for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area), namely Cecil County. In conjunction with the ROP plans for Cecil County, EPA is also approving the plans' contingency measures and corrections to the 1990 base year inventories of ozone precursor emissions. EPA is approving these revisions in accordance with the requirements of the Clean Air Act. In conjunction with this proposed action to approve the ROP plans for Cecil County, EPA is also withdrawing a previous Notice of Proposed Rulemaking to approve the 1999 ROP plan for Cecil County published in the **Federal Register** on February 3, 2000.

DATES: Written comments must be received on or before August 13, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092. Or by e-mail at gaffney.kristeen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (the Act) requires that for certain ozone nonattainment areas, states are to submit plans demonstrating a reduction in volatile organic compound (VOC) emissions of at least three percent per year, averaged over each three year consecutive period, through the area's designated attainment date. This is known as the rate-of-progress (ROP) requirement of the Act. The first ROP requirement covers the period 1990–1996 and is commonly known as the 15% Plan. Subsequent ROP milestone years are grouped in three year intervals beginning after 1996 (i.e., ROP milestone years are 1999, 2002, 2005). Section 182(c)(2)(C) of the Act allows states to substitute nitrogen oxides (NO_X) emission reductions for VOC emission reductions in post 1996 ROP plans. To qualify for SIP credit in ROP plans, emission reduction measures, whether mandatory under the Act or adopted at the state's discretion, must ensure real, permanent and enforceable emission reductions.

Under the Act, the post 1996 ROP plans were due by November 15, 1994. However, on March 2, 1995, EPA issued a policy memorandum establishing an alternative approach for meeting the attainment demonstration and post 1996 ROP requirements of the Act. This policy memorandum established a phased approach for the submittal of the attainment demonstration. In the first phase (the Phase I plan), states were to submit a plan with specific control measures demonstrating at least the first 9 percent ROP reduction for 1999, interim assumptions or modeling about ozone transport, and enforceable commitments to:

(1) Participate in a consultative process to address regional transport,

(2) Adopt additional control measures as necessary to attain the ozone national ambient air quality standard, and

(3) Identify any reductions that are needed from upwind areas for the area to meet the ozone standard.

In the second phase of this approach, (the Phase II plan), states were to submit modeling and attainment plans to show attainment through local and regional controls. For severe ozone nonattainment areas, such as the Philadelphia-Wilmington-Trenton area (the Philadelphia area), the Phase II plan was also to identify the measures needed to demonstrate ROP through the 2005 attainment year. States were to phase-in adoption of rules and implement measures to meet ROP beginning in the period immediately following 1999 and provide for timely implementation of progress requirements.

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. States are required to develop contingency measures in the event an area fails to meet ROP in a given milestone year.

Under EPA's transportation conformity rule, like an attainment plan, an ROP plan is referred to as a control strategy SIP (62 FR 43779). A control strategy SIP identifies and establishes the motor vehicle emissions budgets (MVEBs) to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. States are required to identify motor MVEBs for both NO_X and VOCs in their ROP plans for all milestone years.

On March 2, 1999, the D.C. Circuit Court ruled that MVEBs contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. Please note that an adequacy finding for MVEBs contained in a submitted control strategy SIP is separate from EPA's completeness determination of the SIP submission, and separate from EPA's action to approve or disapprove the SIP. Therefore, even if the MVEBs in a submitted control strategy SIP have been found adequate for conformity purposes, the SIP itself could later be disapproved. The process for determining the adequacy of submitted SIP budgets is provided in a guidance memorandum dated May 14, 1999 and titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.'' You may obtain a copy of this guidance from EPA's conformity website: http://www.epa.gov/oms/traq (once there, click on the ''Conformity'' button). The criteria by which EPA determines whether a SIP's MVEBs are adequate for conformity purposes are found at 40 CFR 93.118(e)(4). Final approval or disapproval of MVEBs occurs in conjunction with final approval or disapproval of the control strategy SIP which identifies and establishes those budgets.

Cecil County, Maryland is part of the Philadelphia area with an attainment date of 2005. This rulemaking addresses the SIP revisions submitted by the Maryland Department of the Environment (MDE) to satisfy the post 1996 ROP requirements of the Act for Cecil County. In this rulemaking, EPA is proposing to approve Maryland's plans demonstrating ROP in Cecil County from 1996 through the 2005 attainment year into the SIP. Also as part of this rulemaking, EPA is proposing to approve the contingency measures and corrections to the 1990 base year emissions inventories for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area that were submitted in conjunction with the ROP plans.

II. Maryland's SIP Revisions

Although Maryland's SIP revision submittals for Cecil County's Phase I and Phase II plans, discussed below, also included Phase I and Phase II plan revisions for the Baltimore severe ozone nonattainment area (the Baltimore area) and revisions for the Maryland portion of the Metropolitan Washington, D.C. serious ozone nonattainment area (the Washington, D.C. area); this proposed rulemaking pertains to the post 1996 ROP plans for the Cecil County portion of the Philadelphia area. Also as part of this rulemaking, EPA is proposing to approve the plans' contingency measures and corrections to the 1990 base year emissions inventories for the Maryland portion of the Philadelphia area (Cecil County) that were submitted in conjunction with the ROP plans. The attainment demonstration plan portion of Cecil County's Phase II plan submitted by Maryland for the Philadelphia area is the subject of a separate rulemaking. Likewise, the Phase I and Phase II plans SIP revisions submitted by MDE pertaining to the Baltimore and Washington, D.C. areas either are or have been the subject of separate rulemakings.

Under the phased approach, MDE submitted the Phase I plan for Cecil County on December 24, 1997 and the Phase II plan for Cecil County on April 24, 1998, with a supplemental submittal on August 18, 1998. MDE subsequently revised portions of both its Phase I and Phase II plan submittals for Cecil County and submitted those revisions to EPA as SIP revisions on December 21, 1999 and December 28, 2000. Descriptions of the submitted SIP revisions related to the ROP plans for Cecil County are provided below.

On December 24, 1997, Maryland submitted a SIP revision for the Phase I plan for Cecil County. Maryland's December 24, 1997 Phase I plan submittal contained:

- The first 9 percent ROP demonstration for the 1999 milestone year;
- Corrections to the 1990 base year emissions inventories for Cecil County; and
- Enforceable commitments to address the first phase of the attainment plan.

On April 24, 1998, MDE submitted a SIP revision for the Phase II plan for Cecil County. EPA asked MDE to submit additional technical information for the Phase II plan. MDE submitted this additional information as a supplement to its Phase II plan on August 18, 1998. The Phase II plan contained the 2005 attainment demonstration and the ROP demonstrations for milestone years 2002 and 2005. The Phase II plan also contained additional information and revised mobile emissions modeling for the December 24, 1997 Phase I ROP submittal. Specifically for Cecil County, the Phase II plan SIP revision requested that the chapter on conformity, including MVEBs, and appendix E, including the target levels, emission estimates, projection year estimates and reduction credit estimates for 1999 contained in the original Phase I plan be replaced by the information contained in the Phase II plan submittal.

On December 3, 1999, MDE submitted a draft SIP revision to EPA for parallel processing. On December 21, 1999, MDE submitted the formal SIP revision. This SIP revision modified the Phase II plan for Cecil County. Specifically, this SIP revision revised the MVEBs for Cecil County for the ROP milestone years 2002 and 2005. EPA determined these MVEBs adequate for use in conformity determinations on May 31, 2000. That determination became effective on June 23, 2000 (see 65 FR 36441, published June 8, 2000).

On December 28, 2000, MDE submitted a SIP revision again modifying the Phase II plan for Cecil County. This SIP revision consisted of new mobile source modeling that used updated 1999 vehicle registration data to project mobile emissions growth in Cecil County. The plan also modified the MVEBs for 2005 for Cecil County to reflect the emission reduction benefits of the Federal Tier 2/Sulfur-in-Fuel regulation. EPA determined these MVEBs adequate for use in conformity determinations on March 26, 2001. That determination became effective on April 27, 2001 (see 66 FR 18928, published April 12, 2001). This SIP submittal also provided more information and revised the Cecil County ROP demonstrations for the milestone years 1999, 2002 and 2005.

III. EPA Rulemaking History on Cecil County ROP Plans

On July 29, 1997, EPA approved Maryland's 15 percent ROP plan for Cecil County as a SIP revision (62 FR 40457).

On February 3, 2000, EPA published a direct final rule approving the 1999 ROP plan, submitted by MDE on December 24, 1997, for Cecil County (65 FR 5252). On that same day, February 3, 2000, EPA published a companion notice of proposed rulemaking to approve that 1999 ROP plan for Cecil County (65 FR 5296). Because EPA received adverse comments during the public comment period, it withdrew the direct final rule on March 28, 2000 (65 FR 16320). Since the time of EPA's February 3, 2000 proposed approval action on the 1999 ROP plan, MDE submitted a SIP revision to revise the 1999 ROP demonstration for Cecil County. As stated previously, that SIP revision was submitted on December 28, 2000.

Because MDE has revised the 1999 ROP plan for which EPA proposed approval on February 3, 2000, EPA is, hereby, withdrawing that previous proposed approval action on the 1999 ROP plan for Cecil County. EPA is, today, proposing to approve the revised 1999 ROP plan in conjunction with the 2002 and 2005 ROP plans. As stated previously, as part of this rulemaking, EPA is proposing to approve the plans' contingency measures and corrections to the 1990 base year emissions inventories for the Maryland portion of the Philadelphia area (Cecil County) that were submitted in conjunction with the ROP plans.

IV. EPA Evaluation of Maryland's Submittals

A. Corrections to the 1990 Base Year Emissions Inventory for Cecil County

Maryland submitted the original 1990 base year emissions inventories for Cecil County as a SIP revision on March 21, 1994. EPA approved the base year inventories into the SIP on September 27, 1996 (61 FR 50715). As part of the Phase I plan submittal of December 24, 1997, Maryland revised certain portions of the 1990 base year inventories because of refinements, such as updated information on point source emissions, and to correct certain errors in the inventories found while auditing the inventories in preparation for the attainment demonstration modeling.

EPA is approving the corrections to the 1990 base year inventories for Cecil County. Table 1 below illustrates the corrections that will be approved into the Maryland SIP. A more detailed description of the changes to Maryland's base year inventories and EPA's evaluation are included in the technical support document (TSD) prepared in support of this proposed rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

TABLE 1.—REVISED BASE YEAR INVENTORY FOR CECIL COUNTY IN TONS PER DAY

	VOC previously approved	VOC revised	Change	NO_X previously approved	NO_X revised	Change
Mobile Sources	7.2	7.2	0	9.3	9.3	0
Point Sources	.55	.6	(+.05)	0	0	0
Nonroad Sources	2.02	2.0	(–.02)	2.5	2.6	(+.1)
Area Sources	9.23	8.7	(–.53)	1.1	1.8	(+.7)
Biogenic Sources	32.96	32.96	0	NA	NA	NA
Total	51.96	51.46	(–.5)	12.9	13.7	(+.8)

B. Rate-of-Progress Plans

1. Calculation of Needed Reductions

The first step in demonstrating ROP is to determine the target level of allowable emissions in the given ROP milestone year. The target level of emissions represents the maximum amount of emissions that can be emitted in a nonattainment area in the given ROP milestone year, which in this case is 1999, 2002 and 2005. The Act allows states to substitute NO_X emission reductions that occur after 1990 for VOC emission reductions in post 1996 ROP plans. The required ROP is demonstrated when the sum of all creditable VOC and NO_X emission reductions equal at least 3 percent per year averaged over a three year period (i.e., 1996–1999), for a total of 9 percent. If a state wishes to substitute NO_X for VOC emission reductions, then a target level of emissions demonstrating a representative combined 9 percent emission reduction in VOC and NO_X emissions must be developed for that milestone year. The MDE has established target levels for both VOC and NO_X emissions for Cecil County. However, the ROP control scenario for Cecil County is based solely on a VOC reduction strategy. Because enough VOC emission reductions exist to demonstrate the full 9 percent reduction for all ROP milestone years, Maryland assumed no NO_X emission reductions to demonstrate ROP. The process for calculating the target level is as follows:

1. Develop the base year inventory.
2. Develop the 1990 ROP base year inventory (by subtracting biogenic emissions and sources located outside the nonattainment area from the base year inventory).
3. Calculate the 1990 adjusted base year inventory (this part excludes from the baseline the emissions that would be eliminated by the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to enactment).[1]
4. Calculate the 3 percent per year reduction required to demonstrate ROP for each consecutive three year milestone interval (multiply the adjusted base year inventory by 0.09). The ROP milestone years are 1999, 2002 and 2005.
5. Calculate the fleet turnover correction term for the three year period. The fleet turnover correction is the difference between the FMVCP/RVP emission reductions calculated in step #3 and the previous milestone year's FMVCP/RVP emission reductions.
6. Calculate the target level of emissions for the milestone year, by subtracting #4 and #5 from the previously established target level for the area. For the 1999 milestone year, the VOC target level for 1996 was established in the 15 percent plan. For NO_X, there is no 1996 target level, so the 1999 target level is calculated from the NO_X adjusted base year inventory.

Tables 2 and 3 below summarize the target level calculations for both NO_X and VOCs for Cecil County for the 1999, 2002 and 2005 ROP milestone years. Maryland has correctly calculated the 1999, 2002 and 2005 target level of emissions for Cecil County following EPA's guidance and the approach outlined above.

TABLE 2.—VOC TARGET LEVELS IN TONS PER DAY

[Based upon 9 percent control strategy]

	1999	2002	2005
1990 Base Year Inventory	51.5	51.5	51.5
(Minus Biogenic Emissions)	(−33.0)	(−33.0)	(−33.0)
1990 Rate of Progress Base Year Inventory	18.5	18.5	18.5
(Minus Non-creditable FMVCP/RVP 1990–1999)	(−2.1)	(−2.3)	(−2.6)
1990 Adjusted Base Year Inventory	16.4	16.2	15.9
9 Percent Required Reduction (1996–1999)	*.09	*.09	*.09
Rate of Progress Emission Reduction Requirement	1.5	1.5	1.4
Fleet Turnover Correction	0.0	0.2	0.1
Target Level from Previous Milestone Year	14.1	12.6	10.9
(Minus Emission Reduction Requirement)	(−1.5)	(−1.5)	(−1.4)
(Minus Fleet Turnover Correction)	(−0.0)	(−0.2)	(−0.1)
Target Level	12.6	10.9	9.4

TABLE 3.—NO_X TARGET LEVELS IN TONS PER DAY

[Based upon 0 percent control strategy]

	1999	2002	2005
1990 Base Year Inventory	13.7	13.7	13.7
(Minus Non-creditable FMVCP/RVP 1990–1999)	(−1.7)	(−1.9)	(−2.0)
1990 Adjusted Base Year Inventory	12.0	11.8	11.7
0 Percent Required Reduction	0	0	0
Rate of Progress Emission Reduction Requirement	0.0	0.0	0.0
Fleet Turnover Correction	0.0	0.2	0.1
Target Level From Previous Milestone Year	12.0	12.0	11.8
(Minus Emission Reduction Requirement)	(−0.0)	(−0.0)	(−0.0)
(Minus Fleet Turnover Correction)	(−0.0)	(−0.2)	(−0.1)
Target Level	12.0	11.8	11.7

[1] Section 182(b)(2)(B) of the Act defines the baseline year of emissions as ''the total amount of actual VOC and NO_X emissions from all anthropogenic sources in the area during the calendar year of enactment of the Clean Air Act amendments. This section prohibits from the baseline the emissions that would be eliminated by the FMVCP regulations promulgated by January 1, 1990, and the RVP regulations promulgated by the time of enactment.

2. Growth Projections (1990–2005)

ROP must be demonstrated net of all new emissions growth in the area. Therefore, states must include adequate emission reductions in their ROP plans to offset the emissions growth projected to occur after 1990. States account for growth by projecting their 1990 base year emission inventories to estimate emissions growth between 1990 and the attainment year. The projected inventories must reflect expected growth in activity, as well as regulatory actions which will affect emission levels. EPA guidance says that emission projections for point sources can be based on information obtained directly from facilities and/or permit applications. Area and mobile source emission projections may be developed from information from local planning agencies. In the absence of source-specific data, credible growth factors must be developed from accurate forecasts of economic variables and the activities associated with the variables.

Economic variables that may be used as indicators of activity growth are: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator. Mobile source emissions projections can be estimated using EPA's MOBILE5 emissions model.

The methodologies used by Maryland to project emissions growth and EPA's evaluation are discussed in the TSD prepared in support of this proposed rulemaking action. The 1999 projection year inventories for Cecil County were revised in the Phase II plan submitted by Maryland in August 1998. Maryland then further revised the mobile source growth estimates for Cecil County in the December 28, 2000 SIP submittal. Maryland used appropriate methodologies to project emissions growth in all source categories. A summary of the projection year inventories for NO_X and VOCs through the 2005 attainment year is shown in Tables 4 and 5 below. The EPA has determined that these growth estimates are approvable.

TABLE 4.—PROJECTED (UNCONTROLLED) VOC EMISSIONS FOR CECIL COUNTY IN TONS PER DAY

Source category	1990 VOC baseline	1999 VOC projected	2002 VOC projected	2005 VOC projected
Point	0.6	0.6	0.6	0.6
Mobile	7.2	10.3	11.5	12.2
Nonroad	2.0	2.3	2.4	2.5
Area	8.7	9.0	9.1	9.2
Total	18.5	22.2	23.6	24.5

TABLE 5.—PROJECTED (UNCONTROLLED) NO_X EMISSIONS FOR CECIL COUNTY IN TONS PER DAY

Source category	1990 NO_X baseline	1999 NO_X projected	2002 NO_X projected	2005 NO_X projected
Point	0	0	0	0
Mobile	9.3	12.7	13.2	13.4
Nonroad	2.6	2.8	3.0	3.0
Area	1.8	1.9	2.0	2.2
Total	13.7	17.4	18.2	18.6

3. Evaluation of Emission Control Measures

The purpose of the ROP plan is to demonstrate how the State has reduced emissions 3 percent per year grouped in three year intervals, through the area's attainment year. In general, reductions toward ROP requirements are creditable provided the control measures occurred after 1990 and are real, permanent, quantifiable, federally enforceable and they occurred by the applicable ROP milestone year. An evaluation of each of the control measures implemented by Maryland in Cecil County can be found in the TSD prepared for this rulemaking. Table 6 below provides a summary of the control measures used by Maryland to achieve ROP in Cecil County. All control measures in the ROP demonstration have been adopted and implemented by the State of Maryland or are Federal measures being implemented nationally. All state control measures have been fully approved by EPA into the Maryland SIP and are permanent and enforceable. The mobile source control programs includes the total amount of reductions associated with enhanced vehicle inspection and maintenance, Tier 1 motor vehicle emission standards, reformulated gasoline, Stage II vapor recovery controls at gas stations, the National Low Emissions Vehicle program, highway heavy duty engine standards, and FMVCP/RVP reductions. EPA's MOBILE5b emissions model was used to generate emission reductions.

TABLE 6.—SUMMARY OF ROP EMISSION CONTROL MEASURES FOR CECIL COUNTY IN TONS PER DAY

Control measure	1999 VOC reduction	1999 NO_X reduction	2002 VOC reduction	2002 NO_X reduction	2005 VOC reduction	2005 NO_X reduction
Architectural coatings	0.2	0.0	0.2	0.0	0.2	0.0
Consumer and commercial products	0.1	0.0	0.1	0.0	0.1	0.0
Antibody refinishing	0.2	0.0	0.2	0.0	0.2	0.0
Surface cleaning	0.2	0.0	0.2	0.0	0.2	0.0
Gasoline vapor recovery at tank loading	0.8	0.0	0.8	0.0	0.8	0.0
Printing operations (screen, lithographic, flexographic and rotogravure combined)	0.1	0.0	0.1	0.0	0.1	0.0

TABLE 6.—SUMMARY OF ROP EMISSION CONTROL MEASURES FOR CECIL COUNTY IN TONS PER DAY—Continued

Control measure	1999 VOC reduction	1999 NO_X reduction	2002 VOC reduction	2002 NO_X reduction	2005 VOC reduction	2005 NO_X reduction
Nonroad heavy duty diesel	0.0	0.2	0.0	0.3	0.0	0.5
Nonroad small gas engines	0.4	0.0	0.5	0.0	0.8	0.0
Locomotive engines	.....	.....	0.0	0.1	0.0	0.2
Open burning ban	3.5	0.7	3.5	0.7	3.5	0.7
Mobile source control programs	6.2	4.9	8.4	6.3	9.5	7.4
Total	11.7	5.8	14.0	7.4	15.4	8.8

4. Summary of ROP Evaluation

Maryland's ROP demonstration for Cecil County is summarized in tons per day in Table 7 below. The table shows that the projected control strategy inventories are less than or equal to the target level for each milestone year, therefore, the ROP plans demonstrate that the 9 percent reduction, net of growth, requirement is met in Cecil County.

TABLE 7.—CECIL COUNTY ROP DEMONSTRATION IN TONS PER DAY

Cecil County	1999 VOC	1999 NO_X	2002 VOC	2002 NO_X	2005 VOC	2005 NO_X
Projected Uncontrolled Emissions (refer to tables 4 and 5) (includes growth)	22.2	17.4	23.6	18.2	24.5	18.6
Reductions From Creditable Emission Control Measures (refer to table 6)	11.7	5.8	14.0	7.4	15.4	8.8
Emissions Level Obtained (projected uncontrolled emissions minus emission reductions)	10.5	11.6	9.6	10.8	9.1	9.8
Projected Target Levels (refer to tables 2 and 3)	12.6	12.0	10.9	11.8	9.4	11.7
Surplus Emission Reductions (target levels minus emissions level obtained)	2.1	0.4	1.3	1.0	0.3	1.9

C. Motor Vehicle Emissions Budgets

Under EPA's transportation conformity rule, like an attainment plan, an ROP plan is referred to as a control strategy SIP (62 FR 43779). A control strategy SIP identifies and establishes the motor vehicle emissions budgets (MVEBs) to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. States are required to identify motor MVEBs for both NO_X and VOCs in their ROP plans for all milestone years. These budgets are illustrated in Table 8 below.

TABLE 8.—MOTOR VEHICLE EMISSION BUDGETS FOR CECIL COUNTY IN TONS PER DAY

	VOC	NO_X
1999	4.4	7.8
2002	2.7	6.3
2005	2.6	5.6

As explained previously, EPA determined the MVEBs identified and established in the December 21, 1999 submittal of the ROP plans adequate for use in conformity determinations on May 31, 2000. That determination became effective on June 23, 2000 (see 65 FR 36441, published June 8, 2000). Most recently, EPA determined the MVEBs identified and established in the December 28, 2000 submittal adequate for use in conformity determinations on March 26, 2001. That determination became effective on April 27, 2001 (see 66 FR 18928, published April 12, 2001).

D. Contingency Measures

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. EPA issued guidance that allows states to implement their contingency measures early, provided the measures are not needed now to demonstrate ROP. EPA does not believe it is logical to penalize areas that are taking extra steps to implement contingency measures early, nor should states be required to backfill for the early activation of contingency measures.

In the Cecil County ROP plan, Maryland outlines its approach for using already implemented control measures for contingency purposes. The EPA encourages the early implementation of required control measures and of contingency measures as a means of guarding against failure to meet a milestone or to attain. Maryland has adopted more emission control programs than is necessary to demonstrate ROP in the Cecil County area. These extra or ''surplus'' emission reductions are shown in Table 7 above. Maryland's plan for Cecil County shows an adequate amount of emission reductions have occurred beyond those

required for ROP, and therefore, any surplus emission reductions can be considered as early implementation of contingency measures. Surplus emission reductions associated control measures that are either not required in the nonattainment area by the Act, nor are Federal measures may be used for contingency purposes. Maryland has adopted two such measures (controls on open burning and the National Low Emissions Vehicle program), which are available for consideration as the early implementation of contingency measures. Pursuant to EPA guidance, the requirements of the Act with regard to providing contingency measures should the area fail to achieve ROP, have been satisfied in the Cecil County portion of the Philadelphia area.

EPA's review of Maryland's SIP revisions indicates that the post 1996 ROP requirements of the Act have been met for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. EPA is proposing to approve the post 1996 ROP plans for Cecil County for milestone years 1999, 2002, and 2005 that were submitted on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000. EPA is soliciting public comments on its proposal to approve these post 1996 ROP plans, corrections to the base year inventories and the contingency measures as discussed in this document. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

V. Proposed Action

EPA is proposing to approve the post 1996 ROP plans for milestone years 1999, 2002 and 2005 for the Cecil County portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area submitted on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000. EPA is also proposing to approve corrections to the 1990 base year emissions inventories for Cecil County, submitted on December 24, 1997. EPA is also proposing to approve the contingency plans for failure to meet ROP for Cecil County, submitted in conjunction with the ROP demonstrations.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule to approve the post 1996 ROP plans for the Cecil County, Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

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

Dated: July 5, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–17562 Filed 7–12–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7012–2]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or ''we'') is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Idaho National Engineering and Environmental Laboratory (INEEL)

proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are procedures and other materials related to the Waste Assay Gamma Spectrometer (WAGS) system, which INEEL proposes to use for radioassay of transuranic (TRU) radioactive waste. The documents are available for review in the public dockets listed in **ADDRESSES.** We will use these documents to evaluate the WAGS system during an inspection conducted in accordance with EPA's WIPP Compliance Criteria in July 2001. The purpose of the inspection is to verify that the proposed new system at INEEL can characterize transuranic solid waste properly, consistent with the WIPP Compliance Criteria and Condition 3 of EPA's final certification decision for the WIPP.

DATES: The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before August 13, 2001.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

DOE documents related to the WAGS system are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A–2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday, 1 pm–5 pm; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 am–5 pm.

Copies of items in the docket may be requested by writing to Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331–WIPP, or visit our website at http://www.epa.gov/radiation/wipp/announce.html.

SUPPLEMENTARY INFORMATION: The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes a condition that prohibits shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision making process, DOE is required to submit to EPA relevant documentation of waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to the WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and in informational dockets in the State of New Mexico, for public review and comment.

We initially approved certain waste characterization processes at INEEL following an inspection on July 28–30, 1998. Since December 2000, INEEL has been using a new radioassay system, called the SWEPP Waste Assay Gamma Spectrometer (WAGS) system, to complete measurements of the radioactive constituents of waste drums. EPA recently learned that drums characterized by the WAGS system were sent to the WIPP without EPA's approval. On June 27, 2001, we instructed DOE to suspend shipments from INEEL pending investigation by EPA inspectors. On July 2–3, 2001, we performed a preliminary test of the WAGS system and found that it appears to operate at a level comparable to an EPA-approved system. Consequently, there appears to be no risk to public safety or the environment from INEEL drums already placed in the mine. We also found that INEEL is taking proper actions to identify the cause of the error and prevent recurrence. Therefore, we allowed DOE to resume shipment of INEEL waste not characterized by the WAGS. Information related to this action, including EPA's report of the preliminary inspection, has been placed in Air Docket A–98–49.

We will conduct a separate inspection in accordance with § 194.8 to verify that this new waste characterization process is technically adequate and in compliance with Condition 3 of our WIPP Certification Decision (appendix A to 40 CFR part 194) and § 194.24(c)(4). This inspection will occur in July 2001. Documents related to the WAGS system have been placed in Air Docket A–98–49, particularly: ''Waste Assay Gamma-Ray Spectrometer (WAGS) System Description, TPR–1561, Rev. 1,'' and ''SWEPP Waste Assay Gamma Spectrometer (WAGS) System, TPR–1654, Rev. 2.'' In accordance with § 194.8 of the WIPP compliance criteria, we are providing the public 30 days to comment on the documents and on the proposed new process. Because the inspection will occur during the comment period, we will respond to relevant comments received prior to, during, and after the inspection.

If EPA determines that the provisions in the documents are adequately implemented, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, and in the informational docket locations in New Mexico. A positive approval letter will allow INEEL to ship TRU waste characterized by the WAGS system. We will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: July 9, 2001.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–17612 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7008–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Texas Arai Manufacturing Facility (Texas Arai) to exclude (or delist) certain solid wastes generated by its Houston, Texas, facility from the lists of hazardous wastes.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of the delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment.

If finalized, we would conclude that Texas Arai's petitioned waste is nonhazardous with respect to the original listing criteria and that the wastewater treatment process Texas Arai uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that its process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until August 27, 2001. We will stamp comments received after the close of the comment period as ''late''. These late'' comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by July 30, 2001. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas, 75202. A third copy should be sent to the Texas Natural Resource Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: ''F–00–TXDEL–Texas Arai.''

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Deanna R. Lacy at (214) 665–6461.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information
- A. What action is EPA proposing?
- B. Why is EPA proposing to approve this delisting?
- C. How will Texas Arai manage the waste if it is delisted?
- D. When would EPA finalize the proposed Delisting?
- E. How would this action affect states?

II. Background
- A. What is the history of the delisting program?
- B. What is a delisting petition, and what does it require of a petitioner?
- C. What factors must EPA consider in deciding whether to grant a delisting petition?

III. EPA's Evaluation of the Waste Information and Data
- A. What wastes did Texas Arai petition EPA to delist?
- B. Who is Texas Arai and what process does it use to generate the petition waste?
- C. How did Texas Arai sample and analyze the waste data in this petition?
- D. What were the results of Texas Arai's analysis?
- E. How did EPA evaluate the risk of delisting this waste?
- F. What did EPA conclude about Texas Arai's analysis?
- G. What other factors did EPA consider in its evaluation?
- H. What is EPA's final evaluation of this delisting petition?

IV. Next Steps
- A. With what conditions must the petitioner comply?
- B. What happens if Texas Arai violates the terms and conditions?

V. Public Comments
- A. How may I as an interested party submit comments?
- B. How may I review the docket or obtain copies of the proposed exclusions?

VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act
IX. Unfunded Mandates Reform Act
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer and Advancements Act
XIII. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) To grant Texas Arai's petition to have its F006 wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Texas Arai's petition requests a delisting for listed hazardous wastes. Texas Arai does not believe that the petitioned waste meets the criteria for which EPA listed it. Texas Arai also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. EPA's proposed decision to delist waste from

Texas Arai's facility is based on the information submitted in support of this proposal, i.e., descriptions of the wastewater treatment system, and analytical data from the Houston facility.

C. How Will Texas Arai Manage the Waste if it Is Delisted?

Texas Arai currently disposes of the wastewater treatment sludge by transporting it to a disposal facility, Phillips Services (formerly Eltex Chemical) in Houston. Then, according to Phillips Services, it is transported to Texas Ecologists located in Robstown, Texas, for stabilization and final disposal. If delisted, Texas Arai plans to manage the wastewater treatment sludge as a Class I nonhazardous industrial solid waste, and proposes to dispose of the sludge at an approved and permitted industrial waste landfill to be determined pending successful completion of the petition.

D. When Would EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires EPA to provide proposal and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposed rule.

RCRA section 3010(b)(1) at 42 U.S.C.A. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of § 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States which have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's under § 3009 of RCRA, 42 U.S.C.A. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Texas Arai transports the petitioned waste to or manages the waste in any State with delisting authorization, Texas Arai must obtain delisting authorization from that State before they can manage the waste as nonhazardous in that State.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which a waste was listed wastes. The criteria for which EPA lists a waste are in Part 261 further explains and in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See Part 261 and the background documents for the listed wastes.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The ''mixture'' and ''derived-from'' rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived from'' rules and remanded them to EPA on procedural grounds. See *Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (DC Cir. 1991). On

March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See (57 *FR* 7628). These rules became final on October 30, 1992. See (57 *FR* 49278). Consult these references for more information about mixtures and derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Texas Arai Petition EPA To Delist?

On April 13, 2000, Texas Arai petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32 a F006 wastewater treatment sludge generated from the treatment of process wastewater associated with metal plating and finishing operations. Specifically, in its petition, Texas Arai located in Houston, Texas, requested that EPA grant an exclusion for 186 cubic yards per year of wastewater treatment sludge resulting from its hazardous waste treatment process.

B. Who Is Texas Arai and What Process Do They Use To Generate the Petitioned Waste?

Texas Arai is a manufacturing facility in Houston, TX which has been in operation since 1981 and began its generation of the petitioned waste in 1997. Texas Arai produces carbon steel couplings for the petroleum and petrochemical industry.

The facility machines tubular carbon steel into threaded couplings which are then finished by chromium steel plating, followed by paint marking and packaging. The couplings are machined from raw carbon steel and alloy metals and are plated to American Petroleum Institute (API) specifications. Metal finishing and plating operations generate wastewater which is treated in an on-site wastewater treatment system prior to discharge. Hazardous wastes generated during facility operations include: wastewater treatment sludge, zinc phosphate solution, alkaline cleaning solution, spent solvents, and spent paint wastes. The petitioned waste has been disposed of as a hazardous waste at Texas Ecologists in Robstown, Texas. The waste code of the constituents of concern is EPA Hazardous Waste No. F006. The constituents of concern for F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

C. How Did Texas Arai Sample and Analyze the Waste Data in This Petition?

Four grab samples were collected each week over a period of five weeks. The grab sample locations were selected using a random sampling strategy. Each of the four grab samples were combined into a single composite sample. Samples were collected from two trays underlying the filter press. Sampling was conducted by Dames & Moore consulting firm.

To support its petition, Texas Arai submitted:

(1) Descriptions of its wastewater treatment system associated with petitioned wastes;

(2) Results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Results for total sulfide,

(5) results for total cyanide;

(6) Results for pH;

(7) Results of the metals; amd

(9) Results from oil and grease.

D. What Were the Results of Texas Arai's Analyses?

The EPA believes that the descriptions of the Texas Arai hazardous waste process and analytical characterization provide a reasonable basis to grant Texas Arai's petition for an exclusion of the wastewater treatment sludge. The EPA believes the data submitted in support of the petition show Texas Arai's process renders the wastewater treatment sludge nonhazardous. The EPA has reviewed the sampling procedures used by Texas Arai and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the wastewater treatment sludge. The data submitted in support of the petition show that constituents in Texas Arai's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Texas Arai has successfully demonstrated that the wastewater treatment sludge is nonhazardous.

E. How Did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Texas Arai's petitioned waste. The EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000) to predict the maximum allowable concentrations of hazardous constituents that may release from the petitioned waste after disposal and determined the potential impact of the disposal of Texas Arai's petitioned waste on human health and the environment. In assessing potential risks to ground water, specifically, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10–5 and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPACMTP fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

Similarly, the DRAS used the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). In the ground water analyses, the DRAS uses the established acceptable risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point

concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels''). In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Texas Arai does not dispose of waste onsite, therefore, no groundwater data is available.

From the evaluation of Texas Arai's delisting petition, EPA developed a list of constituents for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., ''delisting levels'') are part of the proposed verification testing conditions of the exclusion.

The EPA believes that the descriptions of the Texas Arai, Inc., hazardous waste process and analytical characterization, in conjunction with the proposed testing requirements (as discussed later in this proposed exclusion) provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA should grant Texas Arai's petition for a standard conditional exclusion of the wastewater treatment sludge.

The EPA Region 6 Delisting Program guidance document states that the appropriate fate and effect model will be used to determine the effect the petitioned waste could have on human health if it is not managed as a hazardous waste. Specifically, the model considers the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) are then compared directly to the health-based levels used in delisting decision-making for hazardous constituents of concern. EPA Region 6 has selected the DRAS as the appropriate model for the delisting program. This subsection presents an evaluation of the potential for ground water contamination for the petitioned waste using the DRAS.

The EPA considered the appropriateness of alternative waste management scenarios for Texas Arai's wastewater treatment sludge. The EPA decided, based on the information provided in the petition, that disposal of the wastewater treatment sludge in a municipal solid waste landfill is the most reasonable, worst-case scenario for the wastewater treatment sludge. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Texas Arai's petitioned waste using DRAS which predicts the potential for ground water contamination from waste placed in a landfill.

For the evaluation of Texas Arai's petitioned waste, EPA used the DRAS to evaluate the mobility of the hazardous constituents detected in the extract of samples of Texas Arai's wastewater treatment sludge. Total analysis was also utilized for the wastewater treatment sludge. The maximum annual waste volume for Texas Arai is 186 cubic yards per year. The Dilution Attenuation Factors are currently calculated assuming an ongoing process generates waste for 20 years.

Analytical data for the wastewater treatment sludge samples were used in the model. The data summaries for detected constituents are presented in Table I. The data in this table shows that the Maximum Total concentration in the waste is low and if leached, the waste would not pose a significant risk to the environment.

The EPA's evaluation of the wastewater treatment sludge is based on the maximum reported Total and TCLP concentrations (See Table II). Based on the DRAS, the petitioned waste should be delisted because no constituents of concern exceed the delisting concentrations.

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE [1]

Constituent	Total constituent analyses (mg/kg) (SW–846, Method 8240, 8260, 8030, 8020, 8010, 8015, 8270, 8080, 8150, 6010, 7470, 7870, 9030, 9010, 9040)	TCLP leachate concentration (mg/1) (SW–846, method 1311)
Aluminum	643	ND(0.1)
Arsenic	3.55	ND(0.1)
Barium	37.4	ND(0.1)
Chromium	70.7	(0.1)
Chromium (VI)	0.1	N/A
Cobalt	3.63	0.021
Copper	33.6	ND(0.02)
Manganese	862	7
Nickel	2560	14.9
Tin	10800	0.92
Zinc	19300	9.5
Ethylbenzene	0.022	ND(0.005)
Xylenes	0.073	ND(0.005)
Carbon Disulfide	0.28	ND(0.005)
Methylene Chloride	0.017	ND(0.05)
Acetonitrile	0.21	0.21
Allyl Chloride	0.018	0.018
bis(2-ethylhexyl) phthlate	4.4	ND(0.005)
Chloride	549	N/A

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE [1]—Continued

Constituent	Total constituent analyses (mg/kg) (SW–846, Method 8240, 8260, 8030, 8020, 8010, 8015, 8270, 8080, 8150, 6010, 7470, 7870, 9030, 9010, 9040)	TCLP leachate concentration (mg/1) (SW–846, method 1311)
Sulfides	24200	N/A
pH	8.94	N/A

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
ND Denotes that the constituent was not detected at the method detection limit specified in the table.
N/A Not Applicable.

TABLE II.—MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE

Constituent	Maximum allowable leachate concentration (mg/L)
Allyl Chloride	0.187
Acetonitrile	21.3
Arsenic	0.163
Barium	100
Bis (2-ethylhexyl) phthalate	4.88
Carbon Disulfide	2.94
Chromium	5.0
Cobalt	39.3
Copper	130
Ethylbenzene	3.33
Manganese	91.7
Methylene Chloride	3.95
Nickel	49.3
Tin	393.0
Xylenes	104.0
Zinc	489.0

F. What did EPA Conclude About Texas Arai's Analysis?

The EPA concluded, after reviewing Texas Arai's processes, that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Texas Arai's waste. In addition, on the basis of explanations and analytical data provided by Texas Arai pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See, §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did EPA Consider in Its Evaluation?

During the evaluation of Texas Arai's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Texas Arai's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Texas Arai's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Texas Arai's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Texas Arai's Wastewater treatment sludge. A description of EPA's assessment of the potential impact of Texas Arai's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for the proposed rule F–00–TXDEL–TXARAI.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 *FR* 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this proposed rule due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Texas Arai's waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for the proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Texas Arai's wastewater treatment sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is EPA's Final Evaluation of This Delisting Petition?

The descriptions of Texas Arai's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this proposed exclusion) provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table II). We believe Texas Arai has an effective treatment process that has rendered the waste as nonhazardous.

Thus, EPA believes we should grant Texas Arai an exclusion for the wastewater treatment sludge. The EPA believes the data submitted in support of the petition show Texas Arai's process renders the wastewater treatment sludge nonhazardous.

We have reviewed the sampling procedures used by Texas Arai and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the wastewater treatment sludge. The data submitted in support of the petition show that constituents in Texas Arai's waste are presently below the compliance point concentrations used in the delisting decision-making and do not pose a substantial hazard to the environment. The EPA believes that Texas Arai has successfully demonstrated that the wastewater treatment sludge is nonhazardous.

The EPA therefore, proposes to grant a standard conditional exclusion to the Texas Arai, in Houston, Texas, for the wastewater treatment sludge described in its petition. The EPA's decision to conditionally exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the wastewater treatment sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Texas Arai, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents Texas Arai must test the leachate from the wastewater treatment sludge, below which these wastes would be considered nonhazardous.

The EPA selected the set of inorganic and organic constituents specified in Paragraph (1) because of information in the petition. We compiled the list from the composition of the waste, descriptions of Texas Arai's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that any wastewater treatment sludge which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. If EPA determines that the data collected under this condition do not support the data provided in the petition, the exclusion will not cover the petitioned waste.

(3) Verification Testing Requirements

Although the wastewater treatment sludge is considered delisted upon promulgation of this rule, EPA believes that conditional testing requirements are still warranted to ensure continued effectiveness of the treatment process. During the verification period, which is described in paragraph (3)(A)(i), Texas Arai must collect four samples quarterly for a period of one year. After successful completion of the initial verification period, which is approximately 12 months from the date of promulgation of the final rule, Texas Arai may begin annual sampling of the wastewater treatment sludge.

(A) *Testing.* The EPA believes that the concentrations of the constituents of concern in the wastewater treatment sludge may vary over time. Therefore, EPA believes that quarterly sampling of this waste is adequate for Texas Arai to collect sufficient data to verify that the data provided for the wastewater treatment sludge is representative. Texas Arai may dispose of the sludge as a nonhazardous waste during the initial verification period if the waste meets the exclusion levels of Paragraph (1). Texas Arai would begin annual sampling on the first anniversary date of the final exclusion if the quarterly sampling is completed.

(4) Changes in Operating Conditions

Paragraph (4) would allow Texas Arai the flexibility of modifying its processes (for example, changes in equipment or changes in operating conditions) to improve its treatment process. However, Texas Arai must prove the effectiveness of the modified process and request approval from the EPA. Texas Arai must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3) is satisfied.

(5) Data Submittals

To provide appropriate documentation that Texas Arai's facility is properly treating the waste, Texas Arai must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that Texas Arai furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 186 cubic yards of wastewater treatment sludge, generated annually at the Texas Arai facility after successful verification testing.

We would require Texas Arai to file a new delisting petition under any of the following circumstances:

(a) If it uses any new manufacturing or production process(es), or significantly change from the current process(es) described in its petition; or

(b) If it makes any changes that could affect the composition or type of waste generated.

Texas Arai must manage annual waste volumes greater than 186 cubic yards of wastewater treatment sludge as hazardous unless or until we grant a new exclusion.

If this exclusion becomes final, Texas Arai's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Texas Arai must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a State permit, license, or is registered to manage municipal or industrial solid waste.

(6) Reopener Language

The purpose of Paragraph 6 is to require Texas Arai to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. Texas Arai must also use this procedure, if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented. This provision expressly requires Texas Arai to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. *See* Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations

case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA § 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Texas Arai provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Texas Arai must provide this notification within 60 days of commencing this activity.

B. What Happens if Texas Arai Violates the Terms and Conditions?

If Texas Arai violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will continue to evaluate the need for enforcement activities on a case-by-case basis. The Agency expects Texas Arai to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraphs 1, 2, 3, 4, 5 and 6 of the exclusion.

VI. Public Comments

A. How Can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency (EPA), Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: ''F–00–TXDEL–Texas Arai.''

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from the proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that the delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets

both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

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.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their 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.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental Protection, Hazardous Waste, Recycling, Reporting and Recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: June 15, 2001.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
Texas Arai Chemical Company	Houston, Texas	Wastewater treatment sludge EPA Hazardous Waste No. F006 generated at a maximum annual rate of 186 cubic yards per calendar year after (publication date of the final rule) and disposed of in a Subtitle D landfill. Texas Arai must implement a testing program that meets the following conditions for the exclusion to be valid: (1) Delisting Levels: All concentrations for the following constituents must not exceed the following levels (mg/l). The wastewater treatment sludge constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Wastewater treatment sludge: (i) Inorganic Constituents: Arsenic—0.163; Barium—100; Chromium—5.0; Cobalt—39.3; Copper—130; Manganese—91.7; Nickel—49.3; Tin—393.0 ; Zinc—489.0. (ii) Organic Constituents: Acetonitrile—21.3; Allyl Chloride—0.00435; Carbon Disulfide—2.94; bis(2-ethylhexylphthalate—4.88; Ethylbenzene—3.33; Methylene Chloride—3.95; Xylenes—104.0. (2) Verification Testing Requirements: Texas Arai must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. (A) Required Testing: (i) Texas Arai must collect and analyze at least four composite samples of the wastewater treatment sludge quarterly for a period of one year. The samples must be analyzed for constituents listed in Paragraph 1. (ii) After paragraph (3)(A)(i) has been completed, Texas Arai must collect and analyze at least one composite sample of the wastewater treatment sludge annually. (3) Changes in Operating Conditions: If Texas Arai significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Paragraph(1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), Texas Arai must notify the EPA in writing and may no longer manage the waste generated from the new process as nonhazardous until the waste meet the delisting levels set in Paragraph (1) and it has received written approval to do so from EPA. (4) Data Submittals: Texas Arai must submit or maintain, as applicable, the information described below. If Texas Arai fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Texas Arai must: (A) Submit the data obtained through Paragraph 3 to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code (6PD-O) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate, and complete.'' As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.''

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Texas Arai possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Texas Arai must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Texas Arai fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility, in writing, of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The proposal shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's action to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B)), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (6) Notification Requirements: Texas Arai must do the following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste to a different disposal facility.

* * * * *

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 100

RIN 0906–AA55

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary has made findings as to a condition that can reasonably be determined in some circumstances to be caused by vaccines containing live, oral, rhesus-based rotavirus. Based on these findings, the Secretary proposes to amend the Vaccine Injury Table (Table) by adding to the Table vaccines containing live, oral, rhesus-based rotavirus as a distinct category, with intussusception listed as a covered Table injury. This proposal is based upon the recommendation by the Centers for Disease Control and Prevention (CDC) that Rotashield, the only U.S.-licensed rotavirus vaccine, no longer be administered to infants in the United States based on review of data indicating a strong association between Rotashield and intussusception in the 1 to 2 weeks following vaccination. The Secretary also proposes several additional amendments to the Table described below under **SUPPLEMENTARY INFORMATION**.

DATES: Comments on this proposed rule must be submitted by January 9, 2002. A public hearing on this proposed rule will be held before the end of the public comment period. A separate notice will be published in the **Federal Register** to provide the details of this hearing.

ADDRESSES: Written comments should be addressed to Samuel Shekar, Associate Administrator for Health Professions, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Parklawn Building, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Planning and Program Development, BHPr, Room 8–67, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, Medical Director, Division of Vaccine Injury Compensation, BHPr, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–4198.

SUPPLEMENTARY INFORMATION:

Rotavirus Vaccine

On August 31, 1998, the Food and Drug Administration (FDA) licensed a live, oral, rhesus-based rotavirus tetravelant vaccine for use in infants between the ages of 6 weeks and 1 year. Distribution of the vaccine began on October 1, 1998. Following a review by the Advisory Committee on Immunization Practices (ACIP), the CDC published its rotavirus recommendation in the March 19, 1999, issue of the *Morbidity and Mortality Weekly Report* (MMWR), calling for doses to be administered at 2, 4 and 6 months of age, the first dose to be administered between 6 weeks and 6 months. The series was not to be initiated in children who were 7 months of age or older due to an increased rate of febrile (fever) reactions after the first dose among older infants.

Over the next 8 months, the Secretary's Vaccine Adverse Event Reporting System (VAERS) began receiving reports of intussusception (a type of bowel obstruction that occurs when the bowel folds in on itself) in infants receiving rotavirus vaccine, mostly after the first dose. Based on an analysis of 15 reports, CDC, in the July 16, 1999, issue of the MMWR, recommended that health-care providers and parents postpone use of the rotavirus vaccine. Additional epidemiological studies were undertaken by CDC to determine if there was a true association between the vaccine and intussusception. Also at that time, the manufacturer, in consultation with FDA, voluntarily ceased further distribution of the vaccine. Upon further consideration, and following consultation with CDC officials in preparation for the upcoming ACIP meeting, the manufacturer announced withdrawal of the only U.S.-licensed rotavirus vaccine from the market on October 15, 1999, and requested the immediate return of all doses of the vaccine.

At its October 22, 1999, meeting, the ACIP reviewed scientific data from several sources, including a 19-State case-control study which showed a statistically significant rate of intussusception among recipients of the live, oral, rhesus-based rotavirus vaccine in the 1- to 2-week period following vaccine administration. Beyond 14 days, there did not appear to be more cases than might occur by chance alone. The ACIP concluded that intussusception occurs with significantly increased frequency in the first 14 days following rotavirus administration and withdrew its recommendation for use of the rhesus-based rotavirus vaccine in infants. CDC published the Committee's decision in the November 5, 1999, issue of the MMWR.

As of December 2000, VAERS had received over 100 reports of confirmed and presumptive intussusception cases, 58 of which had onset within 7 days of vaccine receipt. No reports have been received thus far for vaccines administered after the July 1999 MMWR notice. Of the cases reported, approximately one-half required surgical intervention. Nearly all of the remaining cases of bowel obstruction were relieved through barium enema, a radiological procedure used to both diagnose and often rectify the telescoped bowel segment, or resolved without any intervention. At least one death associated with rotavirus vaccine was reported to VAERS.

The general category of rotavirus vaccines was added for coverage under the VICP effective October 22, 1998. Section 2114(e)(2) of the Public Health Service (PHS) Act provides for the inclusion of additional vaccines in the VICP when they are recommended by the CDC for routine administration to children. In compliance with the requirements of the Omnibus Budget Reconciliation Act of 1993, which added a new section 2114(e)(3) to the Act, a vaccine added to the Table through section 2114(e) will be included in the Table, effective when an excise tax to provide funds for they payment of compensation with respect to such vaccines takes effect. This section, codified at 42 U.S.C. 300aa–14(e)(3), read as follows:

> (3) **Effective Date**—A revision by the Secretary under section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa–14(e)) (as amended by paragraph (2)) shall take effect upon the effective date of a tax enacted to provide funds for compensation paid with respect to the vaccine to be added to the vaccine injury table in section 2114(a) of the Public Health Service Act (42 U.S.C. 300aa–14(a)).

The two prerequisites for adding rotavirus vaccine to the VICP were satisfied by enactment of Public Law 105–77, the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, which set

an excise tax of 75 cents per vaccine dose, and publication in the MMWR the following March of the CDC recommendation of the vaccine for ''routine use in children.'' The effective date of coverage, however, was the date of imposition of the excise tax, which was October 22, 1998.

In order to gain entitlement to compensation under title XXI of the PHS Act for a covered vaccine, a petitioner must establish a vaccine-related injury or death, either by showing an event listed on the Table (referred to as a ''Table injury'' case), and therefore presumed to be caused by a vaccine, or by proving causation in fact. In addition, section 2111(c) of the PHS Act requires that a petitioner must show (except in death cases) 6 months of residual effects of the injury or, as explained below, inpatient hospitalization and surgery resulting from the injury. With regard to a Table injury case, it must be shown that the vaccine recipient suffered an injury of the type enumerated in the ''Vaccine Injury Table'' corresponding to the vaccination in question, and that the *onset* of such injury took place within a time period from the vaccination also specified in the Table. If so, as set out in sections 2111(c)(1)(C)(i), 2113(a)(1)(B), and 2114(a) of the PHS Act, the Table injury is in effect given the legal presumption that it was caused by the vaccination, and the petitioner is entitled to compensation, *unless* it is affirmatively shown by the Secretary that the injury was caused by some factor unrelated to the vaccination.

Based on the requirements of section 2114(e) of the PHS Act, the Secretary added rotavirus vaccine to the Table with ''no condition specified.'' (42 CFR 100.3). In other words, at the time rotavirus was included for coverage under the Program, no adverse events had been identified to include in the Table. Until specified injuries are added to the Table through the Secretary's rulemaking authority, individuals who receive newly recommended vaccines do not receive a legal presumption of causation for any claimed injury, and are required to prove that the vaccine actually caused the claimed injury.

Consistent with the general process for revising the Table, once the Secretary determines that specific adverse events have been associated with newly recommended vaccines, the Secretary will propose further changes to the Vaccine Injury Table in order to confer the appropriate presumption of causation. Until the Table is amended, petitioners must prove causation in fact to prevail. However, once sufficient data is available to confirm a causal relationship between the newly added vaccine and the adverse event, the Secretary is able to concede causation in fact while the rulemaking process to revise the Table is underway.

The Secretary has reviewed the epidemiological data showing a strong statistical association between the rotavirus vaccine administration and subsequent onset of intussusception within a 14-day time interval. In addition, the studies conducted are not precise enough to demonstrate that an intussusception occurring in the 15- to 30-day interval is not caused by the rotavirus vaccine. For this reason, and because the evidence of a casual link between the Rotashield vaccine and the injury of intussusception is so strong, the Secretary is now proposing to add to the Table the category of ''vaccines containing live, oral, rhesus-based rotavirus'' with the injury of intussusception. The Secretary proposes that this injury of intussusception have an onset interval of 30 days under sections 2114(c) and (e) of the PHS Act. The Advisory Committee on Childhood Vaccines (ACCV) voted unanimously to approve this time interval at its December 1, 1999, meeting. Claims can be filed for alleged vaccine-related cases whose onset is beyond 30 days, but petitioners will be required to prove causation in fact.

Section XII of the Table in 42 U.S.C. 100.3(a) currently includes the broad category of ''rotavirus vaccine'' with no condition specified. At its December 1, 1999, meeting, the ACCV voted unanimously to retain this category of rotavirus vaccines on the Table, with no condition specified, and to add the category of ''vaccines containing live, oral, rhesus-based rotavirus'' with the injury of intussusception. In this Notice of Proposed Rulemaking, the Secretary proposes implementing this recommendation. Although the Secretary proposes retaining the current broad category of rotavirus vaccines on the Table in addition to adding the narrower category of ''vaccines containing live, oral, rhesus-based rotavirus,'' at this time the Secretary expects petitions for compensation relating only to this latter category, as the only rotavirus vaccine that has been licensed contains live, oral, rhesus-based rotavirus.

Under this approach, the Department proposes including two different categories of rotavirus vaccines on the Table, with different effective dates of coverage. Of course, petitions must also be filed within the applicable statute of limitations. The statutes of limitations applicable to petitions filed with the VICP, which are set out in section 2116(a) of the PHS Act (42 U.S.C. 300aa–16(a)) continue to apply. In addition, section 2116(b) of the PHS Act lays out specific exceptions to these statutes of limitations that apply when the effect of a revision to the Table makes a previously ineligible person eligible to receive compensation or when an eligible person's likelihood of obtaining compensation significantly increases. Under this section, individuals who may be eligible to file petitions based on the revised Table may file a petition for compensation not later than 2 years after the effective date of the revision if the injury or death occurred not more than 8 years before the effective date of the revision of the Table (42 U.S.C. 300aa–16(b)).

The first category of rotavirus vaccines, the general category of ''rotavirus vaccines,'' will continue to have an effective date of coverage for petitions filed beginning on October 22, 1998, with no corresponding ending date of coverage. Therefore, this category of vaccines will continue to be effective for vaccines administered in the future. The second category of rotavirus vaccines, those ''vaccines containing live, oral, rhesus-based rotavirus,'' will have an effective date of coverage beginning on October 22, 1998, provided that they were administered on or before the effective date of the final rule resulting from this Notice of Proposed Rulemaking. Because the only live, oral, rhesus-based rotavirus vaccine licensed in the United States has been withdrawn from the market and is no longer recommended for routine administration to children, the Department believes that all petitions arising from administrations of the Rotashield vaccine will fall within this covered period.

Any rotovirus vaccines that are licensed in the future, including those containing live, oral, rhesus-based rotavirus, will automatically be covered under the Program under the Table's broad category of rotavirus vaccines. Because no injury is associated with this category of rotavirus vaccines, petitioners would retain the burden of showing causation in fact with respect to injuries unless and until the Department amended the Table through rulemaking. Thus, while both categories of vaccines will remain on the future Table resulting from the final rule, petitioners bringing claims concerning rotavirus vaccines administered after the effective date of that final rule will only be covered under the general category of rotavirus vaccines. The Department believes that this approach best maintains the scientific integrity of the Table because there is no evidence

that future rotavirus vaccines would be associated with the injury of intussusception. The Department presented this proposal, outlining the effective coverage dates for the two categories of rotavirus vaccines, to the ACCV at its December 2000 meeting. The ACCV reached consensus that this approach was appropriate.

Recent legislation also affects petitioners filing claims concerning rotavirus vaccines. Until recently, the PHS Act required all claimants to establish either that the residual effects of an injury persisted for more than 6 months after the administration of the vaccine or that a death resulted from the administration of a vaccine. Since most patients with intussusception recover after immediate treatment and do not suffer lasting complications for more than 6 months, some petitioners alleging intussusception from a rotavirus vaccine might have been denied compensation under that standard. However, a recent statutory amendment increases access to compensation for some petitions raising rotavirus-related intussusception claims. The Children's Health Act of 200 amends section 2111(c)(1)(D) of the PHS Act to permit payment of compensation for claims alleging injuries where the effects of the injury last less than 6 months if the petitioner demonstrates that the vaccine-related illness, disability, injury or condition ''resulted in inpatient hospitalization and surgical intervention.'' Pub. L. No. 106–310. This statutory change, which became effective on October 17, 2000, applies to new petitions for compensation as well as to petitions pending on that date. Thus, under current law, infants who experience intussusception following a rotavirus vaccine and do not suffer residual effects for more than 6 months may qualify for compensation if their injury resulted in inpatient hospitalization and surgery.

Residual Seizure Disorder: Qualifications and Aids to Interpretation

In a final rule published in the **Federal Register** on February 20, 1997, which became effective on March 24, 1997, residual seizure disorder was removed from the Table as an adverse event for vaccines containing the components of measles, mumps, or rubella. Because residual seizure disorder is no longer listed on the Table in 42 CFR 100.3 as an illness, disability, injury or condition for any covered vaccine, the Secretary proposes removing residual seizure disorder from the Table's Qualifications and Aids to Interpretation. The Secretary believes that his approach will minimize confusion about the Table. At its December 2000 meeting, the ACCV reached consensus that this technical change was appropriate.

Hemophilus Influenzae Type b (Hib) Polysaccharide (Unconjugated) Vaccines

The Secretary proposes removing hemophilus influenzae type b (Hib) polysaccharide (unconjugated) vaccines from the Table. The first licensed Hib vaccine was an unconjugated polysaccharide vaccine, which was licensed in April 1985. Two other unconjugated Hib vaccines were licensed in December 1985. In December 1987, the first conjugate Hib vaccine was licensed. Several conjugate Hib vaccines have subsequently been licensed. Because studies demonstrated the superior immunogenicity of conjugate Hib vaccines as compared to unconjugated Hib vaccines, the Secretary, believes that unconjugated Hib vaccines had little, if any, use since 1989.

In a February 20, 1997, final rule, the Secretary added both Hib conjugate and Hib unconjugated vaccines to the Table. Based on the Secretary's findings, early-onset Hib disease was listed as a table injury for unconjugated Hib vaccines. No condition was specified for Hib conjugate vaccines.

Section 904(b) of the Taxpayer Relief Act of 1997, which was signed into law on August 5, 1997, provided an excise tax for Hib vaccines. Thus, petitioners alleging an injury or death as a result of a Hib vaccine, either conjugate or unconjugated, were able to seek compensation beginning on August 6, 1997, the effective date of the addition of the vaccine to the Table.

The Secretary now proposes removing the unconjugated Hib vaccine from the Table for several reasons. First, under section 2116(b) of the PHS Act, petitions relating to unconjugated Hib vaccines administered before August 6, 1989, are not eligible for compensation. Under the terms of section 2116(b), petitions related to a vaccine added to the Table are compensable only if the vaccine-related injury or death occurred within the 8-year period before the date of the addition of the vaccine to the Table. Because Hib vaccines were added to the Table as of August 6, 1997, petitions relating to Hib vaccines administered before August 6, 1989, are ineligible for compensation. Second, because section 2116(b) imposes a 2-year statute of limitations for vaccines added to the Table, all petitions relating to a Hib vaccine administered between August 6, 1989, and August 5, 1997, had to be filed by August 6, 1999. Because this date has passed, such claims are no longer eligible for compensation. Third, the Department believes that unconjugated Hib vaccines have had little, if any, use since 1989 and expects no petitions relating to unconjugated Hib vaccines administered after August 5, 1997. This belief is supported by the fact that the Department has never received any petitions for compensation relating to unconjugated Hib vaccines. In sum, the Secretary proposes removing unconjugated Hib vaccines from the Table because the Secretary believes that no potential claims relating to this category of vaccines exist.

Because the Secretary proposes removing the unconjugated Hib vaccines from the Table, the Secretary further proposes removing early onset Hib disease from the Table's Qualifications and Aids to Interpretation. This proposal arises from the fact that early-onset Hib disease is associated with only the unconjugated polysaccaride Hib vaccine. Because the unconjugated Hib vaccine will no longer be listed on the Table, it is unnecessary to list any illness, disability, injury or condition for the unconjugated Hib vaccine. The Secretary believes this approach will minimize confusion about the Table. At its December 2000 meeting, the ACCV reached consensus that these technical changes were appropriate.

Pneumococcal Conjugate Vaccine

On December 17, 1999, the excise tax for pneumococcal conjugate vaccines was enacted by Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, with an effective date of December 18, 1999. Section 523 of this Act provides that all conjugate vaccines against streptococcus pneumoniae (pneumococcus) are added to section 4132(a)(1) of the Internal Revenue Code of 1986, which defines all taxable vaccines. On February 17, 2000, a pneumococcal conjugate vaccine, Prevnar, was licensed by the FDA. Following a review by the ACIP, the CDC recommended the pneumococcal conjugate vaccine for routine administration to children up to 23 months of age. This recommendation was published in the October 6, 2000, issue of the MMWR.

Because the excise tax for the pneumococcal conjugate vaccines has been enacted, and because the CDC has recommended a licensed pneumococcal conjugate vaccine for routine administration to children, the Secretary proposes adding this vaccine to the Table listed at 42 CFR 100.3(a). We have not identified any illness, disease,

injury, or condition which is caused by pneumococcal conjugate vaccines. Thus, the Secretary proposes adding this vaccine to the Table of Injuries with ''No Condition Specified.'' If we learn of any such illness, disease, injury, or condition which is caused by pneumococcal conjugate vaccines, we will consider amending the Table of Injuries to provide for its coverage, and a time period in which the first symptom or manifestation of its onset will be presumed to be vaccine-related. Pneumococcal conjugate vaccines are presently included in the Table under the Table's broad category XIII (notice published in the **Federal Register** on May 22, 2001, 66 FR 28166).

Under section 2114(e)(3) of the PHS Act, as amended by section 13632(a) of the Omnibus Budget Reconciliation Act of 1993, a revision to the Table adding a vaccine recommended by the CDC for routine administration to children shall take effect upon the effective date of the tax enacted to provide funds for compensation with respect to the vaccine added to the Table. Thus, the Secretary proposes covering pneumococcal conjugate vaccines under the Program effective for petitions filed beginning on December 18, 1999, the date the excise tax for these vaccines became effective. Because the addition of pneumococcal conjugate vaccines to the Table is mandated by the PHS Act, this Table change has not been submitted to the ACCV for review.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that no resources are required to implement the requirements in this rule. Compensation will be made in the same manner. This proposed rule only lessens the burden of proof for potential petitioners. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this proposed rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. We have determined that the proposed rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Nor on the basis of family well-being will the provisions of this rule effect the following family elements: family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

As stated above, this proposed rule would modify the Vaccine Injury Table based on legal authority.

Impact of the New Rule

To date, three petitions have been filed alleging a vaccine-related injury caused or aggravated by a rotavirus vaccine. This proposed rule will have the effect of decreasing the burden of proof on expected future petitioners. Under this proposed rule, future petitioners alleging the injury of intussusception as the result of a live, oral rhesus-based rotavirus vaccine, the only type of rotavirus vaccine licensed to date in the U.S., will be afforded a presumption of causation. This proposed rule will not change the burden of proof applicable to petitioners alleging other injuries related to a rotavirus vaccine, who must rely on a causation in fact analysis.

Because the proposed rule limits the Table injury of intussusception to live, oral, rhesus-based rotavirus vaccines, administered on or before the effective date of the final rule, individuals seeking compensation for injuries related to such a vaccine administered after the final rule becomes effective will no longer receive the presumption of a Table injury for intussusception. Because the manufacturer of the only U.S.-licensed rotavirus vaccine voluntarily ceased distribution of the vaccine in July 1999, and because the CDC recommended that this vaccine no longer be recommended for infants in the United States on October 22, 1999, the Secretary has concluded that no potential claims arising after the final rule is published will be likely to exist. This proposed rule adds a Table injury only for rotavirus vaccines that contain live, oral, rhesus-based rotavirus. Because the only U.S.-licensed rotavirus vaccine falls within this category, the Secretary has concluded that this will not negatively disadvantaged potential petitioners.

This proposed rule will have a similar effect for petitioners seeking compensation for injuries related to hemophilus influenzae type b polysaccharide (unconjugated) vaccines. No claims relating to the administration of an unconjugated Hib vaccine before or on August 5, 1997, are eligible for compensation under the Act. In addition, the Secretary believes that these vaccines were not administered after 1997, and hence that no potential claims relating to this category of vaccines exist. Thus, it is very unlikely that the removal of unconjugated Hib vaccines from the Table will have an adverse impact upon potential petitioners. Removing early-onset Hib disease from the Table's Qualifications and Aids to Interpretation will not have an adverse effect on petitioners because it will no longer be listed as an adverse event for any vaccine on the Table.

Similarly, because residual seizure disorder is not listed on the Table as an adverse event for any vaccine on the Table, removing residual seizure disorder will not have an adverse impact for future petitioners.

Finally, this proposed rule will have the effect of making petitioners seeking compensation for injuries related to pneumococcal conjugate vaccines eligible for compensation under the PHS Act.

Paperwork Reduction Act of 1980

This proposed rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, and Immunization.

Dated: March 2, 2001.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: March 23, 2001.

Tommy G. Thompson,

Secretary.

Accordingly, 42 CFR part 100 is proposed to be amended as set forth below:

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for 42 CFR part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act; 100 Stat. 3767, as revised (42 U.S.C. 300aa–15); § 100.3 Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note); and sec. 2114(c) and (3) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa–14(c) and (e)); sec. 904(b) of Pub. L. 105–34, 111 Stat. 873; and sec. 523(a) of Pub. L. 106–170, 113 Stat. 1860.

2. Section 100.3 is amended as follows:

a. In paragraph (a), the Table is amended by removing Item IX; redesignating Items X, XI, XII, and XIII as Items IX, X, XI, and XIV; and adding new Items XII and XIII to read as set forth below.

b. Paragraph (b)(3) is removed and reserved.

c. Paragraph (b)(4) is amended by revising the phrase ''paragraphs (b)(2) and (3)'' in the first sentence to read ''paragraph (b)(2)''.

d. Paragraph (b)(11) is removed.

e. Paragraph (c)(2) is amended by removing the words '', and XI'' in the parenthetical and adding the word ''and'' before the number ''X''.

f. Paragraph (c)(3) is revised as set forth below.

g. Paragraph (c)(4) is redesignated as (c)(5).

h. A new paragraph (c)(4) is added to read as set forth below.

§ 100.3 Vaccine Injury Table.

(a) * * *

VACCINE INJURY TABLE

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
* * *	* *	* *
XII. Vaccines containing live, oral, rhesus-based rotavirus	Intussusception	0–30 days.
XIII. Pneumococcal conjugate vaccines	No condition specified	Not applicable
* * *	* *	* *

(c) * * *

(3) Rotavirus vaccines (Item XI of the Table) are included in the Table as of October 22, 1998. Vaccines containing live, oral, rhesus-based rotavirus (Item XII of the Table) are included in the Table as of October 22, 1998, provided that they were administered on or before [Effective date of the final rule].

(4) Pneumococcal conjugate vaccines (Item XIII of the Table) are included in the Table as of December 18, 1999.

* * * * *

[FR Doc. 01–16814 Filed 7–12–01; 8:45 am]

BILLING CODE 4165–15–M

Notices

Federal Register

Vol. 66, No. 135

Friday, July 13, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–01–05]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15 member board that is responsible for developing and recommending to the Secretary a proposed National List of Approved and Prohibited Substances. The NOSB also advises the Secretary on all other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill five (5) upcoming vacancies on the NOSB. The Secretary of Agriculture will appoint persons to serve 5-year terms of office that will commence in January 2002. USDA encourages eligible minorities, women, and persons with disabilities to apply for membership on the NOSB.

DATES: Written nominations, with resumes, must be postmarked on or before October 11, 2001.

ADDRESSES: Nominations should be sent to Ms. Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Avenue, SW., Room 2510–So., Ag Stop 0268, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Strother, (202) 720–3252; E-mail: toni.strother2@usda.gov; Fax: (202) 690–2624.

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. Section 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Approved and Prohibited Substances and to advise the Secretary on other aspects of the National Organic program.

The current NOSB has made recommendations to the Secretary regarding the establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill the following five (5) upcoming NOSB vacancies: organic producer, organic handler, consumer/public interest representative, environmentalist, and scientist (in the fields of toxicology, ecology, or biochemistry). Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic production operation, an owner or operator of an organic handling operation, a person who represents public or consumer interest groups, an individual with expertise in areas of environmental protection and resource conservation, or someone with expertise in the fields of toxicology, ecology or biochemistry. Selection criteria will include such factors as: Demonstrated experience and interest in organic production and handling; diverse commodity and geographic representation; support of consumer and public interest organizations; demonstrated experience with environmental matters; and such other factors as may be appropriate for specific positions.

Nominees will be supplied with a biographical information form that must be completed and returned to USDA within 10 working days of its receipt. Completed biographical information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the members of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB will include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: July 10, 2001.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–17553 Filed 7–12–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Reed Island Creek Watershed, Carroll, Pulaski and Wythe Counties, VA

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the National Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Little Reed Island Creek Watershed in Carroll, Pulaski and Wythe Counties and the Town of Hillsville, Virginia.

FOR FURTHER INFORMATION CONTACT: M. Denise Doetzer, State Conservationist, USDA, Natural Resources Conservation Service, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, Virginia 23229–5014, telephone (804) 287–1691.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action provides evidence that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Denise Doetzer, State Conservationist, has issued a Finding of No Significant Impact and determined that the preparation and review of an Environmental Impact Statement are not needed for this project.

The project purposes are to improve water quality, improve fish and wildlife habitat, and reduce on-farm damages caused by excessive erosion and sedimentation. The planned works of improvement include the installation of 15,569 acres of conservation practices on pastureland, hayland, cropland, woodland and riparian zone land in the Little Reed Island Creek Watershed in Carroll, Pulaski, and Wythe Counties and the Town of Hillsville, Virginia. The watershed protection will be accomplished by the installation of soil and water conservation practices on private lands.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting M. Denise Doetzer, State Conservationist.

No administrative action on implementation of the proposed will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Watershed and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

M. Denise Doetzer,

State Conservationist.

[FR Doc. 01–17512 Filed 7–12–01; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 13, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each the commodities or services will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Mop, Flat, w/Scrubber
M.R. 1045
NPA: Arizona Industries for the Blind, Phoenix, Arizona
Government Agency: Defense Commissary Agency

Mop, Twist-N-Lock,
M.R. 1040
NPA: LCI/Signature Works, Inc., Hazlehurst, Mississippi
Government Agency: Defense Commissary Agency

Services

Grounds Maintenance
Illinois Air National Guard, 126th ARW, Scott Air Force Base, Illinois
NPA: Challenge Unlimited, Inc., Alton, Illinois
Government Agency: Illinois Air National Guard

Janitorial/Custodial
Minnesota Valley National Wildlife Refuge Visitors Center, Bloomington, Minnesota
NPA: AccessAbility, Inc., Minneapolis, Minnesota
Government Agency: U.S. Fish and Wildlife Service

Mailing Services
Department of Energy, Argonne National Laboratory, Argonne, Illinois
NPA: Jewish Vocational Service & Employment Center, Chicago, Illinois
Government Agency: Department of Energy

Photocopying
Environmental Protection Agency, Research Triangle Park, North Carolina
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Government Agency: Environmental Protection Agency

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodity is proposed for deletion from the Procurement List:

Commodity

Buckle, Belt

8315–00–664–9126

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 01–17608 Filed 7–12–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 13, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 2, March 9, May 18 and May 25, 2001, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 13041, 14123, 27627 and 28889) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Services

Central Facility Management

Social Security Administration, Trust Fund Building, Chambersburg, Pennsylvania

Food Service Attendant

Hickam Air Force Base, Hawaii

Janitorial/Custodial

Naval & Marine Corps Reserve Center (NMCRC), 1201 N. 35th Avenue, Phoenix, Arizona

Janitorial/Custodial

Bombay Hook National Wildlife Refuge Smyrna, Delaware

Janitorial/Custodial

At the following U.S. Army Reserve Center Locations:

Brandt Memorial USARC, Baltimore, Maryland
Fleming Goodwin USARC, Dover, Delaware
Cape Henlopen USARC, Lewes, Delaware
Annapolis USARC, Annapolis, Maryland
Sheridan USARC, Baltimore, Maryland
Jachman USARC, Owings Mills, Maryland
AMSA 83 Curtis Bay, Baltimore, Maryland
Jecelin USARC, Baltimore, Maryland

Janitorial/Custodial

U.S. Fish & Wildlife Service, Bosque del Apache National Wildlife Refuge, Socorro, New Mexico

Janitorial/Custodial

St. John's Border Station Route 9B, New York

Janitorial/Custodial

Naval and Marine Corps Reserve Center, Milwaukee, Wisconsin

Provision of Customized Recognition & Awards Program

50% of the Governments Requirement

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 01–17609 Filed 7–12–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 070901E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Observer Workshop/Conference Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 44.

Number of Respondents: 175.

Average Hours Per Response: 15 minutes.

Needs and Uses: In March 1998 and June 2000 NOAA coordinated and conducted workshops on fishery observer programs. NOAA now wants to request feedback about these workshops from participants. The information will be used to plan for the next workshop, which is planned for 2002 and which will also be coordinated and sponsored by NOAA.

Affected Public: Federal government, individuals or households, business or other for-profit organizations, not-for-profit institutions, and State, Local, or Tribal Government.

Frequency: Biennial.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17577 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 070901G]

Submission for OMB Review; Comment Request

The Department of Commerce (D0C) has submitted to the Office of Management and Budget (OMB) for

clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tag Recapture Card.

Form Number(s): None.

OMB Approval Number: 0648–0259.

Type of Request: Regular submission.

Burden Hours: 8.

Number of Respondents: 240.

Average Hours Per Response: 2 minutes.

Needs and Uses: The Cooperative Gamefish Tagging Program was established to determine the migratory patterns of and other biological information about billfish, tunas, red drum, and numerous other species. An essential part of the tagging program is for fishermen catching tagged fish to voluntarily report on when and where the catch took place, the size and weight of the fish, and similar information. The information resulting from the tagging program is used to help make management decisions.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17578 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1178]

Grant of Authority for Subzone Status Audiovox Specialized Applications, LLC (Motor Vehicle Audio/Video Products) Elkhart, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the St. Joseph County Airport Authority, grantee of Foreign-Trade Zone 125 (South Bend, Indiana), has made application for authority to establish special-purpose subzone status at the motor vehicle audio/video products manufacturing plant of Audiovox Specialized Applications, LLC, located in Elkhart, Indiana (FTZ Docket 51–2000, filed 8–14–00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 51293, 8–23–2000); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the motor vehicle audio/video products manufacturing plant of Audiovox Specialized Applications, LLC, located in Elkhart, Indiana (Subzone 125D), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of June 2001.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–17625 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Low Enriched Uranium From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Gabriel Adler, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3003 or (202) 482–3813, respectively.

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination: We preliminarily determine that low enriched uranium is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on December 27, 2000.[1] *See Initiation of Antidumping Duty Investigations: Low Enriched Uranium from France,*

[1] The petitioners in this investigation are USEC Inc. and its wholly-owned subsidiary, the United States Enrichment Corp. (collectively USEC), and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC, Local 5–550 and Local 5–689 (collectively PACE).

Germany, the Netherlands, and the United Kingdom, 66 FR 1080 (January 05, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

In the initiation notice, we invited interested parties to comment, by January 17, 2001, on the scope of this investigation. On January 17, 2001, we received comments from Eurodif, S.A. (Eurodif), the sole producer/exporter of subject merchandise, and its owner, Compagnie Generale des Matieres Nucleaires (Cogema) (collectively, ''Eurodif/Cogema'' or ''the respondent''), as well as from the petitioners. In addition, on April 5, 2001, we received comments from the Ad Hoc Utilities Group (Ad Hoc Group), an industrial user/consumer of subject merchandise. Our analysis of these comments can be found in a memorandum to Bernard Carreau, dated May 7, 2001, on file in the Central Records Unit, Room B–099, of the Main Commerce Building.

On January 22, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from France, Germany, the Netherlands, and the United Kingdom of low enriched uranium. *See Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom,* 66 FR 8424 (January 31, 2001).

On January 29, 2001, the Department invited interested parties to submit comments on model matching criteria and proposed modifications to the standard questionnaire. We received comments from Eurodif/Cogema and the petitioners on January 31, 2001. On February 5, 2001, after considering those comments, the Department requested additional information from Eurodif/Cogema for purposes of formulating an antidumping questionnaire appropriate to the unique nature of the uranium industry. We received a response to that request on February 12, 2001. After considering this information, on February 28, 2001, we issued an antidumping questionnaire to Eurodif/Cogema.[2]

The respondent submitted its initial responses to the Department's questionnaire in April and May of 2001. After analyzing these responses, we issued supplemental questionnaires to the respondent to clarify the initial questionnaire responses or to request more complete responses to the initial questions.

On April 18, 2001, the Department postponed, by 50 days, the preliminary determination in this case (from May 16, 2001 to July 5, 2001) in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2). *See Low Enriched Uranium From France, Germany, The Netherlands, and the United Kingdom: Notice of Extension of Preliminary Antidumping Duty Determinations*, 66 FR 20969 (April 26, 2001).

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. On July 2, 2001, Eurodif/Cogema, the sole producer/exporter of subject merchandise, made such a request. In its request, the respondent consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigation

The period of investigation (POI) is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* December 2000).

Scope of Investigation

The scope of this investigation covers low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this investigation. Specifically, this investigation does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this investigation. For purposes of this investigation, fabricated uranium is defined as enriched uranium dioxide (UO_6), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this investigation.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

The Ad Hoc Group contends that certain sales subject to these investigations are in actuality transactions for separative work units (SWU) of enrichment, and therefore constitute the provision of services, not the production or sale of goods subject to the antidumping law.

In particular, the Ad Hoc Group focuses upon the relevant sale to be used in determining whether LEU is sold at less than fair value. The Ad Hoc Group contends that sales of SWU or enrichment do not constitute sales of subject merchandise. They argue further that because ''toll-produced LEU'' is consumed by the parties who contract for the tolling, such LEU is never sold in the United States. The Ad Hoc Group cites the Department's tolling regulation and practice to support its conclusion that such sales should be excluded from the scope of these investigations.

This is an exceptionally complicated issue. Based upon our analysis of the record and the arguments of the parties, we preliminarily determine that all LEU entering the United States from Germany, the Netherlands, the United

[2] Section A of the antidumping questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, then a listing of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

Kingdom, and France is subject to these investigations regardless of the way in which the sales for such merchandise are structured.[3] This preliminary determination is based on several factors. First, no party disputes that LEU entering the United States is a good. As the product yield of a manufacturing operation, LEU is a tangible product. Moreover, under the U.S. Customs regulations, any item that is within a tariff category of the Harmonized Tariff System constitutes merchandise for customs purposes. See 19 CFR 141.4 (2000). In this case, LEU is normally classified under HTSUS 2844.20.0020, but also satisfies three other HTSUS classifications described as enriched uranium compounds, enriched uranium, and radioactive elements, isotopes, and compounds.

Second, it is well established that the enrichment process is a major manufacturing operation that is required to produce LEU. No party disputes that the enrichment operation constitutes substantial transformation of the uranium feedstock, nor does any party dispute that the country of origin for LEU is based upon where that substantial transformation takes place. Thus, the LEU exported from Germany, the Netherlands, the United Kingdom, and France are products of those respective countries, and are therefore subject to these investigations.

Third, in these investigations there are significant volumes of LEU sold pursuant to contracts that expressly provide separate prices for SWU and feedstock, and no party disputes that such sales constitute sales of subject merchandise.[4] Rather, it is only for those transactions in which utility companies arguably obtain LEU through separate transactions of SWU and feedstock from separate entities that the Ad Hoc Group contends that such LEU entering the United States cannot be subject to the antidumping law. The Department has considered whether it would be appropriate to include in these investigations only the former type of transactions and exclude the latter. We believe, however, that, based on the petitioners' arguments, discussed below, there is little substantive commercial difference between these types of transactions, and, therefore, we have preliminarily included both. Simply because an unaffiliated customer purchases subject merchandise arguably in the form of two transactions, instead of a single, conventional type of transaction, does not mean that the merchandise entering the United States is not subject to the antidumping law. The purpose of the antidumping law is to provide a remedy to U.S. industries injured by unfairly priced goods. Subject merchandise purchased in the form of two transactions, instead of one, does not eliminate the possibility of unfair pricing, nor does it alleviate the need for the remedy established under the antidumping law.

Fourth, contrary to the Ad Hoc Group's claim, the tolling regulation does not provide a basis to exclude merchandise from the scope of an investigation. The purpose of the tolling regulation is to identify the seller of the subject merchandise for purposes of establishing export price, constructed export price, and normal value. Under § 351.401(h), therefore, the Department focuses upon which party controls the relevant sale of the subject merchandise and foreign like product. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan*, 64 FR 15493, 15498 (Mar. 31, 1999)). Thus, under the tolling regulation the issue is not whether the LEU in question is subject to the antidumping law, but rather who is the seller of the subject merchandise for determining U.S. price and normal value or, more specifically, what is the appropriate way in which to value subject merchandise and foreign like product. To the extent that sales of subject merchandise are structured as two transactions, the Department would combine such transactions to obtain the relevant price of subject merchandise, or normal value, as appropriate. On the other hand, to the extent that a company located in the United States sells the subject merchandise that is toll-processed in a country subject to investigation, the company in the United States would be the seller of subject merchandise. Even if in these cases we considered the utilities to be the producers of the subject merchandise within the meaning of the tolling regulation, this would not mean the antidumping law is not applicable. Regardless of the appropriate seller identified or how the sales are structured, the merchandise entering the United States is subject to the antidumping law.

The petitioners maintain that enrichers are the sellers of LEU in both types of contracts—either as an exchange of SWU and uranium feedstock for cash, or as an exchange of SWU for cash and a swap of uranium feedstock. The petitioners contend that the two transactions are essentially identical. First, regardless of whether the utility company pays in cash or in kind for the natural uranium content, the petitioners point out that the LEU is delivered under essentially the same contract terms, including warranties and guarantees pertaining to the complete LEU product. Second, enrichers do not use the uranium feedstock provided by the utility companies. Instead, the petitioners note that the natural uranium is typically delivered shortly before, or even after, delivery of the LEU, making the delivery of such uranium a payment in kind for the natural uranium component of the LEU. Third, the petitioners contend that the utility company does not have control over the process used to produce LEU that the utility company receives. Rather, the petitioners point out that the enrichers control the manufacture of LEU, as demonstrated by the fact that the product assay under the contract (transactional assay) differs from the product assay produced and delivered by the enricher (operational assay). According to the petitioners, the enricher makes the decision of the particular product assay based upon its own operational requirements and input costs. Taken together, these facts indicate that enrichers are in effect selling LEU under both types of contractual arrangements.

We have preliminarily treated the sales at issue as sales of subject merchandise for the reasons stated above and based upon the petitioners' arguments. In all transactions concerning LEU, regardless of how the sales are structured, the utility companies purchase LEU for use in the production and sale of electricity to consumers. Accordingly, the Department has established the value of the subject merchandise and foreign like product for purposes of determining U.S. price and normal value based on these transactions. We will further examine this issue for the final determination, and we invite comments on this issue. For purposes of these preliminary determinations, we have assigned a value to the natural uranium feedstock where no price was provided. We also invite comments from interested parties as to the valuation of the uranium feedstock for such transactions.

Fair Value Comparisons

To determine whether sales of LEU from France were made in the United States at LTFV, we compared the constructed export price (CEP) to the constructed value (CV), as described in the Constructed Export Price and

[3] This statement is limited to imports of LEU that were enriched in the respective countries.

[4] This is also true of a contract for enriched uranium product (EUP) that provides one price for both components.

Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weight-average CEPs and compared them to CV.

We note that during the POI, the respondent sold LEU pursuant to different types of contracts. For some contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering both the value of the enrichment component and the value of the natural uranium feedstock contained in the LEU (so-called EUP contracts). For other contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering only the value of the enrichment component; for the natural uranium feedstock component, the respondent received an amount of natural uranium equivalent to the amount used to produce the LEU shipped (so-called SWU contracts). For both types of transactions, the product manufactured and delivered by the respondent was LEU. For purposes of our antidumping analysis, we have translated prices and costs involved in SWU contracts to an LEU basis, increasing those values to account for the cost of the uranium feedstock involved. These adjustments are described in greater detail below.

Constructed Export Price

In accordance with section 772 of the Act, we calculated a CEP. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of the merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act. Consistent with this definition, we found that Eurodif/Cogema made CEP sales during the POI because the sales were made for the account of Eurodif/Cogema by the respondent's U.S. subsidiaries, Cogema, Inc. and Urangesellschaft USA, Inc. (UG Inc.), in the United States.

We calculated CEP based on packed prices charged to the first unaffiliated customer in the United States. For sales involving cash payments on a SWU basis, we translated the prices to an LEU basis by adding a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's average cost of uranium feedstock purchases during the POI.

Section 351.401(i) of the Department's regulations provide that the date of sale will normally be the date of invoice, unless the material terms of sale are set on some other date. In the instant case, the material terms of sale are set on the date of the contract with the U.S. customer. Therefore, we based the date of sale on that date.

Because many of these contracts are long-term, spanning over five years, in most instances there have been only partial deliveries to date pursuant to POI contracts. Under the long-term contracts, the LEU provider is obligated to supply a percentage of the utility's overall requirements for given periods of time. The LEU provider does not know the specifications for the desired enrichment level of a given shipment of LEU until it receives delivery instructions for particular shipments of LEU. The desired enrichment level (or ''product assay'') determines the price for each specific delivery. Given the speculative nature of estimating the product assays to be associated with future shipments of LEU for which no delivery instructions exist (as well as the fact that exchange rates, selling expenses, and costs of production for future deliveries pursuant to POI contracts would also have to be estimated), we have decided, preliminarily, to base the dumping analysis on completed deliveries only.

We note that two of the sales during the POI involved pre-existing contracts, which were amended during the POI. The petitioners have argued that, while the Department typically includes in its dumping analysis the entire sales quantity covered by an amended contract, the long-term nature of uranium contracts warrants including in the analysis only the additional quantities associated with the amendments. Further, the petitioners argue the Department should isolate the prices for the additional quantities called for by the amendments, segregating them from prices specified by the pre-existing contracts. For purposes of this preliminary determination, consistent with past practice, we have considered the amended contract to constitute a new sale, and have included in the dumping analysis all deliveries pursuant to the amended contract up to the date of the initial questionnaire response. We will examine this issue further at verification, and invite comment from interested parties for the final determination.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign inland freight from the plant to the French port of exit, international freight, international air freight/insurance, charges for shipment of samples, U.S. brokerage and handling fees, and port charges. We also deducted any discounts from the starting price.

In addition, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses, credit expense, and inventory carrying costs.

Finally, in accordance with 772(d)(3) and 772(f) of the Act, we made a deduction for CEP profit. The CEP profit rate is normally calculated on the basis of comparison market sales and U.S. sales. In this case, there were no home market or viable third-country market sales of LEU during the POI. Therefore, we based the CEP profit calculation on the profit rate of the respondent's U.S. affiliate(s) that had a profit during the POI.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market (or third country market), provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. Eurodif/Cogema did not have a viable comparison market during the POI. Therefore, we have based NV on CV. Adjustments made in deriving the CV are described in detail in the *Calculation of Normal Value Based on Constructed Value,* below.

B. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. We calculated a weight-averaged cost of production (COP) for each control number of LEU, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the data submitted by the respondent in its supplementary questionnaire response except in specific instances

where the submitted costs were not appropriately quantified or valued.

Specifically, we adjusted the reported costs as follows:

(1) We included the cost of centrifugal separation studies (which had been excluded by the respondent) in the calculation of the general and administrative expenses rate.

(2) We recalculated the net interest ratio on the basis of the consolidated interest expenses of Cogema's parent, CEA Industrie, for the year ended December 31, 1999.

For some deliveries pursuant to contracts based on SWU prices, the respondent's reported costs did not include a value for the uranium feedstock used in the production of the delivered LEU. To translate the reported costs to an LEU basis, we added to the reported costs a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's average cost of uranium feedstock purchases during the POI.

We note that, during the POI, Eurodif/Cogema obtained electricity from Electricite de France (EDF), an affiliated French utility. Section 773(f)(2) of the Act provides that the Department may value any element obtained from an affiliate at the market value of the element, if the transfer price does not fairly reflect a market value (the ''transactions disregarded'' rule). In the instant case, the rate charged by EDF to Eurodif/Cogema is below that charged to other large industrial users. However, the record indicates that Eurodif/Cogema is by far the largest consumer of electricity in France. The rate charged by EDF to Eurodif/Cogema appears to be commensurate with the respondent's massive consumption of electricity. Moreover, there is evidence on the record that at least one unaffiliated European electricity provider offered electricity to Eurodif/Cogema at rates even lower than that charged by EDF. Given the facts of this case, we have preliminarily determined to rely on the transfer price for electricity reported by Eurodif/Cogema. We will examine this further at verification.

Because there is no viable comparison market for Eurodif/Cogema, and hence no actual company-specific profit data available for Eurodif/Cogema, we calculated profit in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action (SAA) at 841. (Where, due to the absence of data, the Department cannot determine amounts for profit under alternatives (i) or (ii) of section 773(e)(2)(B) of the Act or a ''profit cap'' under alternative (iii) of section 773(e)(2)(B) of the Act, the Department may apply alternative (iii) on the basis of the facts available.) In this case, we based CV profit on the profit rate on the 1999 financial statements of CEA Industrie, a holding company for the industrial interests of the French Atomic Energy Commission, which consolidates the financial results of the respondent and other companies associated with the French nuclear industry.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from the respondent about the marketing stages involved in the reported U.S. sales, as well as in the home market,[5] including a description of the selling activities performed by the respondent for each channel of distribution. Given that all U.S. sales were CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

In the U.S. market, the respondent sells to utility customers. After deducting expenses associated with the selling activities reflected in the price under section 772(d) of the Act (*i.e.,* the expenses of Cogema Inc. and Urangesellschaft), we noted selling expenses associated with strategic planning and marketing, customer sales contact, production planning and evaluation, and contract administration. These expenses did not vary by U.S. channel of distribution. Therefore, we found all U.S. sales to be made at single LOT.

Home market selling expenses for CV were based on the selling expenses of Cogema for pre-POI home market contracts. We have no basis for attributing different expenses to different channels of distribution. Therefore, we found a single LOT of trade in the home market.

The respondent generally performs the same kinds of selling functions in both markets. Although the respondent described different degrees of selling activities associated with home market sales and U.S. sales by characterizing the levels of different activities as ''low,'' ''medium'' or ''high,'' the respondent did not explain the distinctions between these terms with respect to the different categories of selling activities, leaving these terms ambiguous. Therefore, we have no basis for concluding whether or not a CEP offset to normal value is appropriate and we did not calculate a CEP offset. We will examine this further at verification.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of low enriched uranium from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this

[5] Although the home market was not viable, for the purpose of calculating CV, the respondent provided POI home market selling expenses (related to pre-POI contracts) in its questionnaire responses.

notice in the **Federal Register**.[6] We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Eurodif/Cogema	17.52
All Others	17.52

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one low-enriched uranium case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 5, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17622 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

[6] On July 3, 2001, the Department received comments from the respondent requesting that, in the event of an affirmative preliminary determination, the application of any cash deposit, bond or other security be limited to transactions involving the sale of enriched uranium, and exclude imports pursuant to so-called SWU contracts. We will consider these comments for the final determination.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–808; A–412–820; A–428–828]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Low Enriched Uranium From the United Kingdom; Preliminary Determinations of Sales at Not Less Than Fair Value: Low Enriched Uranium From Germany and the Netherlands; and Postponement of Final Determinations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or James Terpstra, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4793 or (202) 482–3965, respectively.

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determinations: We preliminarily determine that low-enriched uranium (LEU) from Germany and the Netherlands is not being sold, or is not likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act.

We preliminarily determine that LEU from the United Kingdom is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

These investigations were initiated on December 27, 2000.[1] *See Notice of Initiation of Antidumping Duty Investigations: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom,* 66 FR 1080 (January 5, 2001). (*Initiation Notice*).

In the initiation notice, we invited interested parties to comment on the scope of these investigations by January 17, 2001. On January 17, 2001, we received a letter with comments from Urenco Ltd., Urenco (Capenhurst) Ltd., Urenco Nederland BV, and Urenco Deutschland GmbH (collectively, ''Urenco'' or ''the respondent''), as well as from the petitioners. In addition, on April 5, 2001, we received comments from the Ad Hoc Utilities Group (Ad Hoc Group), an industrial user/consumer of subject merchandise. Our analysis of these comments is in a memorandum from the team to Bernard Carreau, dated May 7, 2001, which is on file in the Central Records Unit, Room B–099, of the Main Commerce Building.

On January 22, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by

[1] The petitioners in this investigation are USEC Inc. and its wholly-owned subsidiary, the United States Enrichment Corp. (collectively USEC), and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, CLC, Local 5–550 and Local 5–689 (collectively PACE) (the petitioners).

reason of imports of the products subject to each of these antidumping investigations. *See Low Enriched Uranium From France, Germany, The Netherlands, and the United Kingdom,* 66 FR 8424 (January 31, 2001).

On January 29, 2001, the Department invited interested parties to submit comments on model matching criteria and proposed modifications to the standard questionnaire. We received comments from Urenco and the petitioners on January 31, 2001. On February 5, 2001, after considering those comments, the Department requested additional information from Urenco for purposes of formulating antidumping questionnaires appropriate to the unique nature of the uranium industry. We received Urenco's response to that request on February 13, 2001. After considering this information, on February 26, 2001, the Department issued its antidumping questionnaires to Urenco.[2]

We issued supplemental questionnaires where appropriate. Responses to those supplemental questionnaires were timely filed on May 30, 2001 and June 4, 2001, and we have incorporated the information provided in those responses into this preliminary determination. On May 5, 2001, Urenco requested an extension of time to respond to certain questions in the supplemental questionnaires. On May 29, 2001, the Department granted Urenco a five-day extension to respond to certain questions in the Department's supplemental questionnaires.

On April 18, 2001, the Department concluded, consistent with section 733(c)(1)(B) of the Act, that these cases concerning LEU from Germany, the Netherlands, and the United Kingdom are extraordinarily complicated, and that additional time was necessary to issue the preliminary determinations. Consequently, we extended the deadline for the preliminary determinations to July 5, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom,* 66 FR 20969 (April 26, 2001).

In addition to the principal events listed above, petitioners and respondent have filed numerous submissions suggesting alternative calculation methodologies, the appropriate treatment of separative work unit (SWU) contracts, and the possible calculation of a consolidated rate for the Urenco group. These comments have been addressed insofar as we have made a specific determination on how to handle each aspect of the calculations. One suggestion not elsewhere addressed is petitioners' request that we rely on adverse facts available for these preliminary determinations based on Urenco's failure to respond to the questionnaire to the best of its ability. Petitioners cite numerous instances of Urenco's failure to initially provide information, most notably a lack of full disclosure about affiliated party transactions. Although we agree with petitioners that there were deficiencies in the information provided by Urenco, which are detailed in our supplemental questionnaires, we preliminarily determine that Urenco's questionnaire responses are not so deficient as to be unuseable or that reliance on facts available is appropriate for purposes of these preliminary determinations.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of a negative preliminary determination, as in the case for Germany and the case for the Netherlands, a request for such postponement is made by the petitioner. On July 5, 2001, the petitioners made such a request. Since these preliminary determinations are negative, with respect with Germany and the Netherlands, and there is no compelling reason to deny the petitioners' request, we have extended the deadline for issuance of these final determinations until the 135th day after the date of publication of these preliminary determinations in the **Federal Register**.

In the event of an affirmative preliminary determination, as is the case for the United Kingdom, section 735(a)(2)(A) of the Act states that the Department may postpone making the final determination until no later than the 135th day after publication of the preliminary determination if a request in writing for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. On June 29, 2001, Urenco Ltd., the sole producer/exporter of subject merchandise from the United Kingdom, made such a request. In its request, the respondent consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, with respect with the United Kingdom, and there is no compelling reason to deny respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigation

The period of investigation (POI) is October 1, 1999, through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* December 2000).

Scope of Investigation

The scope of these investigations covers low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U_{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of these investigations. Specifically, these investigations do not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these investigations. For purposes of these investigations, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of these investigations.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[2] Section A of the antidumping questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, then a listing of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

The Ad Hoc Group contends that certain sales subject to these investigations are in actuality transactions for separative work units (SWU) of enrichment, and therefore constitute the provision of services, not the production or sale of goods subject to the antidumping law. In particular, the Ad Hoc Group focuses upon the relevant sale to be used in determining whether LEU is sold at less than fair value. The Ad Hoc Group contends that sales of SWU or enrichment do not constitute sales of subject merchandise. They argue further that because ''toll-produced LEU'' is consumed by the parties who contract for the tolling, such LEU is never sold in the United States. The Ad Hoc Group cites the Department's tolling regulation and practice to support its conclusion that such sales should be excluded from the scope of these investigations.

This is an exceptionally complicated issue. Based upon our analysis of the record and the arguments of the parties, we preliminarily determine that all LEU entering the United States from Germany, the Netherlands, the United Kingdom, and France is subject to these investigations regardless of the way in which the sales for such merchandise are structured.[3] This preliminary determination is based on several factors. First, no party disputes that LEU entering the United States is a good. As the product yield of a manufacturing operation, LEU is a tangible product. Moreover, under the U.S. Customs regulations, any item that is within a tariff category of the Harmonized Tariff System constitutes merchandise for customs purposes. See 19 CFR 141.4 (2000). In this case, LEU is normally classified under HTSUS 2844.20.0020, but also satisfies three other HTSUS classifications described as enriched uranium compounds, enriched uranium, and radioactive elements, isotopes, and compounds.

Second, it is well established that the enrichment process is a major manufacturing operation that is required to produce LEU. No party disputes that the enrichment operation constitutes substantial transformation of the uranium feedstock, nor does any party dispute that the country of origin for LEU is based upon where that substantial transformation takes place. Thus, the LEU exported from Germany, the Netherlands, the United Kingdom, and France are products of those respective countries, and are therefore subject to these investigations.

Third, in these investigations there are significant volumes of LEU sold pursuant to contracts that expressly provide separate prices for SWU and feedstock, and no party disputes that such sales constitute sales of subject merchandise.[4] Rather, it is only for those transactions in which utility companies arguably obtain LEU through separate transactions of SWU and feedstock from separate entities that the Ad Hoc Group contends that such LEU entering the United States cannot be subject to the antidumping law. The Department has considered whether it would be appropriate to include in these investigations only the former type of transactions and exclude the latter. We believe, however, that, based on the petitioners' arguments, discussed below, there is little substantive commercial difference between these types of transactions, and, therefore, we have preliminarily included both. Simply because an unaffiliated customer purchases subject merchandise arguably in the form of two transactions, instead of a single, conventional type of transaction, does not mean that the merchandise entering the United States is not subject to the antidumping law. The purpose of the antidumping law is to provide a remedy to U.S. industries injured by unfairly priced goods. Subject merchandise purchased in the form of two transactions, instead of one, does not eliminate the possibility of unfair pricing, nor does it alleviate the need for the remedy established under the antidumping law.

Fourth, contrary to the Ad Hoc Group's claim, the tolling regulation does not provide a basis to exclude merchandise from the scope of an investigation. The purpose of the tolling regulation is to identify the seller of the subject merchandise for purposes of establishing export price, constructed export price, and normal value. Under § 351.401(h), therefore, the Department focuses upon which party controls the relevant sale of the subject merchandise and foreign like product. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan,* 64 FR 15493, 15498 (Mar. 31, 1999)). Thus, under the tolling regulation the issue is not whether the LEU in question is subject to the antidumping law, but rather who is the seller of the subject merchandise for determining U.S. price and normal value or, more specifically, what is the appropriate way in which to value subject merchandise and foreign like product. To the extent that sales of subject merchandise are structured as two transactions, the Department would combine such transactions to obtain the relevant price of subject merchandise, or normal value, as appropriate. On the other hand, to the extent that a company located in the United States sells the subject merchandise that is toll-processed in a country subject to investigation, the company in the United States would be the seller of subject merchandise. Even if in these cases we considered the utilities to be the producers of the subject merchandise within the meaning of the tolling regulation, this would not mean the antidumping law is not applicable. Regardless of the appropriate seller identified or how the sales are structured, the merchandise entering the United States is subject to the antidumping law.

The petitioners maintain that enrichers are the sellers of LEU in both types of contracts—either as an exchange of SWU and uranium feedstock for cash, or as an exchange of SWU for cash and a swap of uranium feedstock. The petitioners contend that the two transactions are essentially identical. First, regardless of whether the utility company pays in cash or in kind for the natural uranium content, the petitioners point out that the LEU is delivered under essentially the same contract terms, including warranties and guarantees pertaining to the complete LEU product. Second, enrichers do not use the uranium feedstock provided by the utility companies. Instead, the petitioners note that the natural uranium is typically delivered shortly before, or even after, delivery of the LEU, making the delivery of such uranium a payment in kind for the natural uranium component of the LEU. Third, the petitioners contend that the utility company does not have control over the process used to produce LEU that the utility company receives. Rather, the petitioners point out that the enrichers control the manufacture of LEU, as demonstrated by the fact that the product assay under the contract (transactional assay) differs from the product assay produced and delivered by the enricher (operational assay). According to the petitioners, the enricher makes the decision of the particular product assay based upon its own operational requirements and input costs. Taken together, these facts indicate that enrichers are in effect selling LEU under both types of contractual arrangements.

We have preliminarily treated the sales at issue as sales of subject

[3] This statement is limited to imports of LEU that were enriched in the respective countries.

[4] This is also true of a contract for enriched uranium product (EUP) that provides one price for both components.

merchandise for the reasons stated above and based upon the petitioners' arguments. In all transactions concerning LEU, regardless of how the sales are structured, the utility companies purchase LEU for use in the production and sale of electricity to consumers. Accordingly, the Department has established the value of the subject merchandise and foreign like product for purposes of determining U.S. price and normal value based on these transactions. We will further examine this issue for the final determination, and we invite comments on this issue. For purposes of these preliminary determinations, we have assigned a value to the natural uranium feedstock where no price was provided. We also invite comments from interested parties as to the valuation of the uranium feedstock for such transactions.

Fair Value Comparisons

To determine whether sales of low enriched uranium from Germany, the Netherlands, and the United Kingdom were made in the United States at less than fair value, we compared the export price (EP) to the constructed value (CV), as described in the *Export Price* and *Constructed Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and compared them to CV.

We note that during the POI, the respondent sold LEU pursuant to different types of contracts. For some contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering both the value of the enrichment component and the value of the natural uranium feedstock deemed to be contained in the LEU (referred to as EUP contracts). For other contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering only the value of the enrichment component; for the natural uranium feedstock component, the respondent received an amount of natural uranium equivalent [5] to the amount deemed to be used to produce the LEU shipped (referred to as SWU contracts). For both types of transactions, the product manufactured and delivered by the respondent was LEU. For purposes of our antidumping analysis, we have translated prices and costs involved in SWU contracts to an LEU basis. To value the natural uranium component for SWU contracts we have made our calculations based upon the presumption that the value of this natural uranium was equal to the value of natural uranium paid by Urenco's customers pursuant to EUP contracts.

Export Price

Germany, the Netherlands, and the United Kingdom

For the price to the United States, we used EP in accordance with section 772(a) of the Act because the merchandise was sold by the producer or exporter outside the United States to the first unaffiliated purchaser in the United States prior to importation. In addition, constructed export price was not otherwise warranted based on the facts on the record. Consistent with this definition, we found that Urenco made EP sales during the POI.

We based the date of sale on the date of the contract with the U.S. customer; *i.e.,* the date that the terms of sale were established. Section 351.401(i) of the Department's regulations provide that the date of sale will normally be the date of invoice, unless the material terms of sale are set on some other date. In the instant cases, we preliminarily determine the material terms of sale are set by contract.

We note that some of the sales during the POI involved pre-existing contracts which were amended during the POI. The petitioners argue that, while the Department typically includes in its dumping analysis the entire sales quantity covered by an amended contract, the long-term nature of uranium contracts warrants including in the analysis only the additional quantities associated with the amendments.[6] Further, the petitioners argue that the Department should isolate the prices for the additional quantities called for by the amendments, segregating them from prices specified by the pre-existing contracts. For purposes of these preliminary determinations, we have considered the amended contract to constitute an entirely new sale, and have included in the dumping analysis all deliveries to date pursuant to the amended contract. We will examine this issue further at verification, and invite comment from interested parties for the final determinations.

Because many of these contracts are long-term, spanning over five years, in most instances there have been only partial deliveries to date pursuant to contracts entered into during the POI. Based on the nature of the contracts, the specifications for the desired enrichment level of the LEU (*i.e.* ''product assay'' of the LEU) and, therefore, the per-kilogram price for the LEU, are not known, until the customer requests delivery.[7] Given the speculative nature of estimating the product assays and prices associated with future deliveries, coupled with the fact that we are unable to determine the country of origin until delivery actually occurs, we have preliminarily decided to base the dumping analysis on completed deliveries only.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign inland freight from the plant to the port of export, international freight, international air freight/insurance, charges for shipment of samples, U.S. brokerage and handling fees, and port charges. We also deducted any discounts from the starting price.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that normal value (NV) be based on the price at which the foreign like product is sold in the home market (or third country market), provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

Germany

Pursuant to section 773(a)(1) of the Act, because Urenco Deutschland GmbH's (UD) aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

The Netherlands

Urenco Nederland B.V. (UN) had no sales in its home market. Japan was its largest third-country market, and, following our normal practice, it was selected as the comparison market.

[5] The actual quantity of feedstock used by enrichers to produce the LEU they ship is normally different from the quantity of feedstock they receive from their utility customers. This difference, between the operational and transactional tails assays, is adjusted for in the constructed value calculation.

[6] Due to the fact that many long-term contracts covering an existing quantity are renegotiated when newer quantities are purchased, price reductions are taken on existing contracts that are related to new sales in the POI.

[7] Prices, exchange rates, selling expenses, and costs of production for future deliveries pursuant to POI contracts would also have to be estimated.

The United Kingdom

Urenco (Capenhurst) Ltd. (UCL) had no sales in its home market. Japan was its largest third-country market and, following our normal practice, it was selected as the comparison market.

B. Constructed Value

For Germany and the Netherlands, Urenco reported no actual shipments in the respective comparison markets. Because, as discussed above, we limited our analysis to actual shipments, we therefore used constructed value as the basis for normal value. For the United Kingdom, although UCL had actual shipments to Japan, we have preliminarily determined not to rely on these sales for determining normal value. Due to the differences in product and tails assays and the unique manner in which LEU is sold, a difference in merchandise adjustment (diffmer) will not adequately reflect price differentials. Accordingly, we have also relied on constructed value as the basis for normal value for the United Kingdom. We will examine this issue further at verification and invite comment from interested parties for the final determination. *See* ''Calculation Memorandum''.

C. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the merchandise, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. We calculated a weighted-averaged cost of production (COP) for each control number of low enriched uranium, based on the sum of the cost of materials, fabrication and general expenses, and packing costs.

We relied on the data submitted by respondents in their supplementary cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued.

Common

We adjusted the reported general and administrative expenses (G&A) rate to include certain non-operating income and expense amounts which appear to relate to the general operations of each of the companies.

Urenco (Capenhurst) Limited

1. We increased UCL's depreciation expense to account for the effect of acquiring fixed assets from affiliates at less than full cost.

2. We adjusted UCL's reported cost of manufacturing by including the portion of the centrifuge losses allocated to the POI.

Urenco Nederland B.V.

1. We increased UNL's reported costs by including the unreconciled difference between the audited financial statement cost of manufacturing and the total costs reported.

2. We increased UNL's reported cost of manufacturing to account for foreign exchange losses that were excluded from the reported costs.

Urenco Deutschland GmbH

We increased UD's reported cost to include depreciation expense calculated in accordance with German GAAP rather then that in accordance with UK GAAP.

In accordance with section 773(e)(2)(B)(iii) of the Act, we calculated Urenco's SG&A and profit using the individual company's audited financial statements. For further details, *see* calculation Memorandum from Ernest Gziryan to Neal Halper, dated July 5, 2001.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine CV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The CV LOT is that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether CV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which CV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the U.S. market, we found selling expenses associated with strategic planning and marketing, customer sales contact, production planning and evaluation, and contract administration. Urenco reported one channel of distribution in the U.S. market (*i.e.,* from Urenco Ltd. to U.S. utilities). Therefore, we found all U.S. sales to be made at single level of trade.

For the comparison markets Urenco reported one channel of distribution (*i.e.,* from Urenco Ltd. to the utility companies). Moreover all the companies in the Urenco group sell through Urenco Inc. and have similar marketing processes and selling activities in these comparison markets (*i.e.,* strategic planning, marketing, and customer sales contact). Therefore, we found a single level of trade. Moreover, since the Urenco group sells to the United States and in the comparison markets through Urenco Ltd., where the marketing activities and selling functions are similar, we found the level of trade in the comparison markets comparable to that of the U.S. market.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of low enriched uranium, with the exception of those exported from Germany and the Netherlands, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.[8] We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

[8] On July 3, 2001, the Department received comments from the respondent requesting that, in the event of an affirmative preliminary determination, the application of any cash deposit, bond or other security be limited to transactions involving the sale of enriched uranium, and exclude imports pursuant to so-called SWU contracts. We will consider these comments for the final determination.

Exporter/manufacturer	Weighted-average margin percentage
Urenco Deutschland GmbH	[1] 0.46
Urenco Netherlands B.V	[1] 0.55
Urenco (Captenhurst) Ltd.	3.35

[1] (de minimis).

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determinations. If our final antidumping determinations are affirmative, the ITC will determine whether the imports covered by the determinations are materially injuring, or threaten material injury to, the U.S. industry. The deadline for the ITC determinations would be the later of 120 days after the date of these preliminary determinations or 45 days after the date of our final determinations.

Public Comment

Case briefs for these investigations must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one low-enriched uranium case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determinations no later than 135 days after the date of publication of this notice in the **Federal Register**.

These determinations are issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 5, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17624 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Antidumping Duty Administrative Review

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (2000).

Background

On February 14, 2001, the Department published in the **Federal Register** (66 FR 10269) a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on certain preserved mushrooms from India for the period February 1, 2000, through January 31, 2001. On February 26, 2001, Agro Dutch Foods, Ltd., Himalya International, and Hindustan Lever Limited (formerly Ponds India, Ltd.) requested an administrative review of their sales for the above-mentioned period, and on February 27, 2001, Weikfield Agro Products, Ltd, requested an administrative review of its sales for the same period. On February 29, 2001, the petitioner [1] requested an administrative review of the above-referenced antidumping duty order for the period February 1, 2000, through January 31, 2001, for the following companies: Agro Dutch Foods, Ltd., Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Hindustan Lever Limited, Saptarishi Agro Industries, Ltd., Techtran Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., Weikfield Agro Products, Ltd., Dinesh Agro Products, Ltd., and Himalya International. On March 22, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 66 FR 16037.

Partial Recission of Review

On April 23, 2001, Hindustan Lever Limited timely withdrew its request for an administrative review of its sales during the above-referenced period. On April 24 and June 14, 2001, the petitioner timely withdrew its request for review with respect to the following companies: Alpine Biotech, Ltd., Dinesh Agro Products, Ltd., Flex Foods, Ltd., Hindustan Lever Limited, Mandeep Mushrooms, Ltd., Premier Mushroom Farms, Techtran Agro Industries, and Transchem Ltd. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, the petitioner and Hindustan Lever Limited

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

have withdrawn their requests for review within the 90-day period. We have received no other submissions regarding the petitioner's and Hindustan Lever Limited's withdrawal of their requests for review. Therefore, we are rescinding in part this review of the antidumping duty order on certain preserved mushrooms from India as to Alpine Biotech, Ltd., Dinesh Agro Products, Ltd., Flex Foods, Ltd., Hindustan Lever Limited, Mandeep Mushrooms, Ltd., Premier Mushroom Farms, Techtran Agro Industries, and Transchem Ltd. This review will continue with respect to Agro Dutch Foods, Ltd., Himalya International, Saptarishi Agro Industries, Ltd., and Weikfield Agro Products, Ltd.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: July 3, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–17623 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 8, 2001, the Department of Commerce published the preliminary results of the first administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia (66 FR 13903). The review covers three manufacturers/exporters. The periods of review are August 5, 1998, through January 31, 2000, for PT Indo Evergreen Agro Business Corporation and PT Zeta Agro Corporation, and December 31, 1998 through January 31, 2000, for PT Dieng Djaya and PT Surya Jaya Abadi Perkasa.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2000).

Background

The review covers three manufacturers/exporters, PT Indo Evergreen Agro Business Corporation (Indo Evergreen), PT Zeta Agro Corporation (Zeta), and PT Dieng Djaya (Dieng Djaya) and PT Surya Jaya Abadi Perkasa (Surya Jaya). The periods of review are August 5, 1998, through January 31, 2000, for Indo Evergreen and Zeta and December 31, 1998 through January 31, 2000,[1] for Dieng Djaya and Surya Jaya.

On March 8, 2001, the Department of Commerce (the Department) published the preliminary results of the first administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia (66 FR 13903). We invited parties to comment on the preliminary results of review. We received case briefs from the petitioners and respondents on April 9, 2001. We received rebuttal briefs from the petitioners and the respondents on April 17, 2001. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 6, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Internet at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memo are identical in content.

Changes From the Preliminary Results

Based on our analysis of the comments received, we have made

[1] *See Notice of Antidumping Duty Order: Certain Preserved Mushroom from Indonesia,* 64 FR 8310 (February 19, 1999).

certain changes to the margin calculations. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Decision Memo, the public version of which is on file in room B–099 of the Department and available on the Internet at http://ia.ita.doc.gov.

Final Results of Review

We determine that the following weighted-average margin percentages exist:

Manufacturer/exporter	Margin (percent)	Period of review
PT Dieng Djaya and PT Surya Jaya Abadi Perkasa	0.44 (*de minimis*)	12/31/1998–01/31/2001
PT Indo Evergreen Agro Business Corp	5.16	08/05/1998–01/31/2001
PT Zeta Agro Corporation	0.02 (*de minimis*)	08/05/1998–01/31/2001

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We will direct the Customs Service to assess the resulting rates against the entered customs values for the subject merchandise on each importer's entries under the relevant order during the review period. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of the subject merchandise for which the importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.50 percent).

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain preserved mushrooms from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Dieng/Surya Jaya, Indo Evergreen and Zeta will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent. This rate is the ''All Others'' rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 6, 2001.

Faryar Shirzad,

Assistant Secretary for International Trade.

Appendix—List of Issues

Dieng Djaya and Surya Jaya

1. Use of Adverse Facts Available for Dieng
2. Calculation of a Single Weighted-Average Cost
3. Dieng's and Surya Jaya's Reported Can Cost
4. General Expenses and Application of Weighted-Average Financial Ratios
5. Classification of U.S. Sales Through an Affiliated Trading Company

Zeta

6. Packing Expenses
7. Reported Quantity of Waste
8. Sale of Compost and Casing Soil
9. Allocation of Costs Based on Fancy and Non-Fancy Mushrooms
10. Warranty Expenses
11. Home Market Credit Expense

Indo Evergreen

12. Home Market Credit Expenses
13. Warranty Expenses on U.S. sales
14. Allocation of Shrinkage Costs
15. Sales of Compost and Casing Soil as an Offset to Cost of Production
16. Packing Cost
17. Selling, General and Administrative Expenses

[FR Doc. 01–17626 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070201B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife (WDFW) has submitted a Fisheries Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Snake River (SR) steelhead under the Endangered Species Act (ESA). The FMEP specifies the future management of inland recreational fisheries potentially affecting the SR steelhead in the State of Washington. This document serves to notify the public of the availability of the FMEP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft FMEP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on August 13, 2001.

ADDRESSES: Written comments and requests for copies of the draft FMEP should be addressed to Debbie Martin, Sustainable Fisheries Division, Hatchery and Inland Fisheries Branch, 10215 West Emerald Street, Suite 180, Boise, ID 83704 or faxed to 208/378–5699. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Debbie Martin, Boise, ID at phone number 208/321–2959 or e-mail: *debbie.martin@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Snake River steelhead (*Oncorhynchus mykiss*) Evolutionarily Significant Unit (ESU).

Background

WDFW has submitted to NMFS an FMEP for inland recreational fisheries potentially affecting listed adults and juveniles of the SR steelhead ESU. These include all freshwater fisheries managed under the sole jurisdiction of the State of Washington occurring within the boundaries of the SR steelhead ESU including the anadromous portions of the Snake River mainstem and tributaries, from the mouth upstream to the Washington-Oregon border. The objective of the fisheries is to harvest known, hatchery-origin steelhead, hatchery spring and fall chinook and other fish species in a manner that does not jeopardize the survival and recovery of the listed SR ESU. All steelhead fisheries included in this FMEP will be managed such that only hatchery-produced adult steelhead that are adipose fin clipped may be retained. Impact levels to the listed SR steelhead ESU are specified in the FMEP. Population risk assessments in the FMEP indicate the extinction risk for the listed ESU under the proposed fishery impact levels to be low. A variety of monitoring and evaluation tasks are specified in the FMEP to assess the abundance of steelhead, determine fishery effort and catch of steelhead, and angler compliance. WDFW will annually conduct a wild population status and a review of the fisheries within the provisions of the FMEP. WDFW will conduct, at a minimum of every 5 years, a comprehensive review to evaluate the effectiveness of the FMEP.

As specified in the July 10, 2000, ESA 4 (d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an FMEP if it meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4 (d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead 4 (d) rule.

Dated: July 6 , 2001.

Phil Willliams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–17576 Filed 7–12–01; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for July 19, 2001 at 10:00 a.m., in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, July 2, 2001.

Charles H. Atherton,

Secretary.

[FR Doc. 01–17513 Filed 7–12–01; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Petition HP 01–3 Requesting a Ban on Use of Chromated-Copper-Arsenate (CCA) Treated Wood in Playground Equipment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a submission that contains a request that the Commission ban use of chromated-copper-arsenate (CCA) treated wood in playground equipment. This request has been docketed as petition under number HP 01–3 under the Federal Hazardous Substances Act (FHSA). The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by September 11, 2001.

ADDRESSES: Comments on the petition, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned ''Petition HP 01–3, Petition for Ban on Use of CCA Treated Wood in Playground Equipment.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the Environmental Working Group (EWG) and the Healthy Building Network (HBN) requesting that it issue a ban on use of chromated-copper-arsenate (CCA) treated wood in playground equipment. The petitioners assert that a ban is necessary because ''[r]ecent research has shown that arsenic is more carcinogenic than previously recognized, that arsenic is present at significant concentrations on CCA-treated wood and in underlying soil, that the health risks posed by this wood are greater than previously recognized, and that past risk assessments were incomplete.''

The Commission is docketing the request for a ban as a petition under provisions of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278.

The submission also requests that the Commission review the safety of CCA-treated wood for general use. This request has not been docketed as part of the petition because this action does not require rulemaking. (The request for a review will be considered separately by the CPSC's Office of Hazard Identification and Reduction.)

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer

Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: July 9, 2001.

Todd A. Stevenson,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 01–17501 Filed 7–12–01; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Personnel Security Investigation Projection for Industry Survey; DSS Form 232; OMB Number 0704–0417.

Type of Request: Reinstatement.

Number of Respondents: 11,000.

Responses per Respondent: 1.

Annual Responses: 11,000.

Average Burden per Response: 75 minutes.

Annual Burden Hours: 13,750.

Needs and Uses: Under the National Industrial Security Program (NISP), the Defense Security Service (DSS) is responsible for conducting personnel security investigations (PSIs) of employees of those cleared contractor entities under its security cognizance. The execution of the DSS Form 232 is an essential factor in projecting the needs of cleared contractor entities for PSIs. This collection of information requests the voluntary assistance of the Facility Security Officer to provide projections of the numbers and types of PSIs. The data will be incorporated into DSS budget submissions.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 6, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–17508 Filed 7–12–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board

AGENCY: Department of the Army, DOD.

ACTION: Notice of request for nominations.

SUMMARY: Section 302 of Public Law (Pub. L.) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for five (5) appointments or reappointments to two-year terms that will begin January 1, 2002.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary of the Army (Civil Works) (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of Pub. L. 99–662. The substance of those provisions is as follows:

a. *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in Section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) *Carriers and Shippers.* The law uses the terms ''primary users and shippers.'' Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) *Geographical Representation.* The law specifies ''various'' regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Pub. L. 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lowe Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on ''inland'' ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the

selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. *Nomination.* Reflecting preceding selection criteria, the current representation by the five (5) Board members whose terms expire December 31, 2001 is one member representing region 1, two members representing region 2, one member representing region 3, and one member representing region 5. Also, these Board members represent three carriers, one shipper, and one shipper/carrier. Three (3) of the five members whose terms expire December 31, 2001, are eligible for reappointment. Nominations to replace Board members whose terms expire December 31, 2001, may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented;

(2) State whether the nominee is representing carriers, shippers or both;

(3) Provide information on the nominee's personal qualifications;

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed. Nominations received in response to last year's **Federal Register** notice, published on July 18, 2000, have been retained for consideration. Renomination is not required but may be desirable.

Deadline for Nominations. All nominations must be received at the address shown above no later than August 31, 2001.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–17615 Filed 7–12–01; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Feasibility Report and Environmental Impact Statement/Environmental Report (DFR/DEIS–EIR) for the Pine Flat Dam, Fish and Wildlife Habitat Restoration Investigation, California

AGENCY: U.S. Army Corps of Engineers. DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, in coordination with the Kings River Conservation District and Kings River Water Association, have prepared a DFR/DEIS–EIR for the Pine Flat Dam, Fish and Wildlife Habitat Restoration Investigation. This investigation proposes to restore and protect the ecosystem for fish and wildlife resources in Pine Flat Lake, and in and along the lower Kings River by improving the fishery habitat; increasing the fishery survival rate; increasing riparian, shaded riverine aquatic (SRA), and oak woodland habitats; and reestablishing native historic plant and wildlife communities. This DFR/DEIS–EIR is being made available for a 45-day public comment period. All comments should be submitted on or before August 28, 2001.

FOR FURTHER INFORMATION CONTACT: To obtain additional information related to this Report, interested persons are invited to contact the following: Mr. David Tedrick, Biological Sciences Environmental Manager, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, (916) 557–7087 or (916) 557–5138 (FAX), *dtedrick@spk.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Report Availability. Printed copies of the DFR/DEIS–EIR are available for public inspection and review at the following locations:

U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814–2922

Kings River Conservation District, 4886 E. Jensen Avenue, Fresno, CA 93725

Fresno County Library, Main, 2420 Mariposa, Fresno, CA 93721

Fresno County Library, Clovis Branch, 1155 5th Street, Clovis, CA 93611

Fresno County Library, Fig Garden Branch, 3071 W. Bullard, Fresno, CA 93711

Fresno County Library, Sunnyside Branch, 5562 E. Kings Canyon Road, Fresno, CA 93727

Reedley Public Library, 1027 E Street, Reedley, CA 93654

Sanger Public Library, 1812 7th Street, Sanger, CA 93657

2. Commenting. Comments received in response to this report, including names and addresses of those who comment, will be considered part of the public record on this proposed action. Comments submitted anonymously will be accepted and considered. 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.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–17614 Filed 7–12–01; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 11, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of

Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 9, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: International Adult Literacy and Lifestyle Skills Survey.

Frequency: One time.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 2,320.

Burden Hours: 5,140.

Abstract: The International Adult Literacy and Lifeskills Survey (IALL) will collect internationally comparable information on the literacy and numeracy performance of adults from around the world. The IALL will be administered in the general household population aged 16–65 and in selected federally-funded adult education programs. The IALL household assessment will provide a detailed picture of the literacy and numeracy skills of U.S. adults compared to adults from other countries. The IALL adult education program assessment will show the literacy skills of the adults enrolled in adult education programs and how they differ from the U.S. general population and international populations.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy.Axt@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.

[FR Doc. 01–17523 Filed 7–12–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies whose applications to the Secretary for initial or renewed recognition or request for an expansion of scope will be reviewed at the Advisory Committee meeting to be held on December 10–11, 2001.

Where Should I Submit My Comments?

Please submit your written comments by August 27, 2001 to Carol Griffiths, Chief, Accrediting Agency Evaluation, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, 1990 K Street, NW., 7th Floor, Room 7105, Washington, DC 20006–8509, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity To Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies. The Criteria are regulations found in 34 CFR part 602 (for accrediting agencies) and in 34 CFR part 603 (for State approval agencies).

We will also include your comments in the staff analyses we present to the Advisory Committee at its December 2001 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by August 27, 2001. In all instances, your comments about agencies seeking initial or continued recognition or request for an expansion of scope must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

What Agencies Are on the Agenda for the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed during the December 2001 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Commission on Massage Therapy Accreditation (Requested scope of recognition: the accreditation of institutions and programs that award

postsecondary certificates, diplomas, and degrees in the practice of massage therapy.)

Petitions for Renewal of Recognition

1. Accrediting Association of Bible Colleges, Commission on Accreditation (Current scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of Bible colleges and institutes offering undergraduate programs.)

2. American Academy for Liberal Education (Current scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of institutions of higher education and programs within institutions of higher education that offer liberal arts degrees at the baccalaureate level or a documented equivalency.)

3. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education (Current scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'' status) of programs for the preparation of physical therapists and physical therapist assistants. Requested scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of physical therapist education programs leading to the first professional degree at the master's or doctoral level and physical therapist assistant education programs at the associate degree level, including the use of distance education.)

4. American Veterinary Medical Association, Council on Education (Current scope of recognition: The accreditation and preaccreditation (''Reasonable Assurance'') of programs leading to professional degrees (D.V.M. or D.M.V.) in veterinary medicine.)

5. Association for Clinical Pastoral Education, Inc., Accreditation Commission (Current scope of recognition: The accreditation of clinical pastoral education (CPE) centers and CPE and supervisory CPE programs.)

6. Commission on Collegiate Nursing Education (Current scope of recognition: The accreditation of nursing education programs at the baccalaureate and graduate degree levels.)

7. Distance Education and Training Council, Accrediting Commission (Current scope of recognition: The accreditation of private and non-private distance education institutions offering non-degree and associate, baccalaureate, and master's degree programs primarily through the distance learning method. Requested scope of recognition: The accreditation of private and non-private distance education institutions offering non-degree and associate, baccalaureate, master's, and first professional degree programs primarily through the distance learning method.)

8. National League for Nursing Accrediting Commission (Current scope of recognition: The accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs.)

Petition for an Expansion of Scope

1. Accrediting Council for Continuing Education and Training (Current scope of recognition: The accreditation of institutions of higher education that offer non-collegiate continuing education programs. Requested scope of recognition: The accreditation of institutions of higher education that offer non-collegiate continuing education programs and occupational associate degrees (Associate in Occupational Studies (A.O.S) and Associate in Applied Science (A.A.S.))

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, 1990 K Street, NW., 7th Floor, Room 7105, Washington, DC 20006–8509, telephone (202) 219–7011 between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, until November 16, 2001. They will be available again after the December 10–11 Advisory Committee meeting. An appointment must be made in advance of such inspection or copying.

Authority: 5 U.S.C. Appendix 2.

Dated: June 27, 2001.

Maureen A. McLaughlin,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 01–17536 Filed 7–12–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Science; Energy Biosciences Program, et al.; Extension of Due Date for Notices Inviting Grant Applications

AGENCY: Department of Energy (DOE).

ACTION: Extension of due dates for notices inviting grant applications.

The Office of Science (SC), U. S. Department of Energy (DOE), hereby extends the due dates for the following notices:

Notice 01–15: Energy Biosciences Program.

Published in FR, Vol. 66, No. 2, pages 356–357, January 3, 2001.

The deadline for formal applications has been extended to July 13, 2001.

Notice 01–24: Theoretical Research in Plasma and Fusion Science.

Published in FR, Vol. 66, No. 61, pages 17165–17167, March 29, 2001.

The deadline for formal applications has been extended to July 13, 2001.

Notice 01–25: Development of Diagnostic Systems for Magnetic Fusion Energy Sciences.

Experiments Published in FR, Vol. 66, No. 78, pages 20442–20443, April 23, 2001.

The deadline for the Letter-of-Intent has been extended to July 27, 2001.

The deadline for formal applications has been extended to August 31, 2001.

Notice 01–26: Program for Ecosystem Research (PER).

Published in FR, Vol. 66, No. 97, pages 27636–27638, May 18, 2001.

The deadline for preapplications has been extended to August 2, 2001.

The deadline for formal applications has been extended to September 13, 2001.

FOR FURTHER INFORMATION CONTACT:

Notice 01–15: Energy Biosciences Program

Ms. Pat Snyder, Chemical Sciences, Geosciences and Biosciences Division, Office of Basic Energy Sciences, SC–143, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2873; E-mail *pat.snyder@science.doe.gov.*

Notice 01–24: Theoretical Research in Plasma and Fusion Science

Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

Magnetohydrodynamics and Stability: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address, rostom.dagazian@science.doe.gov.

Confinement and Transport: Curt Bolton, Research Division, SC–55, Telephone: (301) 903–4914, or by Internet address, curt.bolton@science.doe.gov.

Edge and Divertor Physics: Walter Sadowski, Research Division, SC–55, Telephone: (301) 903–4678, or by Internet address, walt.sadowski@science.doe.gov.

Plasma Heating and Non-inductive Current Drive: Walter Sadowski,

Research Division, SC–55, Telephone: (301) 903–4678, or by Internet address, walt.sadowski@science.doe.gov.

Innovative Confinement Concepts: Steve Eckstrand, Research Division, SC–55, Telephone: (301) 903–5546, or by Internet address, steve.eckstrand@science.doe.gov.

Atomic and Molecular Processes in Plasmas: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address, michael.crisp@science.doe.gov.

Notice 01–25: Development of Diagnostic Systems for Magnetic Fusion Energy Sciences Experiments

Darlene Markevich, SC–55 GTN, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4920, or by e-mail address, darlene.markevich@science.doe.gov. Or contact John Sauter, SC–55 GTN, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone 301–903–3287, or by e-mail address, john.sauter@science.doe.gov.

Notice 01–26: Program for Ecosystem Research (PER)

Dr. Jeffrey S. Amthor, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2507, e-mail: Jeff.Amthor@science.doe.gov, fax: (301) 903–8519.

Issued in Washington DC on July 3, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–17547 Filed 7–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 01–25–NG, 01–27–NG, 01–26–NG, 01–30–NG, 01–14–NG, 01–29–NG, 01–33–NG, 01–31–NG, 01–34–NG]

Office of Fossil Energy; Pan-Alberta Gas (U.S.) Inc.; et. al.; Orders Granting and Amending Authority to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2001, it issued Orders granting and amending authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 9, 2001.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting and Amending Import/Export Authorizations

[DOE/FE authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Import volume	Export volume	Comments
1688	06–07–01	Pan-Alberta Gas (U.S.) Inc.; 01–25–NG.	730 Bcf		Import from Canada beginning on July 4, 2001, and extending through July 3, 2003.
1689	06–13–01	Dartmouth Power Associates Limited Partnership; 01–27–NG.	11.68 Bcf		Import from Canada beginning on May 7, 2001, and extending through May 6, 2003.
1690	06–13–01	Pawtucket Power Associates Limited Partnership; 01–26–NG.	10.584 Bcf		Import from Canada beginning on May 31, 2001, and extending through May 30, 2003.
1691	06–21–01	AEC Marketing (USA) Inc.; 01–30–NG	200 Bcf		Import from Canada beginning on June 30, 2001, and extending through June 29, 2003.
1677–A	06–21–01	AltaGas Marketing (U.S.) Inc.; 01–14–NG.		15 Bcf	Amendment to Import authority to include exports to Canada, over a two-year term beginning on the date of first delivery.
1692	06–25–01	Cascade Natural Gas Corporation; 01–29–NG.	100 Bcf		Import from Canada beginning on July 1, 2001, and extending through June 30, 2003.
1693	06–25–01	Dynegy Power Marketing, Inc.; 01–33–NG.	600 Bcf	330 Bcf	Import a combined total from Canada and Mexico, and export a combined total to Canada and Mexico beginning on June 25, 2001, and extending through June 24, 2003.
1695	06–26–01	Coral Canada US Inc.; 01–31–NG	350 Bcf	350 Bcf	Import and export from and to Canada, over a two-year term beginning on the date of first delivery.
1696	06–28–01	Sithe/Independence Power Partners, LP; 01–34–NG.	60 Bcf		Import from Canada beginning on July 1, 2001, and extending through June 30, 2003.

[FR Doc. 01–17548 Filed 7–12–01; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–383–000]

Raton Gas Transmission Company; Notice of Filing

July 9, 2001.

Take notice that on June 12, 2001, Raton Gas Transmission Company. (RGT), P.O. Box 308, Raton, New Mexico 87740, filed an abbreviated application for a temporary emergency certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, 15 U.S.C. 717f(c), and Part 157 the Commission's Rules and Regulations.

RGT requests an immediate temporary certificate authorizing RGT to transport up to 6290 Dth/d of natural gas for the City of Las Vegas, New Mexico (the City). In the alternative, RGT requests the Commission to grant to RGT and Zia Natural Gas Company, a division of Natural Gas Processing Company (Zia), a waiver of any and all Commission regulations as may be required to allow the City to transport its own gas supplies through Zia's capacity on RGT and that portion of the Colorado Interstate Gas Company (CIG) capacity held by RGT for its customers.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 30, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–17544 Filed 7–12–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 344 California]

Southern California Edison; Notice Soliciting Applications

July 9, 2001.

On April 24, 1998, the Southern California Edison Company, licensee for the San Gorgonio Nos. 1 and 2 Hydroelectric Project No. 344, filed a notice of intent to file an application for a new license, pursuant to Section 15(b)(1) of the Federal Power Act (Act). The original license for Project No. 344 was issued effective May 1, 1983 and expires April 26, 2003. The project occupies lands of the United States within the San Bernardino National Forest.

The project is located on the San Gorgonio River, in San Bernardino County, California. The principal project works consist of: (a) Two diversion dams; (b) concrete-lined canals; (c) two water tanks; (d) two forebays; (e) two penstocks; (f) two powerhouses with a total installed capacity of 2,440 kilowatts, (g) two switchyards; (h) a transmission line; and (i) appurtenant facilities.

The licensee did not file an application for new license which was due by April 26, 2001. Pursuant to Section 16.25 of the Commission's Regulations, the Commission is soliciting applications from potential applicants other than the existing licensee. This is necessary because the deadline for filing an application for new license and any competing license applications, pursuant to Section 16.9 of the regulations, was April 26, 2001, and no other applications for license for this project were filed.

The licensee is required to make available certain information described in Section 16.7 of the regulations. For more information from the licensee contact Mr. Walt Pagel, Southern California Edison Company, 300 North Lone Hill Avenue, San Dimas, CA 91773 or (909) 394–8720.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) May apply for a license under part I of the Act and part 4 (except Section 4.38) of the Commission's Regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of Sections 16.8 and 16.10 of the Commission's Regulations.

Questions concerning this notice should be directed to Tim Looney at (202) 219–2852 or by email at *timothy.looney@ferc.fed.us.*

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–17543 Filed 7–12–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–124–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

July 6, 2001.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company, Commonwealth Edison Company, Exelon Generation Company, LLC

[Docket No. EC01–124–000]

Take notice that on June 29, 2001, PECO Energy Company (PECO Energy), Commonwealth Edison Company (ComEd), and Exelon Generation Company, LLC (Exelon Generation) tendered for filing a joint application for authorization for PECO Energy and ComEd to transfer to Exelon Generation service agreements under PECO Energy's and ComEd's wholesale power sales tariffs.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Communications Company

[Docket Nos. ER95–1586–011, EL96–17–005 and OA96–184–008]

Take notice that on June 29, 2001, Citizens Communications Company (Citizens) tendered for filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's April 30, 2001 order in the above-referenced proceedings, certain tariff and rate schedule sheets with respect to its Vermont Electric Division's open access transmission tariff (FERC Electric Tariff First Revised Volume No. 4, Second Revised Sheet Nos. 139, 144 and 148), and Rate Schedule FERC No. 28. To comply with this order, Citizens filed these tariff and rate schedule sheets under the name of Citizens Utilities Company, and

requested an effective date of December 31, 2001.

A copy of this filing was served on the parties on the official service list in the above-referenced proceedings.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER01–2491–000]

Take notice that on July 2, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and ExxonMobil Refining & Supply Co.

Entergy Services requests that the service agreements become effective by June 14, 2001.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation

[Docket No. ER01–2492–000]

Take notice that on July 2, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing two service agreements with Enron Power Marketing, Inc. for transactions exceeding one year in length by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies).

AEPSC respectfully requests waiver of notice to permit these service agreements to be made effective on or prior to July 1, 2001.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Company

[Docket No. ER01–2493–000]

Take notice that on July 2, 2001, Central Maine Power Company (CMP), tendered for filing with the Federal Energy Regulatory Commission (FERC), in accordance with section 1.18 of the settlement agreement approved in Docket Nos. ER00–26–000, et al., an informational filing containing the data used to update the formula rates in its open access transmission tariff. The charges associated with the updated data took effect June 1, 2001.

Copies of this filing were sent to FERC Staff and the Maine Public Utilities Commission.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Bethlehem Steel Corporation

[Docket No. ER01–2494–000]

Take notice that on July 2, 2001, Bethlehem Steel Corporation (Bethlehem) tendered for filing under Section 205 of the Federal Power Act an umbrella Service Agreement For Short-Term Sales between Bethlehem and PSEG Energy Resources & Trade LLC. The umbrella service agreement provides for sales of energy and capacity under Bethlehem's market-based rate schedule.

Bethlehem requests an effective date for the umbrella service agreement of June 1, 2001.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER01–2495–000]

Take notice that on July 2, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and Allegany Limited Partnership for a 2 MW internal combustion generating facility located in the Town of Carrollton, Cattaraugus County, New York, dated as of June 29, 2001. The filing has been designated by the New York Independent System Operator as FERC Electric Rate Schedule No. 311 and Niagara Mohawk has asked for approval of same as a Service Agreement.

Niagara Mohawk requests an effective date of July 13, 2001.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17541 Filed 7–12–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 9, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12056–000.

c. Date Filed: June 25, 2001.

d. *Applicant:* Trinity River Authority of Texas.

e. *Name of Project:* Livington Dam Project.

f. *Location:* The proposed project would be located on an existing dam owned by the applicant, on the Trinity River, in San Jacinto, Polk, Walker, and Trinity Counties, Texas. The project would not utilize any federal facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Danny F. Vance, General Manager, Trinity River Authority of Texas, 5300 South Collins Street, P.O. Box 60, Arlington, TX 76010, (817) 467–4343.

i. *FERC Contact:* Robert Bell at (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

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. Comments, motions to intervene, and protests may be electronically filed via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/efi/doorbell.htm.* Please include the project number (P–12056–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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 that resource agency.

k. *Competing Application:* Project No. 11997–000, Date Filed: April 23, 2001, Due Date: August 7, 2001.

l. *Description of Project:* The proposed project would consist of: (1) The existing 14,400-foot-long Livingston Dam, varying in height from 45 to 90 feet, (2) the existing reservoir having a surface area of 83,000 acres with a storage capacity of 1,750,000 acre-feet and normal water surface elevation of 131 feet msl, (3) a proposed 800-foot-long, 250-foot-wide, 25-foot-deep headrace canal, (4) a proposed 1,000-foot-long, 45-foot-high earth embankment, (5) a proposed intake structure, (6) four proposed 450-foot-long, two 15.5-foot-diameter and two at 19-foot-diameter steel penstocks, (7) a proposed powerhouse containing four generating units having a total installed capacity of 50 MW, (8) a proposed 2,000-foot-long, 135-foot-wide, 69-foot-deep tailrace canal, (9) a proposed 2-mile-long, 138 kV transmission line, and (10) appurtenant facilities.

The project would have an annual generation of 178 GWh.

m. *Locations of the application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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. 01–17542 Filed 7–12–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $6,672,934, plus accrued interest, in refined petroleum overcharges obtained by the DOE pursuant to a remedial order OHA issued to Hudson Oil Company, Inc., Case No. VEF–0011. The OHA has tentatively determined that the funds will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V.

DATES: Comments must be filed in duplicate on or before August 13, 2001.

ADDRESSES: Comments should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0107. All comments should display a reference to Case No. VEF–0011.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr. Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW.,

Washington, DC 20585–0107, (202) 287–1562, richard.cronin@hq.doe.gov.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $6,672,934, plus accrued interest, obtained by the DOE pursuant to a Remedial Order OHA issued to Hudson Oil Company, Inc. (Hudson) and Hudson Refining Company, Inc. (Hudson Refining), on March 15, 1985. Under the Remedial Order, Hudson and Hudson Refining were found to have violated the federal petroleum price regulations involving the sale of refined petroleum products during the relevant audit periods.

The OHA has proposed to distribute the Remedial Order funds in a refund proceeding described in the Proposed Decision and Order. Purchasers of motor gasoline from Hudson, Hudson Refining or its affiliated firms will have the opportunity to submit refund applications. Refunds will be granted to applicants who satisfactory demonstrate that they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the Hudson-affiliated firms during the relevant audit period.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submission, within 30 days of the publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal Holidays, in Room 7132 (the public reference room), 950 L'Enfant Plaza, Washington, DC.

Dated: July 5, 2001.

George Breznay,

Director, Office of Hearings and Appeals.

Department of Energy,
Washington, DC, July 5, 2001.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Hudson Oil Company, Inc.
Date of Filing: March 20, 1995
Case Number: VEF–0011

On March 20, 1995, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to an OHA Remedial Order issued to Hudson Oil Company, Inc. (Hudson) and Hudson Refining Company, Inc. (Hudson Refining). *See Hudson Oil Company, Inc.,* 12 DOE ¶ 83,035 (1985). In accordance with the provisions of the procedural regulations at 10 CFR Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order.

I. Background

ERA audits of Hudson, a retailer with headquarters in Kansas City, Kansas and Hudson Refining, a refiner located in Cushing, Oklahoma, revealed possible violations of the Mandatory Petroleum Price Regulations in Hudson's sales of gasoline during the period of price controls.[1] Subsequently, ERA issued a proposed remedial order (PRO) alleging that Hudson and its affiliated firms had violated the petroleum price regulations. Hudson challenged the PRO before OHA. In our March 15, 1985 Remedial Order, we found that Hudson had violated the price regulations and had overcharged its motor gasoline customers by $10,670,000 during the period June 1979 through August 1979 (refund period). *See Hudson,* 12 DOE at 86,479. Hudson and its affiliates were found to be jointly and severally liable for the overcharge amount.[2] *Id.* at 86,481. On March 20, 1995, the Office of General Counsel filed a Petition for the Implementation of Special Refund Proceeding for the $6,672,934 in funds Hudson has remitted to the DOE.[3]

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (Vickers).

III. Refund Procedures

A. Proposed Standards for the Evaluation of Claims

This section sets forth our proposals for the standards to be used in evaluating refund claims in the Hudson refund proceeding. From our experience with Subpart V proceedings, we expect that refund applicants will fall into the following categories: (i) end-users; (ii) regulated entities, such as public utilities and cooperatives; (iii) refiners, resellers and retailers (collectively referred to as ''resellers'') and (iv) consignees.

In order to receive a refund, each claimant will be required to submit a schedule of its gasoline purchases from Hudson during the refund period. If the gasoline was not purchased directly from Hudson, the claimant must establish that the gasoline originated from Hudson.[4]

In addition, a reseller, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Hudson's regulatory violations. This showing will consist of two distinct elements. First, a reseller claimant will be required to show, through credible, firm-specific data, that it had ''banks'' of unrecouped increased product costs beginning in June 1979 through August 1979. In addition, such a claimant must demonstrate that market conditions would not have allowed those costs to be passed through to its customers. This showing may be made in a comparative disadvantage analysis, which compares the price paid by the applicant with the average price paid for the same product at the relevant level of distribution. *See, e.g., Enron Corp./MAPCO, Inc.,* 27 DOE ¶ 85,018 (1998).

A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the overcharges, or is eligible for a refund of less than the applicable presumption-level amount, will not then be eligible for a presumption-based refund. Instead, such a claimant will receive a refund which reflects the level of injury established in its Application. No refund will be approved if its submission indicates that it was not injured as a result of its gasoline purchases from Hudson.

[1] Hudson and its affiliates operated a widespread retail operation. While information in the available files is incomplete, Hudson gasoline may have been sold by retailers in Virginia, Florida, Pennsylvania, Maryland, New York, West Virginia and Georgia.

[2] The Remedial Order references Hudson Van Oil Company, Hudson Van Oil Company of Kansas City, Inc., Hudson Van Oil Company of Florida, Inc., Hudson Van Oil Company of California, Inc., Hudson Stations, Inc., Wind Stations, Inc., News, Inc. and Hudson Petroleum, Inc. as Hudson affiliates covered in ERA's PRO. *See Hudson*, 12 DOE at 86,483 n.1.

[3] Hudson and Hudson Refining filed for bankruptcy in 1984. In addition to the March 1985 Remedial Order discussed above OHA issued another Remedial Order to Hudson on July 1, 1985, finding that Hudson had violated the price regulations concerning sales of crude oil and was liable for overcharges of $6,380,506. *See Hudson Oil Company*, 13 DOE ¶ 83,022 (1985). ERA's petition requests that we institute a refund proceeding covering both Remedial Orders. However, since Husdon has failed to remit sufficient money to fully comply with the March 1985 Remedial Order, and this Remedial Order was first in time, we will institute a refund proceeding that covers only Hudson's violation of price regulations concerning its sales of motor gasoline detailed in the March 1985 Remedial Order.

[4] Indirect purchasers who establish that their gasoline purchases originated with Hudson will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the Hudson overcharges to its customers. *See Texaco*, 20 DOE ❙ 85,147 at 88,319 n. 39 (1990) (Texaco). As a result, applications from indirect purchasers will generally be considered only after evaluating the applications of their suppliers.

1. Presumptions for Claims Based Upon Hudson Gasoline Purchases

Our general practice is to grant refund on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the period covered by the consent order.

Based on the available ERA workpapers, we estimate that during the period June 1979 through August 1979 Hudson sold 80,207,000 gallons of gasoline. See Schedule II–Q—Summary of allowable cost recoveries at 3. Dividing the recovered overcharge amount of $6,672,934 by this estimated number of gallons sold by Hudson results in a volumetric refund amount (or allocable share) of $0.0832 per gallon. In addition, each successful applicant is entitled to receive a proportionate share of accrued interest.[5]

In order to expedite the processing of applications in this proceeding and to ensure that refund claims are evaluated in the most efficient and equitable manner possible, we propose to use the following presumptions in addition to the volumetric presumption described above.

a. End-Users

End-Users of Hudson gasoline, i.e., consumers, whose use of the gasoline was unrelated to the petroleum business are presumed injured and need only document their purchase volumes from Hudson during the refund period to be eligible to receive a full allocable share.

b. Refiners, Resellers and Retailers Seeking Refunds of $10,000 or Less

Reseller claimants whose allocable share is $10,000 or less, i.e. who purchased 120,192 gallons or less of Hudson gasoline during the refund period will be presumed injured and therefore need not provide a further demonstration of injury, besides documentation of their volumes, to receive its full allocable share.

c. Medium-Range Refiners, Reseller and Retailer Claimants

In lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000.[6] An applicant in this group will only be required to provide documentation of its purchase volumes of Hudson gasoline during the refund period in order to receive a refund of 40 percent of its total volumetric share, or $10,000, whichever is greater.

d. Regulated Firms and Cooperatives

We have determined that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *e.g.,* a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of Hudson gasoline used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or cooperative whose allocable share is greater that $10,000 will also be required to certify that it will pass through any refund received to its customers or member-customers, provide us with a full explanation of how it plans to accomplish that restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund.

e. Spot Purchasers

We propose creation of a rebuttable presumption that a reseller that made only irregular or sporadic, *i.e.,* spot, gasoline purchases from Hudson did not suffer injury as a result of those purchases. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases of Hudson gasoline. In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not sufficiently recouped through draw down of banks. *See Texaco,* 20 DOE at 88,320–21.

f. Consignees

Finally, as in previous cases, we will presume that consignees of Hudson gasoline, if any exist, were not injured by the Hudson overcharges. *See Atlantic Richfield Company,* 17 DOE ¶ 85,069 at 88,153 (1988). A consignee agent is an entity that distributed its products pursuant to an agreement whereby its supplier established the prices to be paid and charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products distributed. This presumption may be rebutted by showing that the consignee's sales volumes and corresponding commission declined due to the alleged uncompetitiveness of Hudson's gasoline pricing practices. *See Gulf Oil Corporation/C.F. Canter Oil Company,* 13 DOE ¶ 85,388 at 88,962 (1986).

B. Refund Application Requirements

To apply for a refund from the Hudson monies paid to the DOE, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[7]

(2) A monthly purchase schedule covering the refund period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its Hudson gasoline purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Hudson refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with Hudson, it should explain this affiliation, including the time period in which it was affiliated;[8]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled with Hudson Oil Company, Inc. and Case No. VEF–0011. Each applicant must submit an original and one

[5] In addition, we propose, as in previous cases, that the minimum refund amount that will be paid to an claimant is $15.00. We have found through our experience that the cost of processing claims for less than $15.00 outweighs the benefits of restitution in these cases. *See, e.g., Texaco*, 20 DOE at 88,320 n. 43.

[6] That is, claimants who purchased between 120,192 gallons and 1,502,404 gallons of Hudson gasoline during the refund period may elect to utilize the presumption. Claimants who purchased more than 1,502,404 gallons from Hudson may elect to limit their claims to $50,000.

[7] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the regulations codified at 10 CFR Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[8] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of Hudson were not injured by the firm's overcharges. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.,* 15 DOE ¶ 85,288 (1987). This is because Hudson presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.,* 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), *reconsideration denied,* 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of Hudson were granted a refund, Hudson would be indirectly compensated from a remedial order fund remitted to settle its own alleged violations.

copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before October 31, 2001, and sent to:

Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by ''representatives,'' including refund filing services, consulting firms, accountants, and attorneys. *See, e.g., Texaco; Starks Shell Service,* 23 DOE ¶ 85,017 (1993); *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Additionally, the OHA reserves the authority to require additional information to be submitted before granting any particular refund in the Hudson proceeding.

C. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Hudson Refund Claims

The Interior and Related Agencies Appropriations Act for FY 1999 amended certain provisions of the Petroleum Overcharge and Distribution and Restitution Act of 1986 (PODRA). These amendments extinguished rights that refund applicants had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Hudson). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. *See Enron Corp./Shelia S. Brown*, 27 DOE ¶ 85,036 at 88,244 (2000) (*Brown*). Congress directed OHA to ''assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants.''Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999, Pub. L. No. 105–277 § 337, 112 Stat 2681, 2681–295 (1998) (language added to PODRA); Brown, 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary to prorate the funds available among the meritorious Hudson claims. However, it could be several years before we know the full value of the meritorious claims and the precise total amount available for distribution. It will be some time before we are able to determine the amount that is available for distribution for each claimant.

We therefore propose the following mechanism. All successful small claimants (refunds under $10,000) will be paid in full. To require small claimants to wait several more years for their refunds would constitute an inordinate burden and would be inequitable. *See Brown*, 27 DOE at 88,244. For all others granted refunds, including reseller claimants who have elected to take presumption refunds, we propose to immediately pay the larger of $10,000 or 50 percent of the refund granted. Once the other pending refund claims have been resolved, the remainder of these Hudson claims will be paid to the extent that it is possible through an equitable distribution of the funds remaining in the petroleum overcharge escrow account.

It Is Therefore Ordered That:

The payments remitted to the Department of Energy by Hudson Oil Company, Inc., pursuant to the remedial order issued on March 15, 1985, will be distributed in accordance with the forgoing Decision.

[FR Doc. 01–17439 Filed 7–12–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100173; FRL–6791–-3]

Oak Ridge National Laboratory/DOE and Waterborne Environmental Inc., and Summitec Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Oak Ridge National Laboratory/ Department of Energy (DOE) and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, have been awarded a contract to perform work for OPP, and access to this information will enable Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, to fulfill the obligations of the contract.

DATES: Oak Ridge National Laboratory/ DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, will be given access to this information on or before July 18, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,''''Regulations and Proposed Rules,'' 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/.

II. Contractor Requirements

Under Contract No. DW-89-93921701, Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc and Summitec Corporation, will perform the following based on the statement of work:

The purpose of this collaborative effort is to assist OPP/EPA in systematically analyzing, evaluating, simulating, and identifying data/ information gaps for pesticides with complex issues from the registrant's submissions to fully characterize the safe manufacture, application, reentry, and residue issues prior to a FIFRA registration or reregistration. Several major tasks have been identified to

support the OPP/EPA mission under the FIFRA mandate.

1. *Risk assessments.* Assess risks of specific pesticides using the best scientific rationale and state-of-the-art information to evaluate adverse effects to exposed human and ecological populations in support of the Food Quality Protection Act (FQPA) and ecological risk assessments conducted under FIFRA. In addition, provide state-of-the-art risk assessment methodologies (i.e., probabilistic risk assessment) as requested.

2. *Fate and transport.* Develop and evaluate environmental fate and transport data and models in support of the Ecological Committee on FIFRA Risk Assessment Methods (ECOFRAM) Guidance. In addition, provide research in areas of uncertainty and sensitivity analyses to advance the use and usefulness of probabilistic techniques in fate and transport modeling.

3. *Geo-spatial analysis.* Provide data analysis, modeling, Geographic Information System (GIS) and software programming support to enhance assessments of potential pesticide transport from crop areas to surface waters and drinking water intake sources. Assess potential impacts of pesticide use at differing spatial scales and resolution.

4. *Computerization of toxicology data.* Systematically compile toxicity data submitted by the registrants into an electronic format. This would enable easy access and effective retrieval of data that would assist in the evaluation of chemicals under current review, and make recommendations to OPP/EPA in identifying data/information gaps for future studies.

5. *Evaluations of complex toxicology studies and issues.* Perform evaluations of difficult and complex toxicology studies, and provide assessments of the overall significance of the findings as they relate to the expected effects and environmental persistence of a chemical. Such studies may include population based dynamics in addition to those specified under Task 1. Evaluations of difficult and complex issues in toxicology will be performed. The Oak Ridge National Laboratory will be exploring the state-of-the-art bio-statistical and dose/response methodologies for hazard assessments, identifying data gaps for research studies, and making recommendations to OPP/EPA for handling data gap issues.

The OPP has determined that access by Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc. and Summitec Corporation, to information on all pesticide chemicals is necessary for the performance of this contract.

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 FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, 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, Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, are 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 Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, until the requirements in this document have been fully satisfied. Records of information provided to Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, will be maintained by EPA Project Officers for this contract. All information supplied to Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, by EPA for use in connection with this contract will be returned to EPA when Oak Ridge National Laboratory/DOE and its subcontractors, Waterborne Environmental, Inc., and Summitec Corporation, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: June 27, 2001.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 01–17632 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6619–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 564–7167 www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed July 02, 2001 Through July 06, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010241, Draft EIS, FHW, RI, Sakonnet River Bridge Rehabilitation or Replacement Project, Portsmouth & Tiverton, Newport County, RI, Due: September 07, 2001, Contact: Daniel J. Berman (401) 528–4541.

EIS No. 010242, Draft EIS, FHW, CA, CA–78/111 Brawley Bypass, Construction of an Expressway from CA–86 to CA–11, City of Brawley, Funding, Imperial County, CA, Due: August 27, 2001, Contact: Jeffrey W. Kolb (916) 498–5037.

EIS No. 010243, Final EIS, FHW, IL, Illinois Route 3 (FAP–14) Relocation, Improved Transportation from Sauget to Venice, Funding, NPDES Permit and COE Section 404 Permit, Madison and St. Clair Counties, IL, Due: August 13, 2001, Contact: Daniel M. Mathis (217) 492–4640.

EIS No. 010244, Final EIS, FHW, NY, NY–120/22, Reconstruction Corridor, from Exits 2 and 3 on I–684 and Old Post Road (PIN–8130.75), Funding, COE Section 10 and 404 Permits, Town of North Castle, Westchester County, NY, Due: August 13, 2000, Contact: H.J. Brown (518) 472–3616.

EIS No. 010245, Final EIS, NRS, WV, Upper Tygart Valley River Watershed Plan, Water Supply Project, Approval and Funding, Randolph and Pocahontas Counties, WV, Due: August 13, 2001, Contact: William J. Hartman (304) 284–7545.

EIS No. 010246, Draft Supplement, BLM, ID, Smoky Canyon Mine Panels B and C, Propose to Mine Phosphate Ore Reserves in the Final Two Mine Panels, National Forest System Lands and Federal Mineral Leases, Caribou National Forest, Permit, Caribou County, ID, Due: September 11, 2001, Contact: Jeffery Cundick (208) 478–6354. The U.S. Department of Interior's Bureau of Land Management and U.S. Department of Agriculture, Forest Service are Joint Lead Agencies for this project.

EIS No. 010247, Final EIS, MMS, LA, AL, MS, FL, Eastern Planning Area

Outer Continental Shelf Oil and Gas Lease Sale 181 (December 2001), Gulf of Mexico, Offshore Marine Environment and Coastal Counties/ Parishes of LA, MI, AL and northwestern FL, Due: August 13, 2001, Contact: Archie Melancon (703) 787–1547.

EIS No. 010248, Draft EIS, USN, HI, Programmatic EIS—Ford Island Development Program, Proposed Consolidation of Selected Operation at Pearl Harbor by Locating and Relocating Certain Activities Ford Island, HI, Due: August 27, 2001, Contact: Stanley Uehara (808) 471–9338.

EIS No. 010249, Draft EIS, COE, CA, Pine Flat Dam Fish and Wildlife Habitat Restoration Investigation, Propose to Restore and Protect the Ecosystem for Fish and Wildlife Resource, King River Basin, Fresno County, CA, Due: August 27, 2001, Contact: David Tedrick (916) 557–7087.

EIS No. 010250, Draft EIS, FRC, MA, CT, Phase III/Hubline Project, Construction and Operation a Natural Gas Pipeline, Maritimes and Northeast Pipeline (Docket No. CPO1–4–000), Algonquin Gas Transmission (Docket No. CP01–5–000) and Texas Eastern Transmission (Docket No. CP01–8–000), MA and CT, Due: September 03, 2001, Contact: Berne Mosley (202) 208–0004.

EIS No. 010251, Final EIS, FTA, CA, Mid-Coast Corridor Mass Transit Improvement Project, Funding, San Diego County, CA , Due: August 13, 2001, Contact: Tim Pennington (415) 744–3116.

Dated: July 10, 2001.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–17627 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6619–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 04, 2001 through June 08, 2001 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–J65337–MT Rating EC2, Cave Gulch Post-Fire Salvage Sale, Harvesting Dead or Dying Trees, Implementation, Helena National Forest, Big Belts Mountain, Lewis and Clark Counties, MT.

Summary: EPA expressed concerns about adverse effects of timber harvest on water quality. EPA indicated that harvest methods and mitigation measures should avoid and minimize further adverse impacts to fire stressed water bodies and recommended additional mitigation, and monitoring to detect effects on water quality.

ERP No. D–AFS–L65232–OR Rating EC2, Deep Vegetation Management Project, Implementation, Ochoco National Forest, Paulina Ranger District, Crook and Wheeler Counties, OR.

Summary: EPA expressed concerns about possible impacts to air and water quality, the limited information on cumulative impacts, and the limited range of alternatives. EPA requests that the final EIS discuss these potential impacts in greater detail.

ERP No. D–AFS–L65369–00 Rating EC2, Boise National Forest, Payette National Forest and Sawtooth National Forest, Forest Plan Revision, Implementation, Southwest Idaho Ecogroup, several counties, ID, Malhaur County, OR and Box Elder County, UT.

Summary: EPA expressed environmental concerns regarding air and water quality impacts and with the discussion regarding alternatives and cumulative impacts.

ERP No. D–BOP–K81025–CA Rating LO, Fresno Federal Correctional Facility Development, Orange Cove, Fresno County, CA.

Summary: EPA had no objections to the project.

ERP No. DS–DOE–A06181–00 Rating EC2, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a Geologic Repository at Yucca Mountain, Updated and Additional Information, Nye County, NV.

Summary: The Supplement updates information about the repository design, but because of its limited scope, the Supplement does not address most of the comments EPA had on the draft EIS. EPA therefore continues to have environmental concerns with the project. EPA also requests additional information to clarify information presented in the Supplement.

ERP No. D1–AFS–J65250–CO Rating LO, Forest Development Trail (FDT) 1135 (Arapaho Ridge Trail), Forest Development Road (FDR) 711.1 and FDR 711.1A Motorized or Non-Motorized Determination and Trailhead Parking Areas Creation at both ends of the Trail, Routt National Forest, Jackson County, CO.

Summary: EPA expressed a lack of objections with the preferred alternative.

Final EISs

ERP No. F–AFS–J65322–MT, Spar and Lake Subunits Forest Health Project, Improvements, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about the lack of information on aquatics monitoring and weed control chemicals to be used in the project area.

ERP No. F–RUS–E39053–KY, Jackson County Lake Project, Implementation, To Provide Adequate Water Supplies for the Projected Residential, Commercial and Industrial Needs, Funding and Possible COE Section 10 and 404 Permits, Jackson County, KY.

Summary: EPA's original environmental concerns remain, especially since other water supply options can address purpose/need goals with lesser adverse (long-term) water quality impacts.

Dated: July 10, 2001.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–17628 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–1028; FRL–6785–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance fora Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1028, must be received on or before August 13, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1028 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' 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/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1028. 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 the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. 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, it is imperative that you identify docket control number PF–1028 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1028. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI 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 identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for

residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience

PP 4F4281 and PP 0F6126

EPA has received pesticide petitions (PP 4F4281 and PP 0F6126) from Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 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 iprodione, 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1- methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidaxolidinecarboxamide and its metabolite,3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine carboxamide in or on the raw agricultural commodity rapeseed (canola) at 1.0 part per million (ppm)(4F4281) and increasing the tolerance in or on the commodity almond hulls to 5.0 ppm (0F6126). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of iprodione in plants is well understood. EPA concluded that the residues of concern in plants are the parent, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide.

2. *Analytical method*. An adequate analytical method, gas liquid chromatography using an electron-capture detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

3. *Magnitude of residues —i. Canola*.

a. *Foliar application*. Residue data were reported for 11 field trials conducted in the major canola production areas of Canada. Most of the trial locations also represent major canola production areas of the United States. Residues ranged from 0.05 ppm to 0.62 ppm.

b. *Seed treatment*. Residue data were reported for 8 field trials conducted in EPA Regions II, V, VII, and XI. The seed were treated with iprodione and planted with equipment customarily used for canola seed. Mature canola seed generated from the treated seed was collected at normal commercial harvest and analyzed. Iprodione residues were non-detectable in all samples. The LOD was estimated to be 0.005 ppm.

c. *Processing*. A canola processing study was found to be adequate by the Agency to support a tolerance on canola. Combined residues do not concentrate in canola meal, crude oil, or refined oil. Food or feed additive tolerances are not necessary.

ii. *Almonds*. A residue study was conducted at five field trial locations in California, the only state with commercial almond production. The product was applied four times as airblast applications using equipment customarily used to apply pesticides to almonds at a nominal rate of 1.0 lb ai/A per application. This represents a rate increase compared to thecurrent label rate of 0.5 lb ai/A per application. All resulting iprodione residues in/on almond nutmeat samples were below the current tolerance of 0.3 ppm. Residues in almond hull samples ranged from 1.6 ppm to 3.9 ppm.

B. Toxicological Profile

1. *Acute toxicity*. A complete battery of acute toxicity studies for iprodione was completed. Iprodione has low acute toxicity. The acute oral toxicity study in the rat resulted in LD_{50} of 3,629 milligrams/kilograms and 4,468 mg/kg for females and the combined sexes, respectively. The acute dermal LD_{50} in both rats and rabbits is > 2,000 mg/kg. The acute inhalation LC_{50} for a four hour exposure to rats is > 5.16 mg/L. No skin or eye irritation or dermal sensitization is produced by iprodione. Based on the results of this study iprodione was placed in toxicity category III.

2. *Genotoxicty*. Mutagenicity studies completed include*Salmonella typhimurium* and *Escherichia coli* reverse mutation (all negative), induction tests with *Escherichia coli*, (all negative), DNA repair test in *Escherichia coli* (negative), DNA damage in *Bacillus subtilis* (positive), Rec assay in *Bacillus subtilis* (negative), mutagenicity in *Saccharomyces cerevisiae* D7 (negative), forward mutation in CHO/HGPRT assay (negative), chromosome aberrations in CHO cells (negative), sister chromatid exchange in CHO cells (negative), *in vivo* micronucleus test (negative), *in vivo* host mediated assay with *Salmonella typhimurium* G46 (negative) and dominant lethal test in male mice (negative). Based on these data, the weight of evidence indicates that iprodione does not pose a mutagenic hazard to humans.

3. *Reproductive and developmental toxicity*. The embryo/fetal toxicity and teratogenicity of iprodione were evaluated in Sprague-Dawley rats at oral (gavage) dose levels of 0, 40, 90 or 200 mg/kg/day by gavage from day 6 through 15 of gestation. Iprodione showed no embryotoxicity or teratogenicity at any of the dose levels examined. Although no maternal effects were detected at any treatment level in the definitive study, dose selection was justified from the pilot study in which maternal toxicity was noted at 120 and 240 mg/kg/day. In addition, an increase in the average number of late resorptions per litter was observed at 240 mg/kg/day. A clear and conservative developmental and maternal NOAEL was observed at 90 mg/kg/day.

The potential effects of iprodione on pregnancy and on parameters of sex differentiation have been investigated in the rat. Iprodione was administered by gavage at dose levels of 0, 20, 120 or 250 mg/kg/day to pregnant female Sprague –Dawley rats on days 6 to 19 of

gestation. Iprodione induced severe maternal toxicity, including mortality, at 250 mg/kg/day. Maternal body weight gain was reduced during the treatment period at 120 and 250 mg/kg/day. Mean fetal bodyweight was reduced at 250 mg/kg/day in both sexes. In the final report of the FQPA Safety Factor Committee, April 14, 1998, EPA concluded that for developmental toxicity, the NOAEL was 20 mg/kg/day and the LOAEL was 120 mg/kg/day based on decreased anogenital distance in the male pups. Aventis CropScience disagrees with EPA's evaluation of the study findings. The effects observed on AGD at 120 mg/kg/day are marginal (4.5% decrease) and of extremely doubtful biological significance considering the presence of substantial maternal toxicity (28% decrease in maternal body weight gain on GD 16–20). Nevertheless, it should be noted that since the completion of the FQPA Safety Factor Committee, April 14, 1998, EPA Dr. Earl Gray published in the January-March 1999 issue of Toxicology and Industrial Health An International Journal, findings from a sex differentiation study conducted with iprodione. Dr. Gray reports no decrease in AGD in male rats when iprodione is administered at 100 mg/kg/day from gestational day 14 to postnatal day 3. EPA's findings support a change in the NOAEL to 100 mg/kg/day. Additionally, EPA has relied and used the data generated by Dr. Gray to regulate the product, vinclozolin. The Agency should handle iprodione in a similar fashion and use the data generated by Dr. Gray at the 100 mg/kg/day dose level to regulate iprodione concerning this endpoint.

The embryo/fetal toxicity and teratogenicity of iprodione were evaluated in rabbits dosed by gavage at levels of 0, 20, 60 or 200 mg/kg/day No treatment-related embryotoxicity or teratogenicity was noted at doses of 20 or 60 mg/kg/day. Even though iprodione at 200 mg/kg/day was too maternally toxic for a complete teratologic evaluation, no malformations were observed in the fetuses examined from this group. The developmental NOAEL was 60 mg/kg/day and the maternal NOAEL was 20 mg/kg/day based on decreases in maternal body weight gain.

In a multi-generation study, iprodione was administered to male and female Sprague–Dawley rats via dietary admixture at dose levels of 0, 300, 1,000 or 2,000/3,000 ppm (for males 18.5, 61.4 and 154.8 mg/kg/day and for females 22.49, 76.2 and 201.2 mg/kg/day, respectively). It was necessary to reduce the high dose from 3,000 to 2,000 ppm following the first mating period of the F1 parents owing to excessive toxicity. No effects on reproductive performance were observed at any of the treatment levels. Parental toxicity, as evidenced by reduced bodyweight, body weight gain and food consumption was observed at dietary levels of 1,000 ppm and higher. Effects on pup viability and pup weight were noted at 2,000/3,000 ppm. The NOAELs for parental and offspring toxicity were 300 ppm and 1,000 ppm, respectively. Based on these data, it is concluded that Iprodione is not a reproductive toxicant.

4. *Subchronic toxicity*. In a dermal toxicity study, rabbits were administered iprodione on the skin at dose levels of 0, 100, 500, and 1,000 mg/kg/day for 21 days. There were no deaths or clinical signs of toxicity and no adverse effects were observed on body weight, food consumption, the skin, liver or kidneys. The NOAEL was 1,000 mg/kg/day, the highest dose tested (HDT).

In a 90–day subchronic feeding study, rats were administered iprodione in the diet at doses of 0, 1,000, 2,000, 3,000, and 5,000 ppm (0, 78, 151, 252, and 355 mg/kg/day for males and 0, 89, 189, 266, and 408 mg/kg/day for females). The NOAEL in this study was 1,000 ppm (78 mg/kg/day for males and 89 mg/kg/day for females). The LOAEL was 2,000 ppm (151 mg/kg/day for males and 189 mg/kg/day for females), based on decreased body weight gain, decreased food consumption and food utilization, organ weight effects, and microscopic lesions in the sex organs.

5. *Chronic toxicity and carcinogenicity*– i. *Non–rodent dog*. In a first chronic feeding study, 6 Beagle dogs/sex/group were administered iprodione in the diet at dose levels of 0, 100, 600 and 3,600 ppm (equivalent to 0, 4.2, 26.6, and 148.9 mg/kg/day) for 12 months. There were no teatment–related for body weight, food consumption, or clinical signs observed in either male or female dogs. In the 3,600 ppm dose group, increases in alkaline phoshatase, SGOT, SGTP, and LDH levels were observed in both male and female dogs. Increases in absolute and relative liver and adrenal weights were observed in both male and female in the 3,600 ppm dose level. Increased erthrocytes with Heinz bodies were observed in the male dogs at both the 600 and 3,600 ppm dose groups. Additionally decreased prostate weights were seen in these same male dogs. A clear NOAEL was established at 100 ppm (4.2 mg/kg/day). The LOAEL was set at 600 ppm based on equivocal effects such as decreased prostate weight and an increased incidence of Heinz bodies in erythrocytes in males.

A second chronic feeding study designed to complement the above study in dogs was conducted at dose levels of 0, 200, 300, 400 and 600 ppm. In this study no clear indications of any toxicological effects were noted with the exception of minor effects seen at the 600 ppm dose group, which consisted of decreased red blood cell parameters. From the results of the two complementary studies, a conservative NOAEL of 400 ppm (17.5 mg/kg/day in males and 18.4 mg/kg/day in females) and a LOAEL of 600 ppm (24.6 mg/kg/day in males and 26.4 mg/kg/day in females) based on depressed blood cell parameters were established.

ii. *Rodent —Rat*. a. *Study A*. In the initial chronic/carcinogenicity study, Charles River outbred CD albino rats were fed diets containing 125, 250 or 1,000 ppm (6.25, 12.5 and 50 mg/kg/day) of Iprodione technical for 24 months. In this study, no treatment-related effects were observed for parameters measured (i.e., body weight, clinical signs, and etc.) No treatment–related tumors were observed in this study. The NOAEL of iprodione in rats was observed to be greater than 1,000 ppm (i.e. >50 mg/kg/day), the HDT. Therefore, the rat chronic/carcinogenicity study discussed below was repeated to comply with EPA guidelines as in the initial study a MTD was not attained.

b. *Study B*. In the second study, Sprague Dawley rats were administered 150, 300, or 1,600 ppm iprodione technical in the diet for 24 months. The NOAEL for chronic toxicity was set at 150 ppm (mean intake of males and females was 7.25 mg/kg/day) and the LEL was 300 ppm (12.4 mg/kg/day for males and 16.5 mg/kg/day for females). The NOEL for carcinogenicity in males in this study was 300 ppm (12.4 mg/kg/day) and the LEL was 1,600 ppm (69 mg/kg/day). There was no indication of carcinogenicity in females at any dose levels.

The following summarizes the findings at the mid and high dose levels in this study:

In the high dose group mean body weight gains were reduced from 13.7% to 16.4% between weeks 0 to 12, 12 to 22, and 0 to 104 of the study in high dose males.

Terminal sacrifice: Increased relative liver weight was noted in males receiving 300 or 1,600 ppm, significantly increased testes weight were recorded at 1,600 ppm and slight increases in relative adrenal and thyroid weights in males were recorded at 1,600 ppm.

Interim sacrifice: An increased incidence of centrilobular hepatocyte

enlargement was seen in males at 300 and 1,600 ppm and an increased incidence of extramedullary haemopoiesis and haemosiderosis was observed in female rats receiving 1,600 ppm. In the adrenals, generalized and/or focal enlargement of cells of the zona glomerulosa was observed in numerous male and female rats treated at 1,600 ppm. A high proportion of rats in this group revealed generalized rarefaction and fine vacuolation of zona fasciculata; only one female in the 300 ppm group showed this latter change. A high proportion of male rats also showed a generalized fine vacuolation of zona reticularis.

Terminal sacrifice: In the testes, interstitial cell hyperplasia was observed at 300 and 1,600 ppm and an increased incidence of atrophy of seminiferous tubules was noted in rats treated with 1,600 ppm. In the epididymides, reduced spermatozoa were noted at 300 and 1,600 ppm and an increased incidence of spermatozoa absent was noted in males treated with 1,600 ppm. An increased atrophy of the prostate was noted at 1,600 ppm. In seminal vesicles, secretory colloid was absent/empty in rats treated with 1600 ppm and reduced secretion was also observed at 300 ppm. In the spleen, the incidence of minimal haemosiderosis was increased amongst female rats treated with 300 or 1,600 ppm. In the adrenals, an increased incidence of either generalized or focal enlargement of cells of zona glomerulosa for males and females treated with 1600 ppm, often with generalized vacuolation of zona fasciculata and zona reticularis for males treated with 1,600 ppm were noted. Generalized vacuolation of zona reticularis was also observed in male rats treated at 300 ppm.

No increase in tumor incidence was noted at interim sacrifice.

Macroscopic examination of animals found dead or sacrificed in extremis did not show an increased incidence of any tumor type. In the high dose group there was an increase in the incidence of both unilateral and bilateral benign interstitial cell tumors in the testes of males. No treatment–related neoplastic lesions were observed in the 150 or 300 ppm dose levels.

iii. *Rodent —Mouse*. a. *Study A*. In the initial study, Carworth CF–1 outbred albino mice were fed diets containing 200, 500, 1,250 ppm (28.6, 71.4 and 178.6 mg/kg/day) of iprodione technical for 18 months. In this study, no treatment–related effects were observed for parameters measured (i.e., body weight, clinical signs, and etc.). No treatment–related tumors were observed in this study. In this study, the NOAEL of Iprodione in mice was greater than 1,250 ppm (i.e. > 178.6 mg/kg/day). Therefore, the mouse life–time feeding study discussed below was repeated to comply with EPA guidelines as in the initial study a MTD was not attained.

b. *Study B*. In the second study (MRID 42825002), iprodione technical was administered at dietary concentrations of 160, 800 or 4,000 ppm to CD–1 mice for 99 weeks. The NOAEL for chronic toxicity was set at 160 ppm (23 mg/kg/day for males and 27 mg/kg/day for the females) and the LEL at 800 ppm (115 mg/kg/day for males and 138 mg/kg/day for females). The NOAEL for oncogenicity in this study was 800 ppm (115 mg/kg/day in males and 138 mg/kg/day in females) and the LEL was 4,000 ppm (604 mg/kg/day in males and 793 mg/kg/day in females).

The following summarizes the findings at the mid and high dose levels in this study:

Over the duration of the study, weight gain was reduced 14% and 11% in high dose males and females respectively. During weeks 18 to 45, weight gain was reduced 44% and 47%, respectively.

Biochemistry investigations at week 52 revealed significant increases in GOT and GPT values in both sexes at 4,000 ppm.

At interim sacrifice, Significantly higher liver weights and slightly higher adrenal weights were noted in animals of both sexes at 4,000 ppm. A decrease in uterine and ovarian weights was also observed at 4,000 ppm although they were not statistically significantly reduced in comparison with the controls. At terminal sacrifice the following organ weight changes were noted at 4,000 ppm: Significant increases in liver weights in both sexes, marginal increases in thyroid weights in both sexes and significantly decreased uterus weights in females. A decrease in ovarian weights was also noted at 4,000 ppm, although the reduction was not statistically significant.

At interim sacrifice, non-neoplastic findings were only observed in mice treated with 4,000 ppm. In the livers of both sexes an increase in the incidence and degree of centrilobular hepatocyte enlargement was observed with increased incidence of centrilobular hepatocyte vacuolation in females. In the adrenals, an increased incidence of hypertrophy of the cells of the zona fasciculata was observed in females. In the testes, generalized vacuolation and hypertrophy of the interstitial cells was observed in most males. In the ovaries, luteinisation of the interstitial cells and absence of corpora lutea were observed.

At terminal sacrifice, the following non-neoplastic lesions were noted: In the liver, single and multiple areas of eosinophilic hepatocytes, focal fat containing hepatocytes and centrilobular hepatocyte enlargement were present more frequently in both sexes treated at 4,000 ppm with minimal centrilobular hepatocyte enlargement in female mice treated with 800 ppm. In male mice receiving 4,000 ppm, pigmented macrophages were more frequently observed. In the testes, an increased incidence of generalized vacuolation and hypertrophy of interstitial cells of the testes were noted in male mice treated with 800 and 4,000 ppm. In the ovaries, luteinisation of the interstitial cells, absence of corpora lutea, arrest of follicular development were more frequently noted in female mice treated with 4,000 ppm. In the stomach, an increased incidence of hyperkeratosis of the non-glandular stomach was noted in male mice treated with 800 and 4,000 ppm. In the spleen, haemosiderosis was more frequent in females treated with 4,000 ppm. In the kidneys amyloidosis/amyloid deposits and cortical scarring were noted in female mice treated with 4,000 ppm.

Microscopic examination of animals found dead, sacrificed in extremis, or killed at termination after 99 weeks revealed an increased incidence of benign and malignant liver cell tumors in both sexes. A slight increase in the incidence of luteomas in the ovaries of females was also noted at 4,000 ppm.

No increased incidence of any other tumor type was recorded.

No treatment–related neoplastic lesions were observed in the 160 or 800 ppm treatment groups.

c. *Conclusion*. The chronic reference dose (RfD) for iprodione should be 0.0725 mg/kg/day based on the NOEL of 7.25 mg/kg/day determined from the rat combined chronic toxicity and carcinogenicity study. Aventis CropScience believes that using an uncertainty factor of 100 to account for inter- and intra-species variations is adequate to protect all population subgroups.

Aventis CropScience have developed a complete and reliable database which demonstrates that pre-and/or postnatal exposure to iprodione does not result in an increased susceptibility to the developing organism in comparison to the adult.

Iprodione has no teratogenic potential, even at maternally toxic dose levels. In addition the results of a recently completed study have confirmed that iprodione has no effects on sex differentiation. An acceptable two generation rat reproduction study indicated that iprodione has no adverse effects on reproductive performance,

fertility, fecundity, sex ratio or ano-genital distance. Effects on pup weight and viability were only noted in the presence of severe parental toxicity.

These studies constitute a very stringent test of developmental and reproductive toxicity because of the types of dosing regimens employed (e.g. MTD throughout the sensitive period of organogenesis), the large numbers of animals examined, and the multiplicity of parameters measured.

The Agency Hazard Identification Review Committee (HIARC) concluded ''based on the weight-of-the-evidence of all available studies, the HIARC concluded that there is no increased susceptibility to rat and rabbit fetuses following *in utero* and/or post natal exposure to iprodione. Additionally, HED also stated that the special prenatal study in rats ...''demonstrated no indication of increased susceptibility. Therefore, based on these statements and available data base for iprodione, a standard 100–fold UF (10–fold for inter–species extrapolation and 10–fold for intra–species variability) is sufficient to assure protection for all population sub–groups, including females of child-bearing age, infants and children, to dietary, residential or occupational exposure to iprodione residues.

iv. *Supplementary information and discussion*. A number of mechanistic studies have been conducted in order to elucidate the mechanism of testicular toxicity and carcinogenicity in the rat and hepatic toxicity and carcinogenicity in the mouse.

a. *Background and introduction*. The HED Carcinogenicity Peer Review Committee (CPRC) met in 1994 and determined that iprodione should be classified a group B2 carcinogen. The CPRC recommended that a low dose quantitative risk assessment for iprodione be estimated from the benign rat interstitial cell tumors of the testes, and also from the mouse male and female liver tumors separately.

In November 1997, HED's Cancer Assessment Review Committee re-affirmed its position for the risk characterization of iprodione on the basis that a definitive mode of action for the formation of either tumor type had not yet been provided.

Aventis CropScience has since produced significant new data to address all the Agency's outstanding issues relative to the induction of rat Leydig cell tumors by iprodione. These data provide a definitive mode of action for the induction of rat Leydig cell tumors and support a move to a MOE (i.e. non–linear) approach for cancer risk assessment for this tumor type. Work has also been conducted on the mechanism of hepatic toxicity and carcinogenicity in the mouse.

b. *Mechanism of Leydig cell toxicity in the rat*. Aventis CropScience contends that a complete evaluation of the carcinogenicity issue indicates that Iprodione is a threshold carcinogen acting through a non-genotoxic mechanism of toxicity. The application of a low dose quantitative risk assessment for Iprodione is inappropriate. These conclusions are based on the available data from the following areas:

(1) *Genetic toxicity of iprodione*. The genotoxicity of iprodione has been assessed in a large number of assays conducted using bacteria, yeast and mammalian cells and whole animals. A single positive result was observed in an outdated and deficient assay designed to assess DNA damage using *Bacillus subtilis*. All other genotoxicity assays, including those conducted *in vivo*, were found to be negative. This considerable body of data indicates that iprodione does not pose a mutagenic hazard to humans. A hormonally-mediated mechanism of carcinogenesis has therefore been investigated. *In vivo* mechanistic studies: Iprodione has recently been shown to decrease plasma testosterone levels significantly in rats in a dose–dependent manner at dose levels analogous to those at which tumors were induced in the rat bioassay (approx. 70 mg/kg/day). Following a single gavage administration of iprodione, plasma testosterone levels were reduced 2 and 4 hours post dosing. Thereafter plasma testosterone levels returned to baseline, presumably as a consequence of the compensatory increase in plasma LH which was significantly increased 2 and 4 hours post dosing (MRID 44729201). This profile of transient hormonal changes mirrors that of the classic testosterone biosynthesis inhibitor ketoconazole.

In previous *in vivo* studies in the rat, detectable hormonal changes have been limited to increases in LH and FSH levels following 14/15 days of iprodione treatment and alterations in the secretion pattern of LH and testosterone following 30–days of treatment (MRID 43535002, 44171903). The rapid reversibility of the hormonal changes observed in the recent study (MRID 44729201) helps to explain the absence of detectable decreases in testosterone levels *in vivo*in previous studies. In the 15–day gavage study, blood sampling was performed 12–14 hours following the final gavage (MRID 43535002). In the 14–day feeding study, blood samples were not taken until mid- to late morning i.e. several hours following the conclusion of the animals' anticipated nocturnal feeding (MRID 44171903). Since, in the recent study, plasma testosterone levels were observed to return to normal approximately 6 hours post dosing (MRID 44729201) it is probable that no significant decreases in circulating testosteronelevels were demonstrated in earlier experiments due to inappropriate sampling times following iprodione administration.

(2) *Combined chronic toxicity/carcinogenicity studies*. Pathologic evidence of a chronic perturbation of steroidogenesis and/or compromised testosterone availability was observed in the rat bioassay. An increased incidence of Leydig cell hyperplasia was observed both at the interim and terminal sacrifices. Other indicators of testosterone deficiency noted at terminal sacrifice included reductions in epididymal spermatozoa, reduced secretion in the seminal vesicles, and decreased weight of seminal vesicles.

Similar effects on steroid hormone producing organs such as the adrenal cortex, testis and ovary have been observed in other subchronic and chronic studies conducted with iprodione in rodents and dogs. Hypertrophy and intracellular accumulation of lipid, most likely due to an interference with cholesterol utilization in steroidogenesis, was observed in the interstitial cells of the mouse ovary and in the zonal fasciculata of the adrenal cortex in rodents and dogs.

(3) *In vitro mechanistic studies*. No clear evidence of competitive binding to the androgen receptor was found for iprodione or its major metabolites.

Iprodione and certain metabolites (RP36112 and RP36115) have been shown to rapidly and reversibly inhibit testosterone secretion from cultures of porcine Leydig cells. Inhibition was found to occur at media concentration of 1–10 ug/ml. No inhibitory effects on testosterone secretion were noted at media concentrations of iprodione or its active metabolites below 1 ug/ml demonstrating a threshold for this effect. Iprodione has also been shown to inhibit testosterone secretion from rat testicular sections *in vitro* at similar media concentration.

The mode of action whereby iprodione and its metabolites (RP36112 and RP36115) modulates steroidogenesis in Leydig cells has been identified using porcine Leydig cell cultures. Iprodione and RP36112 interfere with the active transport of cholesterol substrate into mitochondria while another metabolite RP36115 appears to inhibit steroidogenic enzymes.

(4) *Toxicokinetic study*. Groups of male Sprague Dawley rats received a single oral administration of ^{14}C-iprodione at the nominal rate of 70 mg/kg. Levels of iprodione and its metabolites RP36112 and RP36115 were estimated in the testes and plasma 0.5, 1, 2, 4, 6, 10, 24, and 48 hours post dose.

The results of this study indicate that the changes previously observed in plasma testosterone and LH levels at 70 mg/kg were most likely induced by the presence of RP36112, RP36115, and/or iprodione, which were present in the testes as early as 0.5 hours post dosing. At 2 hours post dosing, when maximal changes in plasma testosterone levels were observed to have occurred, the concentrations of RP36115 and iprodione were already at, or near, peak values in the plasma and testes. These levels were maintained for at least 8 hours, after which the levels rapidly declined to very low concentrations by 24 hours post dosing. It is also noteworthy that the range of concentrations of iprodione and RP36115 achieved in the testes samples by 2 hours post dosing were of the order of 5.6–6.8 ug/g which fall within the range of concentrations known to provide inhibition of testosterone secretion *in vitro* (1–10 ug/ml).

c. *Hepatotoxicity and carcinogenicity in male and female mice*. The development of hepatocellular tumors in mice appeared secondary to hepatic toxicity at a dose level at which body weight gain was severely reduced indicating that the MTD was probably exceeded (over the duration of the study, weight gain was reduced 14% and 11% in high dose males and females respectively. During weeks 18 to 45, weight gain was reduced 44% and 47%, respectively. This severity of the weight gain decrement is compounded by the fact that the livers in these animals weighed more than double their respective controls, i.e., the weight gain decrement is even more serious than the body weights alone would indicate). The animals at the highest dose level, and to a lesser extent, the mid-dose group, exhibited signs of liver toxicity, including increased liver weights, hepatocytic hypertrophy, enlarged eosinophilic hepatocytes, pigmented macrophages, centrilobular necrosis, amyloid deposits and statistically significant increases in levels of the liver enzymes GPT and GOT. Clear NOAELs exist for these effects. In a 14–day toxicity study in male mice, dose levels similar to those at which tumors were observed in the mouse carcinogenicity study induced a number of hepatic changes including the induction of Cytochrome P450 isoenzymes CYP 2B and CYP 3A and cellular proliferation in a similar manner to the well established liver promotor phenobarbital (MRID 44171902). This mechanism is not relevant to humans based on the pharmaceutical use of phenobarbital in humans for over 50 years.

d. *Conclusion*. As demonstrated above, the administration of iprodione to the Sprague Dawley rat results in transient hormonal imbalances *in vivo* (decreased plasma testosterone and increased plasma LH). It is well established that the chronic administration of a number of xenobiotic chemicals which cause similar changes to the hypothalamic-pituitary-gonodal axis result in the development of Leydig cell tumors in highly sensitive species, such as the rat. The dose–response for this type of hormonally–mediated effect is expected to be non–linear

The biochemical basis for this hormonal imbalance is an inhibition of testosterone biosynthesis by iprodione and its active metabolites(s). Testicular concentrations of iprodione, and at least one of its active metabolites, attained *in vivo* are within the range of those demonstrated to inhibit testosterone biosynthesis in Leydig cells *in vitro*. The mode of action whereby iprodione modulates Leydig cell steroidogenesis is *via* a reversible interference with the active transport of cholesterol into the mitochondria of Leydig cells as opposed to vinclozolin and procymidone which interact directly with the androgen receptor. As shown with vinclozolin and procymidone, direct interaction with the androgen receptor leads to marked effects on reproduction systems. However, iprodione does not lead to such marked reproductive effects. In fact, iprodione has no effects on reproductive parameters, sex differentiation, and other parameters measured in these study types.

For iprodione, the male interstitial cell tumors seen only at the high dose in the lifetime rat study was due to mode of action with a clear threshold. This conclusion is based on the following rationale: (i) The tumors were benign and only observed at a dose level at or above the MTD, (ii) the mechanistic toxicological research designed to elucidate the biochemical mode of action described above and (iii) the consensus of scientific experts that benign Leydig cell tumors in the rat are not valid predictors of human disease as will be discussed below.

Furthermore, concerning the testicular tumors (Leydig cell tumors) and as stated in the recent **Federal Register** notice for Vinclozolin April 21, 2000 (65 FR 21427),(FRL–6555–6) ''the relevance of Leydig cell tumors to men should be seen in the light that this is a very rare human tumor and that the precursor change (i.e. Leydig cell hyperplasia) has not been observed in patients treated with flutamide. In addition, the toxicology of cimitidine, an H2-receptor antagonist with anti-androgenic properties results in a size reduction and atrophy of the prostate and seminal vesicles in chronic rat studies. Moreover, an increase in benign Leydig cell tumors, and a decrease in pituitary and mammary tumor incidence were noted; hence a toxicity potential not unlike that of vinclozolin is evident. Despite the fact that over 30 million patients have been treated with cimitidine, this therapeutic agent has been demonstrated to be extremely safe, clearly indicating that the rat Leydig cell tumors have very little relevance for humans.'' A similar conclusion is drawn by other investigators ''Leydig cell tumors of the rat have limited significance because of the fundamental differences in testicular control mechanisms.'' It is therefore concluded that the observed neoplastic changes do not pose a relevant hazard to humans. EPA in the September 1996, Cancer Peer Review Document for vinclozolin, came to the same basic conclusion that the Leydig cell tumors are a very uncommon tumor type in humans which implies the threshold dose for humans would be greater than for rats. EPA based this conclusion on the work performed by Dr. Charles C. Capen (Professor Charles C. Capen, Leydig Cell Tumors: Pathology, Physiology, and Mechanistic Considerations in Rats, The Toxicology Forum, 1994 Annual Summer Meeting, p. 110). Consistent with the data and the advice of the OPP Scientific Advisory Panel and using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified the potent anti- androgen, vinclozolin, as a Group C chemical–possible human carcinogen. The Agency Cancer Peer Review Committee (CPRC) chose an–linear approach margin (MOE) to regulate vinclozolin. More recently, the Agency in its recent **Federal Register** notice of May 26, 2000 (65 FR 34179),(FRL–6588–6) stated the following, ''Vinclozolin is classified as a Group C carcinogen based on Leydig (interstitial testicular) cell tumors in a perinatal rat developmental toxicity study. A nonlinear (MOE) approach was determined to be appropriate based on the weight of the evidence conclusion that tumor induction is via an anti-androgenic effect mechanism.'' The

Agency should handle iprodione in a similar fashion and regulate iprodione via the MOE Approach.

Supporting this position, Aventis CropScience notes, that the joint meeting of the Food and Agriculture Organization of the United Nations (FAO) Panel of Experts on Pesticide Residues and the World Health Organization (WHO) Expert Group on Pesticide Residues determined in 1995 that a risk assessment utilizing a margin of safety approach with an uncertainty factor of 100 applied to the no oberserved adverse effect level (NOAEL) from the chronic rat study was appropriate to provide adequate dietary safety for Iprodione.

Again, Aventis CropScience contends that a complete evaluation of the carcinogenicity issue indicates that iprodione is a threshold carcinogen acting through a non–genotoxic mechanism of toxicity. The application of a low dose quantitative risk assessment for Iprodione is inappropriate.

6. *Animal metabolism*. A general metabolic pathway for iprodione in the rat indicates that biotransformation results in hydroxylation of the aromatic ring, degradation of the isopropylcarbamoyl chain and rearrangement followed by cleavage of the hydantoin moiety. Additionally, structural isomers of iprodione resulting from molecular rearrangement, as well as intermediates in the pathway, were detected.

7. *Metabolite toxicology*. The residues of concern in plants for tolerance setting purposes are the parent, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1- imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide. In animal commodities, tolerances are established on the parent, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, its metabolite 3-(3,5-dichlorophenyl)-2,4- dioxo-1-imidazolidinecarboxamide, and an additional metabolite N-(3,5-dichloro-4-hydroxyphenyl)-ureidocarboxamide.

8. *Endocrine disruption*. In the carcinogenicity studies conducted for iprodione, the primary lesion at the level of the target organs (testes, ovaries & adrenals) is likely to be related to an inhibition of steroid/androgen biosynthesis. The resulting endocrine toxic effect due to iprodione is fairly moderate compared to that produced by potent endocrine disruptors such as Flutamide, Vinclozolin (and other structural analogs) and is insufficiently potent to produce effects on reproduction or development.

The increased incidence in tumors in both rats and mice was only observed when animals were treated at or above the MTD. For all three tumor sites (testis, liver, ovary) tumors only develop on pre–existing non–neoplastic lesions (cell hypertrophy/vacuolation, hyperplasia) and Aventis CropScience concludes that a clear threshold level exist for both non–neoplastic lesions and tumors. Those thresholds are far in excess of those levels of iprodione that the general public would be exposed to. Iprodione is not expected to induce any adverse effects related to endocrine disruption in members of the general population via the consumption of food containing residues of this compound.

C. Aggregate Exposure

1. *Dietary exposure*. Aventis CropScience expects that potential residues resulting from the proposed use of iprodione on canola and the increased application rate on almonds will not significantly affect EPA's exposure and risk assessments for currently registered uses of iprodione.

i. *Food*. Dietary exposures for iprodione were reevaluated by EPA as part of the reregistration process (1998). The lifetime cancer risk from potential iprodione residues in foods with existing tolerances and drinking water was estimated to be 1.8×10^{-6}. This cancer risk corresponds to a dietary exposure of 0.000041 mg/kg/day or 0.2% of the reference dose (RfD). A chronic dietary exposure analysis for iprodione residues in canola only was conducted for the overall population and 0 26 population subgroups, including infants and children, to determine the incremental risk resulting from the proposed use on canola. Chronic exposure estimates from residues in canola only were less than 0.1% of the RfD for all population subgroups examined. The corresponding lifetime cancer risk was estimated to be 9.44×10^{-9} or less for all lifetime population groups. Chronic exposure estimates from residues in almonds only were also less than 0.1% of the RfD for all population subgroups examined. The corresponding lifetime cancer risk was estimated to be 2.23×10^{-8} 8 or less for all lifetime population groups. Thus, the incremental chronic dietary risk resulting from the proposed use on canola and the increased application rate on almonds does not increase the cancer risk to an unacceptable level.

Acute dietary exposure was estimated for the population subgroup of concern, women 13 years of age and older. Utilizing the Tier 3 methodology (Monte Carlo) for acute exposure, margins of exposure (MOEs) up to the 99.9th percentile of exposure for this population subgroup were at least 351 for currently registered crops. Adding residues in canola and residues in almonds that reflect the revised application rate resulted in MOEs of 351 and 366, respectively, at the 99.9th percentile of exposure. The EPA has determined that a MOE of at least 300 is acceptable for iprodione.

ii. *Drinking water*. Iprodione, applied according to labeled use and good agricultural management practices, is predicted and demonstrated to present no significant, if any, concentrations in drinking water sources. Iprodione's physical-chemical properties and actual measured environmental concentrations in field dissipation/monitoring studies provide support for this conclusion.

Five conservative aggregate exposure and risk assessments were conducted by EPA for the Iprodione RED. These risk assessments include combined exposures to iprodione through food and water in the diet: (a) Acute dietary; (b) chronic dietary; (c) cancer; (d) short-term; and (e) intermediate-term risk. EPA concludes in the RED document that residues of iprodione are not expected to exceed the Agency's drinking water level of concern for either acute or chronic exposure. EPA also concluded with reasonable certainty that residues of iprodione in drinking water (when considered along with exposure from food) would not result in unacceptable short-term and intermediate term aggregate human health risk estimates at this time.

Since the completion of the RED, EPA recently issued a Data Call–In requiring the submission of 3,5-dichloroaniline (3,5-DCA)-targeted surface and ground water monitoring studies relating to golf course use of iprodione products. Aventis has since submitted to the Agency an aerobic soil metabolism study and a soil adsorption/desorption study conducted with 3,5-DCA. Risk analyses using these recent data and EPA's standard operating procedures confirm that there is no concern for contamination of drinking water resulting from the use of iprodione products on golf courses.

Aventis CropScience expects that potential residues resulting from the proposed use of iprodione on canola and the proposed application rate increase on almonds will not significantly affect EPA's exposure and risk assessments for drinking water. Most of the use on canola will occur in the states of North Dakota and Minnesota. The amount of product that

will be used on canola is expected to be minimal compared to that used on currently registered crops. The total amount of product used on almonds is not expected to increase significantly.

2. *Non–dietary exposure*. This assessment is not applicable since all residential uses of iprodione products have been cancelled.

D. Cumulative Effects

The Agency has previously noted both structural and toxicological similarities between iprodione, procymidone and vinclozolin. There are clear differences in both the type and magnitude of effects observed after exposure to iprodione in contrast to vinclozolin and procymidone. Vinclozolin and procymidone are known to exert their identical endocrine effects via a blockage of the androgen receptor. By contrast, iprodione has poor binding affinity to the androgen receptor and the primary lesion appears to be a blockage of testosterone biosynthesis and secretion. Subsequently, iprodione only appears to induce transient changes in plasma hormone levels until compensatory mechanisms take effect. Consequently, Aventis CropScience concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable data to indicate that the toxic effects caused by Iprodione would be cumulative with those of any other compound.

E. Safety Determination

1. *U.S. population*. Dietary exposures for iprodione were reevaluated by EPA as part of the reregistration process (1998). The lifetime cancer risk from potential iprodione residues in foods with existing tolerances and drinking water is estimated to be 1.8×10^{-6}. This cancer risk corresponds to a dietary exposure of 0.000041 mg/kg/day or 0.2% of the reference dose (RfD). Chronic dietary exposure to iprodione residues in/on canola only was estimated to be less than 0.1% of the RfD for the general U.S. population and 26 population subgroups. The lifetime cancer risk from potential iprodione residues in canola only was estimated to be 8.27×10^{-9} for the overall U.S. population. For the most highly exposed population subgroup, nonhispanics other than black or white, the cancer risk was estimated to be 9.44×10^{-9}. Chronic dietary exposure to iprodione residues in/on almonds only was also estimated to be less than 0.1% of the RfD for the general U.S. population and 26 population subgroups. The lifetime cancer risk from potential iprodione residues in almonds treated at the increased application rate was estimated to be 1.36×10^{-8} for the overall U.S. population. For the most highly exposed population subgroup, those living in the Pacific region of the U.S., the cancer risk was estimated to be 2.23×10^{-8}. The cancer risk estimates for currently registered crops, drinking water, almonds treated at the proposed increased application rate, and the proposed use on canola are within the range the Agency generally considers negligible for excess life-time cancer risk.

For crops with existing tolerances, acute dietary exposure at the 99.9th percentile for women 13 years of age and older resulted in a MOE of 351. Separate acute exposure analyses conducted for (i) all registered crops including almonds treated at the increased application rate and (ii) all registered crops and canola, resulted in MOEs of 351 and 366, respectively, for this subgroup. Iprodione uses are not expected to impact ground water. Upper bound estimates of iprodione in surface waters from conservative screening models indicate concentrations of a few parts per billion.

Both the chronic and acute dietary exposure assessments clearly demonstrate a reasonable certainty that no harm will result from the use of iprodione on currently registered crops, including almonds treated at the increased application rate, and canola.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of iprodione the available teratology and reproductive toxicity studies and the potential for endocrine modulation by iprodione were considered.

Developmental studies in two species indicate that iprodione has no teratogenic potential, even at maternally toxic dose levels. Maternal and developmental NOAELs and LOAELs were generally comparable indicating no increased susceptibility of developing organisms. In addition the results of a recently completed study have confirmed that Iprodione has no effects on sex differentiation. Multigeneration rodent reproduction studies indicated that Iprodione has no adverse effects on reproductive performance, fertility, fecundity or sex ratio. Effects on pup weight and viability were only noted in the presence of severe parental toxicity.

The mechanism of endocrine modulation associated with iprodione (inhibition of testosterone biosynthesis) appears to be distinct from that of anti-androgens acting at the level of the androgen receptor and may help to explain the lack of adverse effects on reproductive function observed with Iprodione.

Therefore, based upon the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from exposure to residues of iprodione and no additional uncertainty factor is warranted.

The EPA Health Effects Division (HED) determined that the developmental NOAEL for iprodione was relevant only to women of childbearing age and concluded that the developmental NOAEL is not relevant to acute dietary exposures to infants and children. Because no non-developmental acute effects have been identified, there is no acute toxicological endpoint to assess acute dietary risk to infants and children.

Based on the chronic exposure assessment conducted by EPA for uses currently registered, aggregate exposure to iprodione from food utilizes 1.6% of the RfD for non-nursing infants less than 1 year old and less than 1% for all other population subgroups. Chronic dietary exposure to iprodione residues in/on canola only was estimated to be less than 0.1% of the RfD. Chronic dietary exposure to iprodione residues in/on almonds only (treated at the increased application rate) was also estimated to be less than 0.1% of the RfD. EPA generally has no concern for exposures below 100% of the RfD. Since the potential for exposure to iprodione in drinking water is low and there is no risk from non–dietary, non-occupational exposure, the aggregate exposure is expected to be well below 100% of the RfD when accounting for the proposed use on canola and for the increased application rate on almonds. Thus, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to iprodione residues.

F. International Tolerances

A Codex MRL for iprodione on rape seed is established at 0.5ppm. In Canada, PMRA supports the establishment of a MRL of 1.0 ppm for iprodione on canola and a temporary registration was granted. A Codex MRL for iprodione on almonds is established at 0.2 ppm.

[FR Doc. 01–17634 Filed 7–12–01;8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7011–8]

Proposed Past Cost Administrative Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of Westinghouse Electric Corporation Facility, Bloomington, Monroe County, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the ABB/Westinghouse Electric Corporation Plant site in Bloomington, Monroe County, Indiana, with Viacom Inc., f/k/a/ CBS Corporation, f/k/a/ Westinghouse Electric Corporation. The settlement requires Viacom Inc. to pay $940,398.47 to the Hazardous Substance Superfund, which represents 100% of U.S. EPA's documented past costs.

Under the terms of the settlement, Viacom Inc. agrees to pay the settlement amount. In exchange for its payment, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), relating to the Site. In addition, Viacom Inc. is entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Monroe County Public Library in Bloomington, Indiana.

DATES: Comments must be submitted on or before August 13, 2001.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670. Comments should reference the Westinghouse Electric Corporation Facility site, Bloomington, Monroe County, Indiana, and EPA Docket No. V–W–01–C–638, and should be addressed to Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: June 11, 2001.

William E. Muno,

Director, Superfund Division.

[FR Doc. 01–17631 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51973; FRL–6792–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 4, 2001 to June 15, 2001 consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51973 and the specific PMN number, must be received on or before August 13, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51973 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules'', 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/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51973. 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, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. 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, it is imperative that you identify docket control number OPPTS–51973 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified 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 disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51973 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI 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 under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 4, 2001 to June 15,2001, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 32 PREMANUFACTURE NOTICES RECEIVED FROM: 06/04/01 TO 06/15/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0651	06/04/01	09/02/01	CBI	(G) Inks	(G) Polyester acrylate
P–01–0652	06/04/01	09/02/01	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(G) Plant extract
P–01–0653	06/04/01	09/02/01	CBI	(G) Urethane coating	(G) Urethane modified mdi
P–01–0654	06/04/01	09/02/01	CBI	(G) Urethane coating	(G) Urethane modified mdi
P–01–0655	06/04/01	09/02/01	CBI	(G) Urethane coating	(G) Urethane modified mdi
P–01–0656	06/04/01	09/02/01	CBI	(G) Open non-dispersive (thickener)	(G) Polyurethane based thickening agent
P–01–0657	06/05/01	09/03/01	Ciba Specialty Chem. Corp., Colors Division	(G) Textile dye	(G) 2-anthracenesulfonic acid, 4-[[3-(acetylamino)phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-, compd. with substituted amine polymer
P–01–0658	06/05/01	09/03/01	CBI	(G) Toner	(G) Substituted epoxy-modified silicone compound
P–01–0659	06/05/01	09/03/01	Basf Corporation	(S) Uv-printing inks;optical film coating	(G) Substituted alkyl ester acid
P–01–0660	06/07/01	09/05/01	King Industries, Inc.	(S) Synthetic base fluid;additive for lubricants	(G) Alkylated aromatic
P–01–0661	06/07/01	09/05/01	King Industries, Inc.	(S) Synthetic base fluid;additive for lubricants	(G) Alkylated aromatic
P–01–0662	06/07/01	09/05/01	3m Company	(S) Adhesive	(G) Acrylate polymer
P–01–0663	06/08/01	09/06/01	Vulcan Performance Chemicals	(S) Wastewater/sludge treatment	(G) Polymer of cationic quaternary and anionic acid
P–01–0664	06/05/01	09/03/01	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Polytetrahydrofuran, polymer with a diisocyanate, a diamine and an amine
P–01–0665	06/11/01	09/09/01	CBI	(S) Fluorescent brighter for use in cellulosic paper applications	(G) Benzenesulfonic acid, 2,2'-(1,2-ethenediyl)bis[5-[[4-substituted-6-substituted-1,3,5-triazin-2-yl]amino-, sodium salt, compd. with (substituted)oxirane polymer with sorbitol, (substituted)amine and (substituted)triol formate (salt)
P–01–0666	06/12/01	09/10/01	Gaco Western, Inc.	(S) Hypalon activator	(S) Isocyanic acid, polymethylenepolyphenylene ester, 2-(diethylamino)ethanol-blocked
P–01–0667	06/14/01	09/12/01	Specialty Fertilizer Products LLC	(G) Fertilizer dust control coating and agronomic enhancement product	(G) Maleic acid copolymer salt
P–01–0668	06/14/01	09/12/01	Specialty Fertilizer Products LLC	(G) Fertilizer dust control coating and agronomic enhancement product	(G) Maleic acid co-polymer salt
P–01–0669	06/14/01	09/12/01	CBI	(G) Oil and water repellant;water proofing product	(G) Fluorinated copolymer
P–01–0670	06/14/01	09/12/01	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–01–0671	06/15/01	09/13/01	CBI	(G) Polymeric chromphore	(G) Polyalkoxylated aromatic chromophore
P–01–0672	06/15/01	09/13/01	CBI	(G) Polymeric chromphore	(G) Polyalkoxylated aromatic chromophore
P–01–0673	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0674	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0675	06/15/01	09/13/01	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–01–0676	06/15/01	09/13/01	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–01–0677	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0678	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0679	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0680	06/15/01	09/13/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0683	06/15/01	09/13/01	CBI	(G) Resin coating	(G) Urethane acrylate
P–01–0684	06/15/01	09/13/01	Ciba Specialty Chemicals Corporation	(S) Paper pulp retention and drainage aid	(G) Phenolic sulfone reaction products

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 24 NOTICES OF COMMENCEMENT FROM: 06/04/01 TO 06/15/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0479	06/05/01	05/24/01	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsatd., branched and linear, sodium salts
P–00–0544	06/08/01	06/07/01	(G) Hydrofluoroether
P–00–0615	06/12/01	04/28/01	(G) Alkylphenol polyether amine
P–00–0821	06/08/01	05/10/01	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 2-hydroxyethyl 2-propenoate and 2-propenoic acid, compd. with *n,n*-diethylethanamine
P–00–1116	06/07/01	05/21/01	(G) Unsaturated polyester
P–00–1167	06/11/01	05/30/01	(G) Acrylic solution polymer
P–01–0095	06/11/01	05/16/01	(G) Aliphatic urethane
P–01–0106	06/11/01	05/16/01	(G) Hydrogen-functional polysiloxane(s)
P–01–0124	06/05/01	05/21/01	(G) Aromatic amino polyol
P–01–0150	06/06/01	05/22/01	(S) 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione and 1,2-propanediol, 2-ethylhexyl ester
P–01–0185	06/06/01	06/04/01	(G) Fatty acids, tall-oil, reaction products with castor oil and substituted amines
P–01–0244	06/11/01	05/24/01	(G) Co-polymer of acrylic esters
P–01–0273	06/12/01	05/31/01	(G) Alkylarylpolyether salt
P–01–0274	06/12/01	05/31/01	(G) Alkylarylpolyether
P–01–0275	06/12/01	05/31/01	(G) Alkylarylpolyether salt
P–01–0294	06/05/01	05/10/01	(S) Siloxanes and silicones, di-me, di-ph, polymers with vinyl silsesquioxanes, methoxy-terminated
P–01–0295	06/05/01	05/10/01	(S) Siloxanes and silicones, di-ph, polymers with ph silsesquioxanes, sec-butoxy- and [(trimethylsilyl)oxy]-terminated
P–01–0305	06/05/01	05/02/01	(G) Polyureapolyurethane polyol
P–01–0342	06/14/01	05/14/01	(G) Metalorganics
P–01–0365	06/11/01	06/05/01	(G) Polyacrylate, modified with siloxane
P–93–0897	06/05/01	02/04/01	(G) Aliphatic diol polyester
P–97–0920	06/05/01	05/22/01	(G) Isocyanate terminated polyester polyurethane
P–99–0808	06/06/01	05/07/01	(G) Ethylene interpolymer
P–99–1308	06/05/01	05/23/01	(G) Blocked aliphatic polyisocyanate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 28, 2001.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–17633 Filed 7–12–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1370–DR]

Minnesota; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1370–DR), dated May 16, 2001, and related determinations.

EFFECTIVE DATE: July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 3, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17528 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1376–DR]

North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1376–DR), dated May 28, 2001, and related determinations.

EFFECTIVE DATE: July 3, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 3, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services

Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17529 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1383–DR]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–1383–DR), dated June 21, 2001, and related determinations.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is June 15–23, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 01–17531 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1383–DR]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania, (FEMA–1383–DR), dated June 21, 2001, and related determinations.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2001:

Montgomery County for Public Assistance (already designated for Individual Assistance).

Berks County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17532 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2001:

Calhoun and Putnam Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17530 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin, (FEMA–1369–DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 11, 2001:

Adams, Chippewa, Dunn, Jackson, Juneau, and Taylor Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537,

Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17525 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1369-DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 6, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17526 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1369–DR]

Wisconsin; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin, (FEMA–1369–DR), dated May 11, 2001, and related determinations.

EFFECTIVE DATE: July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–5920.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 11, 2001:

Clark County for Public Assistance.
Barron County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Assistant Director, Readiness, Response and Recovery Directorate.

[FR Doc. 01–17527 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of the State Management of Public Assistance Operations in Small Disasters

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: We (FEMA) give notice that we will devolve major management responsibility of the Public Assistance Program in small disasters to interested States with demonstrated capability beginning on or after the date this notice is published. Interested Indian Tribal Governments, which are acting as their own Grantee, are also invited to participate in this program. We award Public Assistance grants, which supplement community assets in the recovery of State, tribal, local and certain eligible private non-profit infrastructure when the President declares an emergency or major disaster. The change in the program management does not constitute a change to the process by which assistance is provided nor does it constitute a change in benefits under the law or regulation.

DATES: This notice is effective July 13, 2001. We invite comments on this initiative, particularly on the criteria for State selection. Comments received by September 11, 2001 will be considered when making future program revisions.

FOR FURTHER INFORMATION CONTACT: James A. Walke, P.E., Public Assistance Branch Chief, Federal Emergency Management Agency, Washington DC 20472, 202–646–2751 (phone), 202–646–3304 (fax), or *James.Walke@fema.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, provides for the award of grants to assist in the repair and reconstruction of community infrastructure. In April 2000, we convened a task force of FEMA and State officials to explore the option of allowing capable States to manage the Public Assistance Program in small disasters. The purpose of this initiative is to streamline disaster operations and enhance States' program capabilities. This initiative does not change eligibility requirements or the amount of assistance available. Small disasters are those with sufficient severity and magnitude to warrant a major disaster declaration by the President, but are limited in scope and size as defined by the following: statewide infrastructure damage is less than $2 per capita; or, total estimated infrastructure damage is less than $15 million; or, categories of work are limited to debris removal and emergency protective measures; or, the Public Assistance operation is within a State's capability to manage (varies by State). The task force developed a concept of operations, a sample operational agreement, a list of FEMA and State roles and responsibilities, and a list of frequently asked questions to guide program implementation.

Participation in the State Management of Small Disasters program is voluntary. If a State is interested in managing a disaster, it must specify this in the

Governor's request for a disaster declaration. FEMA will determine whether a State is capable of managing a disaster. Interested States should have recent Federal disaster experience, adequate staff, a current management plan, an adequate fiscal accounting system, the ability to meet deadlines for grant management activities, environmental knowledge and awareness, and a commitment to training. FEMA regional offices and States should work together before a disaster to determine capability and ensure that States meet selection criteria. When a State elects to manage the disaster and FEMA determines that the State is capable, FEMA and the affected State will enter into an operational agreement. The operational agreement defines the roles and responsibilities of the State and FEMA as well as the processes and procedures in effect under the agreement.

Under this initiative, a capable State provides staff to manage the Public Assistance Program operation, including project eligibility reviews, process control, and resource allocation on small disasters. We will provide a minimum number of FEMA staff to support the operation, which will include: Federal Coordinating Officer (FCO), Public Assistance Officer (PAO), Deputy PAO, data entry specialist, and environmental specialist. We will retain obligation authority, final approval of environmental and historic preservation reviews, and will help the State to the extent that the State requests such assistance. FEMA and the State will conduct on-going quality control checks of a sample of Project Worksheets to ensure accurate eligibility decisions, scopes of work, and cost estimates.

In July 2000, FEMA published a **Federal Register** Notice regarding the program and plans for a field test. Subsequently, the concept was pilot-tested in three selected disasters that were declared in November 2000 (FEMA–1344–DR–FL), January 2001 (FEMA–1347–DR–AZ), and February 2001 (FEMA–1349–DR–OK). A FEMA/State team evaluated the Public Assistance recovery operation in each of these disasters to determine the success of the pilot program. The teams found that the State Management of Small Disasters concept and its implementation in the field were successful and identified additional refinements before full program implementation. The teams cited the necessity of adhering to State selection criteria and providing training to State personnel as two important keys to the program's success.

* * * * *

Dated: July 6, 2001.

Lacy E. Suiter,

Assistant Director, Readiness, Response, and Recovery Directorate.

[FR Doc. 01–17533 Filed 7–12–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–10]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000–01 sixth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2000–01 sixth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before August 24, 2001.

ADDRESSES: Bank members selected for the 2000–01 sixth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at fitzgeralde@fhfb.gov.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at fitzgeralde@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. See 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. See 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the August 24, 2001 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before July 27, 2001, each Bank will notify the members in its district that have been selected for the 2000–01 sixth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site:

www.fhfb.gov. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–01 sixth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Connecticut

Charter Oak Federal Credit Union, Groton
Salisbury Bank & Trust Company, Lakeville
Hometown Bank, Moodus
Chelsea Groton Savings Bank, Norwich
Dime Savings Bank of Norwich, Norwich
Rockville Bank, Rockville
Thomaston Savings Bank, Thomaston
American Bank of Connecticut, Waterbury
North American Bank & Trust Company, Waterbury
Wilton Bank, Wilton

Maine

Kennebec Savings Bank, Augusta
Bath Savings Institution, Bath
Barco Federal Credit Union, Hampden
Androscoggin Savings Bank, Lewiston
Saco & Biddeford Savings Institution, Saco
Sanford Institution for Savings, Sanford

Massachusetts

Asian American Bank & Trust Company, Boston
The Community Bank, Brockton
Bay State Federal Savings Bank, Brookline
Chicopee Savings Bank, Chicopee
Weymouth Co-operative Bank, East Weymouth
Easthampton Savings Bank, Easthampton
Dukes County Savings Bank, Edgartown
Bank of Fall River, A Co-operative Bank, Fall River
Foxborough Savings Bank, Foxboro
MetroWest Bank, Framingham
Gloucester Bank & Trust Company, Gloucester
Gloucester Cooperative Bank, Gloucester
Hudson Savings Bank, Hudson
Lee Bank, Lee
Lenox Savings Bank, Lenox
Washington Savings Bank, Lowell
Community Credit Union of Lynn, Lynn
Eastern Bank, Lynn
National Grand Bank of Marblehead, Marblehead
Strata Bank, Medway
Nantucket Bank, Nantucket
Middlesex Savings Bank, Natick
First and Ocean National Bank, Newburyport
Newburyport Five Cents Savings Bank, Newburyport
North Easton Savings Bank, North Easton
Norwood Co-Operative Bank, Norwood
Seamen's Bank, Provincetown
Granite Savings Bank, Rockport
Rockport National Bank, Rockport
The Cooperative Bank, Roslindale
Bank of Western Massachusetts, Springfield
Randolph Savings Bank, Stoughton
The Savings Bank, Wakefield
Walpole Co-operative Bank, Walpole
Watertown Savings Bank, Watertown
Winchester Co-operative Bank, Winchester
Northern Bank & Trust Company, Woburn

New Hampshire

First Colebrook Bank, Colebrook
New Hampshire Federal Credit Union, Concord
Merrimack County Savings Bank, Concord
Laconia Savings Bank, Laconia
Mascoma Savings Bank, FSB, Lebanon
Southern New Hampshire Bank & Trust, Windham

Rhode Island

First Bank and Trust Company, Providence

Federal Home Loan Bank of New York—District 2

New Jersey

Bridge View Bank, Englewood Cliffs
Skylands Community Bank, Hackettstown
Haddon Savings Bank, Haddon Heights
Gibraltar Savings Bank, SLA, Newark
New Community Federal Credit Union, Newark
The Rahway Savings Institution, Rahway
Interchange Bank, Saddle Brook
Merrill Lynch Trust Company, FSB, Somerset
Minotola National Bank, Vineland

New York

Charter One Commercial, Albany
Albion Federal Savings & Loan Assn. Albion
Bath National Bank, Bath
Flatbush FS&LA of Brooklyn, Brooklyn
Manufacturers and Traders Trust Co., Buffalo
Trustco Savings Bank, Canajoharie
The Bank of Greene County, Catskill
Ontario National Bank, Clifton Springs
Bank, of Richmondville, Cobleskill
Champlain National Bank, Elizabethtown
Fairport Savings Bank, Fairport
Highland Falls FS&LA, Highland Falls
Steuben Trust Company, Hornell
Ulster Savings Bank, Kingston
Suffolk Federal Credit Union, Medford
Atlantic Bank of New York, New York
Habib American Bank, New York
Sterling National Bank, New York
Rome Savings Bank, Rome
Trustco Bank, N.A., Schenectady
Sleepy Hollow National Bank, Sleepy Hollow
Solvay Bank, Solvay
The Troy Savings Bank, Troy
European American Bank, Uniondale
Walden Savings Bank, Walden

Puerto Rico

Banco Popular de Puerto Rico, San Juan

Federal Home Loan Bank of Pittsburgh—District 3

Pennsylvania

Enterprise Bank, Allison Park
Apollo Trust Company, Apollo
Farmers and Merchants Trust Company, Chambersburg
Cambria County FS&LA Cresson
Premier Bank, Doylestown
Elderton State Bank, Elderton
East Penn Bank, Emmaus
PFC Bank, Ford City
First National Bank of Fredericksburg, Fredericksburg
PeoplesBank, a Codurus Valley Company, Glen Rock
Gratz National Bank, Gratz
Harleysville NB & Trust Company, Harleysville
Harris Savings Bank, Harrisburg
Irwin Bank and Trust Company, Irwin
Jersey Shore State Bank, Jersey Shore
The Farmers National Bank of Kittanning, Kittanning
Bank, of Landisburg, Landisburg
First National Bank of Liverpool, Liverpool
Mars National Bank, Mars
Fulton County NB & Trust, Company, McConnellsburg
Union National Bank, of Mount Carmel, Mount Carmel
Nazareth NB and Trust Company, Nazareth
The New Tripoli National Bank, New Tripoli
The National Bank of North East, North East
St. Edmond's Federal Savings Bank, Philadelphia
Police and Fire Federal Credit Union, Philadelphia
Reliance Standard Life Insurance Company, Philadelphia
Phoenixville FS&LA, Phoenixville
Portage National Bank, Portage
Security National Bank, Pottstown
LA Bank, N.A., Scranton
Sun Bank, Selinsgrove

Guaranty Bank, N.A., Shamokin
Orrstown Bank, Shippensburg

West Virginia

Progressive Bank, N.A.—Buckhannon, Buckhannon
First Exchange Bank, Mannington
One Valley Bank, North, Inc., Moundsville
F&M Bank—West Virginia, Inc., Ranson
First National Bank of Romney, Romney
AmeriBank, Welch

Federal Home Loan Bank of Atlanta—District 4

Alabama

AuburnBank, Auburn
First Commercial Bank of Huntsville, Huntsville
Peachtree Bank, Maplesville
North Jackson Bank, Stevenson

Florida

First Bradenton Bank, Bradenton
Riverside National Bank, Fort Pierce
The Bank of Brevard, Melbourne
PineBank, Miami
First National Bank of Florida, Milton
Palm Beach NB and Trust Company, Palm Beach
SOUTHBANK, Palm Beach Gardens
Tarpon Coast National Bank, Port Charlotte
Citizens FSB of Port St. Joe, Port St. Joe
First Commercial Bank of Tampa, Tampa
The Bank of Tampa, Tampa
Indian River National Bank, Vero Beach

Georgia

First National Bank of South Georgia, NA, Albany
First American Bank and Trust, Athens
Cornerstone Bank, Atlanta
Appalachian Community Bank, Blairsville
The Fannin County Bank, N.A., Blue Ridge
First National Bank of Grady County, Cairo
Main Street Bank, Covington
First State Bank of Randolph County, Cuthbert
Georgia First Bank, Gainesville
The Glennville Bank and Trust Company, Glennville
Farmers and Merchants Bank, Lakeland
Security Bank of Bibb County, Macon
Southwest Georgia Bank, Moultrie
Carver State Bank, Savannah
The First State Bank, Stockbridge
Bank of Upson, Thomaston
Thomasville National Bank, Thomasville

Maryland

Farmers Bank of Maryland, Annapolis
Kopernik Federal Savings Association, Baltimore
Liberty Federal Savings & Loan Assn., Baltimore
Slavie Federal Savings Bank, Baltimore
Chesapeake Bank and Turst Company, Chestertown
The Chestertown Bank of Maryland, Chestertown
Hagerstown Trust Company, Hagerstown
Lafayette Federal Credit Union, Kensington
First United Bank and Trust, Oakland
The National Bank of Rising Sun, Rising Sun
Farmers and Mechanics NB, Taneytown

North Carolina

Bank, of Stanly, Albemarle
Home Savings Bank of Albemarle, SSB, Albemarle
Self-Help Credit Union, Durham
Gibsonville Community Savings Bank, Gibsonville
Farmers & Merchants Bank, Granite Quarry
Carolina Community Bank, Murphy
Citizens Savings Bank of Salisbury, SSB, Salisbury
First National Bank of Shelby, Shelby
Farmers and Merchants Bank, Holly Hill

Virginia

E-Trade Bank, Arlington
American National Bank and Trust Co., Danville
The Bank of Fincastle, Fincastle
Marshall National Bank and Trust Co., Marshall
The Middleburg Bank, Middleburg
First Sentinel Bank, Richlands
First Bank, Strasburg
F&M Bank—Peoples, Warrenton
Northern Neck State Bank, Warsaw

Federal Home Loan Bank of Cincinnati—District 5

Kentucky

Bedford Loan and Deposit Bank, Bedford
Berea National Bank, Berea
South Central Bank of Bowling Green, Inc., Bowling Green
Meade County Bank, Brandenburg
Campbellsville National Bank, Campbellsville
Edmonton State Bank, Edmonton
Bank of Germantown, Germantown
First Security Bank and Trust, McLean, Island
Lawrenceburg National Bank, Lawrenceburg
Farmers National Bank, Lebanon
Square D Employees' Federal Credit Union, Lexington
Fifth Third Bank of Kentucky, Inc., Louisville
Citizens National Bank, Russellville
Bullitt County Bank, Shepardsville
Bank of McCreary County, Whitley City
Williamsburg National Bank, Williamsburg

Ohio

First National Bank of Ohio (FirstMerit), Akron
Bellevue Federal Credit Union, Bellevue
Bethel Building and Loan Company, Bethel
The Equitable Savings and Loan Company, Cadiz
CinFed Employees Federal Credit Union, Cincinnati
Lenox Savings Bank, Cincinnati
Mt. Washington Savings & Loan Company, Cincinnati
Shore Bank and Trust Company, Cleveland
Community First Bank, N.A., Forest
First Ohio Credit Union, Inc., Fostoria
Galion Building and Loan Association, Galion
Greenville National Bank, Greenville
Second National Bank, Greenville
First FS&LA of Lorain, Lorain
New Richmond National Bank, New Richmond
Citizens National Bank of Norwalk, Norwalk
Ripley National Bank, Ripley
Ripley Federal Savings and Loan Assn., Ripley
The First National Bank of Shelby, Shelby
Strasburg Savings and Loan, Strasburg
Toledo Area Catholic Credit Union, Sylvania
Peoples Savings Bank, Urbana
First Federal Savings and Loan Association, Van Wert
Second National Bank of Warren, Warren
Perpetual Savings Bank, Wellsville
First Federal Savings Bank, Zanesville

Tennessee

Citizens National Bank, Athens
Bank of Putnam County, Cookeville
Farmers Bank, Cornersville
First Federal Savings Bank, Dickson
Carter County Bank, Elizabethton
Jackson Bank and Trust, Gainesboro
Gates Banking and Trust Company, Gates
Tennessee State Bank, Gatlinburg
Bank of Gleason, Gleason
Greene County Bank, Greeneville
Bank of Halls, Halls
Commercial Bank, Harrogate
Union Bank, Jamestown
Bank of Tennessee, Kingsport
First Bank, Lexington
Enterprise National Bank, Memphis
The Bank of Milan, Milan
Cavalry Banking, Murfreesboro
Rutherford Bank and Trust, Murfreesboro
Commercial Bank and Trust Company, Paris

Farmers Bank, Portland
Central Bank, Savannah
First Community Bank, Shelbyville
Farmers and Merchants Bank, Trezevant
American City Bank of Tullahoma, Tullahoma
Reelfoot Bank, Union City

Federal Home Loan Bank of Indianapolis—District 6

Indiana

First National Bank, Cloverdale
CSB State Bank, Cynthiana
Blue River Federal Savings Bank, Edinburgh
Bright National Bank, Flora
Three Rivers Federal Credit Union, Fort Wayne
Grabill Bank, Grabill
Fifth Third Bank of Central Indiana, Indianapolis
Landmark Savings Bank, F.S.B., Indianapolis
Meridian Security Insurance Company, Indianapolis
Union Federal SB of Indianapolis, Indianapolis
Heritage Bank, Jeffersonville
Lafayette Savings Bank, F.S.B., Lafayette
Peoples Savings & Loan Association, Monticello
New Washington State Bank, New Washington
First Citizens State Bank, Newport
Citizens State Bank of Petersburg, Petersburg
American Trust & SB of Whiting, Whiting

Michigan

Firstbank Alma, Alma
Signature Bank, Bad Axe
Lake Osceola State Bank, Baldwin
Central State Bank, Beulah
Community Bank, Caro
Eastern Michigan Bank, Croswell
Alpha-Crystal Falls, Crystal Falls
State Bank of Ewen, Ewen
Oakland Commerce Bank, Farmington Hills
Credit Union One, Ferndale
Grand Bank, Grand Rapids
LSI Credit Union, Grand Rapids
National Bank of Hastings, Hastings
Valley Ridge Bank, Kent City
Co-op Services Credit Union, Livonia
Firstbank, Mount Pleasant
First National Bank of Norway, Norway
Sterling Bank and Trust, FSB, Southfield
First Resource Federal Credit Union, St. Joseph

Federal Home Loan Bank of Chicago—District 7

Illinois

National Bank of Commerce, Berkeley
Prairie Bank and Trust Company, Bridgeview
Cerro Gordo Building and Loan, s.b., Cerro Gordo
Marquette National Bank, Chicago
Shore Bank, Chicago
The First Commercial Bank, Chicago
Resource Bank, N.A., DeKalb
Du Quoin State Bank, Du Quoin
Crossroads Bank, Effingham
Midwest Bank and Trust Company, Elmwood Park
The Fisher National Bank, Fisher
Midwest Bank of Freeport, Freeport
Midwest Bank, Hinsdale
Jacksonville Savings Bank, Jacksonville
Commonwealth Credit Union, Kankakee
Kankakee Federal Savings Bank, Kankakee
Union Federal Savings and Loan Assn., Kewanee
Citizens State Bank, Lena
Brickyard Bank, Lincolnwood
Citizens National Bank, Macomb
First Suburban National Bank, Maywood
Community National Bank, Metropolis
Morris Building and Loan, s.b., Morris
Marquette Bank Morrison, Morrison
First National Bank of Nokomis, Nokomis
Nokomis Savings Bank, Nokomis
Orangeville Community Bank, Orangeville
First National Bank of Pana, Pana
Vermillion Valley Bank, Piper City
First State Bank of Red Bud, Red Bud
Capaha Bank, Tamms
AmeriMark Bank, Villa Park
North Shore Trust and Savings, Waukegan
Waukegan Savings & Loan Association, Waukegan
Prospect Federal Savings Bank, Worth
First National Bank of Xenia, Xenia

Wisconsin

American Fox Cities, Appleton
State Bank of Arcadia, Arcadia
First National Bank of Barron, Barron
Blackhawk State Bank, Beloit
First National Bank of Berlin, Berlin
Badger State Bank, Cassville
State Bank of Chilton, Chilton
American Bank, Eau Claire
American Bank, Fond du Lac
Franklin State Bank, Franklin
Peoples National Bank, Hayward
Horicon State Bank, Horicon
Farmers State Bank, Markesan
Mid-Wisconsin Bank, Medford
Lincoln State Bank, Milwaukee
Mitchell Bank, Milwaukee
Bank of Monticello, Monticello
The Bank of New Glarus, New Glarus
The First NB of New Richmond, New Richmond
RiverBank, Osceola
Bank of Poynette, Poynette
Johnson Bank, Racine
Shell Lake State Bank, Shell Lake
Eagle Valley Bank, St. Croix Falls
Acuity Bank, SSB, Tomah
The Equitable Bank, S.S.B., Wauwatosa
ALLCO Credit Union, West Allis
Fortress Bank of Westby, Westby
Westby Co-op Credit Union, Westby

Federal Home Loan Bank of Des Moines—District 8

Iowa

Ackley State Bank, Ackley
Exchange State Bank, Adair
First State Bank, Belmond
Freedom Security Bank, Coralville
Iowa State Savings Bank, Creston
Decorah Bank and Trust Company, Decorah
AmerUS Life Insurance Company, Des Moines
Wells Fargo Bank Iowa, NA, Des Moines
Dupaco Community Credit Union, Dubuque
The Grundy NB of Grundy Center, Grundy Center
Hartwick State Bank, Hartwick
Hiawatha Bank and Trust Company, Hiawatha
Community State Bank, Indianaola
Green Belt Bank and Trust, Iowa Falls
First National Bank in LeMars, Le Mars
Western Bank & Trust, Moville
First National Bank of Muscatine, Muscatine
Security State Bank, New Hampton
Oakland State Bank, Oakland
Citizens State Bank, Oakland
Perry State Bank, Perry
First National Bank of Sioux Center, Sioux Center
The Security National Bank of Sioux City, Sioux City
Heartland Bank, Somers
Farmers Trust & Savings Bank, Spencer
State Bank, Spencer
First Bank & Trust, Spirit Lake
Citizens First National Bank, Storm Lake
West Chester Savings Bank, Washington
Community National Bank, Waterloo
First National Bank, Waverly
Peoples Savings Bank, Wellsburg
Farm Bureau Life Insurance Company, West Des Moines
Farm Bureau Mutual Insurance Company, West Des Moines
Farmers Savings Bank, Wever
State Bank, Worthington

Minnesota

Atwater State Bank, Atwater
First National Bank of Brewster, Brewster
City-County Federal Credit Union, Brooklyn Center
Peoples Bank of Commerce, Cambridge
First National Bank Chisholm, Chisholm
Clinton State Bank, Clinton
Eitzen State Bank, Eitzen

The County Bank, Forest Lake
Citizens State Bank of Glenville, Glenville
Marquette Bank N.A., Golden Valley
First Security Bank—Hendricks, Hendricks
First National Bank of Henning, Henning
Jackson Federal Savings and Loan Assn., Jackson
Janesville State Bank, Janesville
Citizens State Bank of Kelliher, Kelliher
Security State Bank, of Kenyon, Kenyon
First Security Bank—Lake Benton, Lake Benton
State Bank of Long Lake, Long Lake
Lake Country State Bank, Long Prairie
United Prairie Bank, Madison
Bank of Maple Plain, Maple Plain
Superior Guaranty Insurance Company, Minneapolis
First National Bank in Montevideo, Montevideo
Mountain Iron First State Bank, Mountain Iron
State Bank and Trust Co. of New Ulm, New Ulm
Citizens Bank of New Ulm, New Ulm
Community National Bank, Northfield
Minnwest Bank Ortonville, Ortonville
Pine River State Bank, Pine River
Border State Bank, Roseau
First Security Bank—Sanborn, Sanborn
Americana Community Bank, Sleepy Eye
Western Bank, St. Paul
Vermillion State Bank, Vermillion
Northern State Bank of Virginia, Virginia
First State Bank of Wabasha, Wabasha
Heritage Bank N.A., Willmar
Merchants National Bank of Winona, Winona
First State Bank of Wyoming, Wyoming
Bank of Zumbrota, Zumbrota

Missouri

Jefferson Heritage Bank, Ballwin
Boone County National Bank, Columbia
Tri-County State Bank, El Dorado Springs
Commercial Trust Company, Fayette
Home Exchange Bank of Jamesport, Jamesport
Jefferson Bank of Missouri, Jefferson City
Community America Credit Union, Kansas City
Central Bank of Kansas City, Kansas City
Kearney Trust Company, Kearney
Lawson Bank, Lawson
United State Bank, Lewistown
First State Bank, Poplar Bluff
First State Bank of Purdy, Purdy
The Seymour Bank, Seymour
State Bank of Slater, Slater
Citizens Bank of Sparta, Sparta
Metropolitan National Bank, Springfield
Heritage Bank of St. Joseph, St. Joseph
Southwest Bank of St. Louis, St. Louis
Webb City Bank, Webb City

North Dakota

Security State Bank of Edgeley, Edgeley
Bremer Bank, N.A., Grand Forks
Community National Bank of Grand Forks, Grand Forks
Stutsman County State Bank, Jamestown
Northland Financial, Steele
Peoples State Bank, Westhope
Security State Bank, Wishek

South Dakota

Dakota State Bank, Blunt
Security Bank, Madison
BankWest, Inc., Pierre
American Memorial Life Insurance Co., Rapid City
First National Bank of White, White
First Dakota National Bank, Yankton

Federal Home Loan Bank of Dallas—District 9

Arizona

American Founders Life Insurance Co., Phoenix

Arkansas

Bank of Cave City, Cave City
First National Bank of Crossett, Crossett
Simmons First National Bank of Dumas, Dumas
National Bank of Commerce, El Dorado
Bank of Arkansas, Fayetteville
Greers Ferry Lake State Bank, Heber Springs
First National Bank of Phillips County, Helena
Little River Bank, Lepanta
Malvern National Bank, Malvern
Citizens National Bank, Nashville
Merchants and Planters Bank, Newport
American State Bank, Osceola
Bank of Pocahontas, Pocahontas
The Farmers & Merchants Bank, Prairie Grove
Arvest Bank, Rogers
Commercial National Bank of Texarkana, Texarkana

Louisiana

The Cottonport Bank, Cottonport
Kaplan State Bank, Kaplan
Sabine State Bank and Trust Company, Many
Exchange Bank and Trust Company, Natchitoches
Liberty Bank and Trust Company, New Orleans
American Bank of Ruston, N.A., Ruston
Sicily Island State Bank, Sicily Island
St. Martin Bank and Trust Company, St. Martinville
Concordia Bank and Trust Company, Vidalia
The Evangeline Bank and Trust Company, Ville Platte
Progressive State Bank and Trust Company, Winnsboro

Mississippi

First Security Bank, Batesville
Peoples Bank of Franklin County, Bude
Bank of the South, Crystal Springs
Commercial Bank of DeKalb, DeKalb
Community Bank, Ellisville
Community Bank of Mississippi, Forest
Community Bank, Indianola
Century Bank, Lucedale
Great Southern National Bank, Meridian
Newton County Bank, Newton
First National Bank of Oxford, Oxford
The Citizens Bank of Philadelphia, Philadelphia
Peoples Bank and Trust Company, Tupelo

New Mexico

Bank of Belen, Belen
Carlsbad National Bank, Carlsbad
Community Bank, Espanola, Espanola
Western Bank of Lordsburg, Lordsburg
Centinel Bank of Taos, Taos
Peoples Bank, Taos

Texas

First Community Bank, N.A., Alice
Amarillo National Bank, Amarillo
First National Bank of Bastrop, Bastrop
Citizens State Bank, Buffalo
National Bank of Daingerfield, Daingerfield
First National Bank, Edinburg
First National Bank, Fabens
First National Bank, Fairfield
Town North National Bank, Farmers Branch
First National Bank in Graham, Graham
First State Bank, Granger, Granger
First Community Credit Union, Houston
First National Bank of Huntsville, Huntsville
Community Bank, Kirbyville
The Laredo National Bank, Laredo
First State Bank of Livingston, Livingston
First National Bank of Livingston, Livingston
Franklin National Bank, Mount Vernon
First State Bank, Smithville
Texline State Bank, Texline
Randolph-Brooks Federal Credit Union, Universal City
American Bank, N.A., Waco
Union Square Federal Credit Union, Wichita Falls

Federal Home Loan Bank of Topeka—District 10

Colorado

FirstBank of Arvada, N.A., Arvada
FirstBank of Aurora, N.A., Aurora
FirstBank of Douglas County, N.A., Castle Rock
Mountain Bell Credit Union, Colorado Springs

Western National Bank of Colorado, Colorado Springs
Community Bank, Dove Creek
FirstBank of Lakewood, N.A., Lakewood
First Bank of Littleton, N.A., Littleton
Olathe State Bank, Olathe
FirstBank of Silverthorne, N.A., Silverthorne
First National Bank of Strasburg, Strasburg
First National Bank, Telluride, Telluride
WestStar Bank, Vail
FirstBank of Wheat Ridge, N.A., Wheat Ridge
First National Bank of Yuma, Yuma

Kansas

First State Bank of Burlingame, Burlingame
Emporia State Bank and Trust Company, Emporia
Home State Bank, Erie
Union State Bank of Everest, Everest
Emprise Bank, N.A., Hillsboro
The Farmers State Bank, Holton
First Community Bank, Kansas City
Guaranty Bank and Trust, Kansas City
First National Bank & Trust Co. in Larned, Larned
Gold Bank, Leawood
The Bank, Oberlin
First National Bank of Onaga, Onaga
First State Bank and Trust, Tonganoxie
Capital City Bank, Topeka
Commerce Bank and Trust, Topeka
Security Benefit Life Insurance Company, Topeka
Wellsville Bank, Wellsville
Boeing Wichita Employees Credit Union, Wichita

Nebraska

First National Beatrice Bank &Trust Co., Beatrice
Exchange Bank, Gibbon
First State Bank, Gothenburg
Bank of Nebraska, La Vista
West Gate Bank, Lincoln
Home State Bank, Louisville
Bank of Mead, Mead
Farmers and Merchants Bank, Milford
Wells Fargo Bank Nebraska, Omaha
First State Bank, Scottsbluff
The Cattle National Bank, Seward
The First National Bank of Unadilla, Unadilla
First National Bank of Valentine, Valentine
CharterWest National Bank, West Point
Winside State Bank, Winside

Oklahoma

AmeriState Bank, Atoka
WestStar Bank, Bartlesville
First National Bank of Chelsea, Chelsea
Alfalfa County Bank, Cherokee
First National Bank, Edmond
Grand Federal Savings Bank, Grove
American Fidelity Assurance Company, Oklahoma City
Bank One, Oklahoma City
Weokie Credit Union, Oklahoma City
Arvest Bank, Shawnee
First National Bank and Trust Company, Weatherford
First National Bank in Wewoka, Wewoka

Federal Home Loan Bank of San Francisco—District 11

California

Western Sierra National Bank, Cameron Park
First Coastal Bank, N.A., El Segunda
Farmers & Merchants Bk—Central CA, Lodi
Southern Pacific Bank, Los Angeles
County Bank, Merced
Omni Bank, N.A., Monterey Park
CivicBank of Commerce, Oakland
Bay Area Bank, Redwood City
Central Sierra Bank, San Andreas
Santel Federal Credit Union, San Diego
Sequoia National Bank, San Francisco
Santa Barbara Bank and Trust, Santa Barbara
Coast Commercial Bank,Santa Cruz
Del Amo Savings Bank, FSB, Torrance

Nevada

Silver State Bank, Henderson

Federal Home Loan Bank of Seattle—District 12

Hawaii

Honolulu City & County Employees FCU, Honolulu

Montana

Valley Bank of Belgrade, Belgrade
Rocky Mountain Bank, Billings
Blackfeet National Bank, Browning
Mountain West Bank, N.A., Helena
Three Rivers Bank of Montana, Kalispell
Bitterroot Valley Bank, Lolo
Missoula Federal Credit Union, Missoula
Glacier Bank of Whitefish, Whitefish
Western Bank of Wolf Point, Wolf Point

Oregon

Rogue Federal Credit Union, Medford

Utah

First National Bank of Layton, Layton
Capital Community Bank, Orem
Deseret First Credit Union, Salt Lake City

Washington

Anchor Mutual Savings Bank, Aberdeen
The Bank of the Pacific, Aberdeen
Bank NorthWest, Bellingham
Whatcom Educational Credit Union, Bellingham
Security State Bank, Centralia
North Cascades National Bank, Chelan
Bank of Whitman, Colfax
Islanders Bank, Friday Harbor
Community First Bank, Kennewick
Bank of Latah, Latah
Washington Credit Union, Mountlake Terrace
Credit Union of the Pacific, Seattle
Fremont First National Bank, Seattle
Yakima National Bank, Yakima
Yakima Valley Credit Union, Yakima

Wyoming

First National Bank of Wyoming, Laramie
Bank of Lovell, Lovell
Rawlins National Bank, Rawlins
First State Bank of Thermopolis, Thermopolis
First State Bank, Wheatland

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before July 27, 2001, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–01 sixth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–01 sixth quarter review cycle must be delivered to the Finance Board on or before the August 24, 2001 deadline for submission of Community Support Statements.

Dated: July 6, 2001.

By the Federal Housing Finance Board.

James L. Bothwell,

Managing Director.

[FR Doc. 01–17416 Filed 7–12–01; 8:45 am]

BILLING CODE 6725–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080]

Submission for OMB Review; Comment Request Entitled Contract Financing

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration

(GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Contract Financing.

DATES: Comments may be submitted on or before September 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Acquisition Policy Division, GSA (202) 501–3221.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0080, concerning Contract Financing. Offerors are required to identify whether items are foreign source end products and the dollar amount of import duty for each product.

B. Annual Reporting Burden.

Respondents: *2,000.*

Annual Responses: *2,000.*

Average Hours Per Response: *.1.*

Burden Hours: *200.*

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0080, Contract Financing, in all correspondence.

Dated: June 18, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–17611 Filed 7–12–01; 8:45 am]

BILLING CODE 6820–61–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement–01126]

Enhancement of State, County or Local Public Health Departments Participation in Brownfields Decisions and Actions; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year 2001 funds for the Enhancement of State, County or Local Public Health Departments Participation in Brownfield Decisions and Actions was published in the **Federal Register** on June 27, 2001, [Vol. 66, No. 124, page 34201]. The notice is amended as follows:

On page 34201, under B., include:

A. Eligible Applicants

Applicants will be limited to the official county, city, federally recognized tribal governments, and other local public health agencies of local communities (with the exception of Rhode Island where the State Health Department is the eligible applicant) located in the twenty-eight (28) Brownfields Showcase Communities as designated by the Environmental Protection Agency (EPA) 62 FR 44274 & 65 FR 14273). The Brownfield Showcase Communities are:

1. Baltimore, Maryland
2. Chicago, Illinois
3. Dallas, Texas
4. Denver, Colorado
5. Des Moines, Iowa
6. East Palo Alto, Califronia
7. Gila River Indian Community, Arizona
8. Glen Cove, New York
9. Houston, Texas
10. Jackson, Mississippi
11. Kansas City, Kansas & Missouri
12. Los Angeles, California
13. Lowell, Massachusetts
14. Metlakatla Indian Community, Alaska
15. Milwaukee, Wisconsin
16. Mystic Valley Development Commission (Malden, Medford, Everett), Massachusetts
17. New Bedford, Massachusetts
18. Niagara Region, New York
19. Cape Charles/Northhampton County, Virginia
20. Portland, Oregon
21. State of Rhode Island
22. Saint Louis, Missouri/East St. Louis, Illinois
23. Saint Paul, Minnesota
24. Salt Lake City, Utah
25. Seattle/King County, Washington
26. Southeast Florida (Eastward Ho!, Florida
27. Stanford, Connecticut
28. Trenton, New Jersey

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in Section 501 (c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any form.

Dated: July 9, 2001.

Donna Garland,

Deputy Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–17534 Filed 7–12–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 29577, dated May 31, 2001) is amended to establish the Office of Compensation and Analysis within the Office of the Director, National Institute for Occupational Safety and Health.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the *Office of Administrative and Management Services (CC11), Office of the Director (CC1), National Institute for Occupational Safety and Health (CC),* insert the following:

Office of Compensation Analysis and Support (CC12). (1) Conducts a program in support of Federal rulemaking to promulgate science-based methods and guidelines mandated by the Energy Employees Occupational Illness Compensation Program Act of 2000 (''the Act'') to estimate the occupational radiation doses of claimants under the Act and evaluate the relationship between such doses and cancers incurred by the claimants; (2) develops and implements a program of science-based analysis and policymaking by which the Secretary of Health and Human Services shall consider and

issue determinations on petitions by classes of employees to be included as members of the Special Exposure Cohort established under the Act; (3) conducts a program of individual dose reconstruction to estimate and report the radiation doses of claimants under the Act; and (4) identifies and recommends the appointment of occupational physicians to physician panels to be established by the Secretary of Energy to consider the claims of workers with illnesses applying for compensation under state workers' compensation programs.

Dated: July 2, 2001.

Martha Katz,

Acting Director, Centers for Disease Control and Prevention.

[FR Doc. 01–17583 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–2002A]

Fiscal Year 2002 Discretionary Announcement for The Administration for Native Americans Availability of Financial Assistance

AGENCY: Administration for Native Americans, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Wednesday, June 27, 2001 (66 FR 34206). On page 34208, second column, first paragraph the following statement ''Current grantees whose grant project period extends beyond September 30, 2001'' is incorrect. The correct statement should read ''Current grantees whose grant project period extends beyond September 30, 2002''.

On page 34210, third column, second paragraph, the following statement ''Current ANA SEDS grantees whose grant project period ends on or before September 30, 2001'' is incorrect. The correct statement should read ''current ANA SEDS grantees who grant project period ends on or before September 30, 2002''.

On page 34216, second column, second paragraph, the following statement ''Applicants for new grants may not have a pending request to extend their existing grant beyond 2001'' is incorrect. The correct statement should read ''Applicants for new grants may not have a pending request to extend their existing grant beyond 2002''.

FOR FURTHER INFORMATION CONTACT: The Administration for Native Americans for referral to the appropriate contact person in ANA for programmatic questions or send an email to ANA@acf.dhhs.gov.

Dated: July 9, 2001.

Larry A. Guerrero,

Acting Commissioner, Administration for Native Americans.

[FR Doc. 01–17510 Filed 7–12–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01F–0293]

Novus International, Inc.; Filing of Food Additive Petition (Animal Use)—Ethoxyquin Phosphate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Novus International, Inc., has filed a petition proposing that the food additive regulation be amended to provide for the safe use of ethoxyquin phosphate in animal feeds.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael Henry, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0161, e-mail: mhenry@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2244) has been filed by Novus International, Inc., 530 Maryville Centre Dr., St. Louis, MO 63141–5862. The petition proposes to amend the food additive regulations in part 573 Food Additives Permitted in Feed and Drinking Water of Animals (21 CFR part 573) for the addition of an additional salt, ethoxyquin phosphate, to be used as a preservative in yellow grease, oils, and other fats.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 27, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–17497 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1407]

International Conference on Harmonisation; Guidance on S7A Safety Pharmacology Studies for Human Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''S7A Safety Pharmacology Studies for Human Pharmaceuticals.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides a definition, general principles, and recommendations for the nonclinical safety pharmacology studies. The guidance is intended to help protect clinical trial participants and patients receiving marketed products from potential adverse effects of pharmaceuticals, while avoiding unnecessary use of animals and other resources.

DATES: This guidance is effective August 13, 2001. Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the recommendations may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–

FAX or 301–827–3844. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance:

Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–024), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476, or

Martin D. Green, Division of Clinical Trials and Design, Center for Biologics Evaluation and Research (HFM–579), 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349,

Regarding the ICH:

Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before issuance.

In the **Federal Register** of August 7, 2000 (65 FR 48246), FDA published a notice of availability for a draft tripartite guidance entitled ''S7A Safety Pharmacology Studies for Human Pharmaceuticals.'' The notice gave interested persons an opportunity to submit comments by September 6, 2000.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2000.

The guidance describes general principles and recommendations for safety pharmacology evaluations. The guidance is intended to help protect clinical trial participants and patients receiving marketed products from potential adverse reactions to pharmaceuticals and avoid unnecessary use of animals and other resources. The guidance generally applies to new chemical entities and biotechnology-derived products for human use. The guidance may be applied to marketed pharmaceuticals when appropriate. For example, adverse clinical events, a new patient population, or a new route of administration may raise concerns not previously addressed.

The guidance incorporates the following changes:

1. The guidance recommends that in the absence of a safety pharmacology response, the highest tested dose should be a dose associated with moderate toxicity. The draft guidance recommended that the highest dose tested should equal or exceed those doses producing some adverse effects.

2. The guidance recommends that, in addition to respiratory rate, other measures of respiratory function (e.g., tidal volume or hemoglobin oxygen saturation) should be evaluated in assessing effects of the test substance on the respiratory system.

3. Concerning the application of good laboratory practice (GLP), the guidance clarifies that secondary pharmacodynamic studies that contribute to the safety evaluation should be conducted in compliance with GLP.

This guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet can obtain the guidance at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm.

Dated: July 6, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17498 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1548]

Determination That Cyclosporine Capsules USP, 50 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that cyclosporine capsules USP (Neoral Soft Gelatin Capsules), 50 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for cyclosporine capsules USP, 50 mg.

FOR FURTHER INFORMATION CONTACT: Paul C. Varki, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

Cyclosporine capsules USP, 50 mg, are the subject of NDA 50–715. On July 14, 1995, Sandoz, Inc. (now Novartis), obtained approval to market the 25-, 50-, and 100-mg capsules. Novartis has never marketed the 50-mg capsules.

On September 29, 2000, Lachman Consultant Services, Inc., submitted a citizen petition (Docket No. 00P–1548/CP1) under 21 CFR 10.30 to FDA requesting that the agency determine whether cyclosporine capsules USP, 50 mg, were withdrawn from sale for reasons of safety or effectiveness. FDA has determined that, for purposes of § 314.161(a) and (c), never marketing an approved drug product is equivalent to withdrawing the drug from sale.

FDA has reviewed its records and, under § 314.161, has determined that Novartis' decision not to market cyclosporine capsules USP, 50 mg, was not due to concerns about safety or effectiveness of the product. Accordingly, the agency will maintain cyclosporine capsules USP, 50 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to cyclosporine capsules USP, 50 mg, may be approved by the agency.

Dated: July 6, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17496 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 22, 2001, from 9 a.m. to 6 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-594-3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review facility inspection findings and current compliance followup actions, the Mammography Quality Standards Act (the MQSA) compliance guidance, facility satisfaction survey, mammography access issues and the future direction of the MQSA program. The committee will also receive updates on the status of accreditation and certification of full field digital mammography, States as certification agencies under the MQSA, and the inspection demonstration project. The MQSA compliance guidance documents, which are in a question and answer format, are available to the public on the Internet at http://www.fda.gov/cdrh/mammography. This guidance is being updated continually in response to questions that FDA receives from the public. Additional information regarding guidance updates may be obtained by calling the Information Line.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 27, 2001. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on August 22, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 27, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the

approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 6, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–17537 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0314]

Guidance for Industry on Levothyroxine Sodium Products—Enforcement of August 14, 2001, Compliance Date and Submission of New Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Levothyroxine Sodium Products—Enforcement of August 14, 2001, Compliance Date and Submission of New Applications.'' This guidance discusses how FDA plans to exercise its enforcement discretion after August 14, 2001, with regard to levothyroxine sodium products that are marketed without approved applications. This guidance also answers certain frequently asked questions concerning the submission of applications for levothyroxine sodium products. It replaces the previously issued guidance entitled ''Levothyroxine Sodium, Questions and Answers'' (February 2001).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Levothyroxine Sodium Products—Enforcement of August 14, 2001 Compliance Date and Submission of New Applications.'' This guidance discusses how FDA plans to exercise its enforcement discretion after August 14, 2001, with regard to levothyroxine sodium products that are marketed without approved applications. This guidance also answers certain frequently asked questions concerning the submission of applications for levothyroxine sodium products and replaces the previously issued guidance entitled ''Levothyroxine Sodium, Questions and Answers'' (February 2001) (see 66 FR 13935, March 8, 2001).

In the **Federal Register** of August 14, 1997 (62 FR 43535), FDA announced that orally administered levothyroxine sodium drug products are new drugs. The notice stated that by August 14, 2000, manufacturers who wish to continue to market these products must obtain approved applications as required by section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and 21 CFR part 314. The notice stated that after August 14, 2000, any orally administered drug product containing levothyroxine sodium that is introduced or delivered for introduction into interstate commerce without an approved application will be subject to regulatory action, unless found by FDA to be not subject to the new drug requirements of the act under a citizen petition submitted for that product. FDA issued a second **Federal Register** notice on April 26, 2000 (65 FR 24488), extending the deadline for obtaining approved applications until August 14, 2001.

The agency permitted orally administered levothyroxine sodium products to remain on the market during this period of time without approved new drug applications to give manufacturers time to conduct the required studies, prepare applications, and have them approved. FDA stated in the 1997 **Federal Register** notice that levothyroxine sodium products are used to treat hypothyroidism, and no alternative drug is relied on by the medical community as an adequate substitute.

As of June 2001, two orally administered levothyroxine sodium products have been approved by FDA. These approved products have been evaluated by FDA and found to be safe and effective for their intended uses. FDA has not evaluated the safety and effectiveness of unapproved marketed products, but it has determined that no currently marketed unapproved orally-administered levothyroxine sodium product is generally recognized as safe and effective (see 62 FR 43535 at 43538, August 14, 1997).

Notwithstanding the fact that there are now two approved applications for orally administered levothyroxine sodium, FDA has determined that it will take time for the millions of patients taking unapproved products to switch to approved products, and for manufacturers of approved products to scale up their production and to introduce this increased production into the distribution chain. To provide time for manufacturers of approved products to scale up their production and for patients and health care providers to make a reasonable transition from unapproved to approved products, FDA has decided to continue to exercise its enforcement discretion by establishing a gradual phase-out of unapproved products. The phase-out plan and a number of frequently asked questions are addressed in this guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The guidance is being implemented immediately without prior public comment because there are public health reasons for the immediate implementation of the guidance document. The guidance pertains to the agency's exercise of enforcement discretion and it is being issued to facilitate planning by patients, health care providers, manufacturers, and distributors who need information about the agency's plans to transition patients from unapproved to approved levothyroxine sodium products after August 14, 2001. The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments

on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: July 9, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–17538 Filed 7–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–339]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Provider Cost Report Reimbursement Questionnaire and Supporting Regulations in 42 CFR 413.20, 413.24, 415.50, 415.55, 415.60, 415.70, 415.150, 415.152, 415.160, and 415.162; *Form No.:* HCFA–339 (OMB# 0938–0301); *Use:* The Medicare Provider Cost Report Reimbursement Questionnaire must be completed by all providers to assist in preparing an acceptable cost report, to ensure proper Medicare reimbursement, and to minimize subsequent contact between the provider and its fiscal intermediary. It is designed to answer pertinent questions about key reimbursement concepts found in the cost report and to gather information necessary to support certain financial and statistical entries on the cost report. In addition, it provides an audit trail for the fiscal intermediary; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, local and tribal government; *Number of Respondents:* 33,144; *Total Annual Responses:* 33,144; *Total Annual Hours:* 1,342,332.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 19, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–17514 Filed 7–12–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10036]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Request to Use Inpatient Rehabilitation Assessment Instrument and Data Set for PPS for Inpatient Rehabilitation Facilities: Implementation Phase and Supporting Regulations in 42 CFR, Parts 412 and 413;

Form No.: HCFA–10036 (OMB# 0938-NEW); *Use:* This is a request to use a modification of an instrument currently in use by the majority of inpatient rehabilitation facilities for the implementation phase of the prospective payment system. Use of this instrument will enable HCFA to implement a classification and payment system for the legislatively mandated inpatient rehabilitation hospital and exempt units prospective payment system.;

Frequency: On occasion; *Affected Public:* Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 359,000;

Total Annual Responses: 359,000;

Total Annual Hours: 269,250.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 26, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–17515 Filed 7–12–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Survey on Drug Use and Health Clinical Validation Study of the Substance Dependence and Abuse Measures—(New)—The Substance Abuse and Mental Health Services Administration's (SAMHSA) National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse, is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy, other Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

From 2001–2003, the NSDUH plans a two or three-phase Clinical Validation Study of Substance Dependence and Abuse Measures. Specific aims are to achieve the best overarching format, and the best wording and ordering for the assessment questions. The goal is quicker administration time, improved validity, and reduced respondent burden.

Half of all subject will be between 12 and 17, and half 18 years of age or older; subjects will be recruited from the Research Triangle and the Triad areas of North Carolina. In Phase 1, subjects, recruited through fliers and newspaper ads, will be asked (1) demographic information and (2) questions from two self-administered sections of the NSDUH questionnaire: Questions about the quantity and frequency of use of drugs and alcohol, and questions about symptoms of substance dependence and abuse.

A semi-structured clinical interview will then be administered to these same subjects by a trained clinician to determine the presence or absence of substance dependence and abuse. The clinical instruments used to assess subjects will be the substance abuse modules from the Structured Clinical Interview for DSM–IV (SCID) (for adults) and the Kiddie Schedule for Affective Disorders and Schizophrenia (K–SADS) (for those between 12 and 17 years of age). The correspondence of the diagnosis of substance dependence and abuse between the clinical and survey interview will then be compared.

Information from Phase 1 will then be used to assess if a lack of correspondence exists between the clinical and survey measures. If there is a lack of sufficient correspondence, we will then examine reasons for any lack of correspondence, and make decisions about how to modify the NSDUH questions on substance dependence and abuse to achieve better correspondence. This information will then be used to develop a revised NSDUH substance dependence and abuse module.

In Phase 2, a second clinical validation study will be conducted using the same procedures as Phase 1. This will allow a determination of the correspondence (kappa) between the revised diagnosis obtained from the NSDUH substance dependence and abuse module and the diagnosis from the structured clinical interviews. Final revisions to the survey instrument will be made based on findings from Phase 2.

Finally, if the revised NSDUH survey assessment of substance dependence and abuse still does not have sufficient correspondence with a structured clinical interview, overall, or for certain groups (for example, youth or marijuana users) or for certain criteria (withdrawal symptoms or substance abuse without dependence), then an additional phase of the study will be undertaken. Even if the overall correspondence from Phase 2 is good, for example, additional small validation studies might be conducted for specific groups (e.g., adolescent females, Hispanics) for whom there was not good correspondence as a result of small sample sizes or real differences in interpretation of the questionnaire items. All decisions about final revisions to the module will balance the need for correspondence across different groups.

	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Phase I				
Screener only	60	1	.08	5
Screener and Interview	270	1	1.5	405
Phase II				
Screener only	100	1	.08	8
Screener and Interview	455	1	1.5	683
Phase III				
Screener only	100	1	.08	8
Screener and Interview	455	1	1.5	683
Total	1,440			1,792

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 9, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–17535 Filed 7–12–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 5, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 01–17271 Filed 7–12–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to noon, Tuesday, July 24, 2001 and 8:30 a.m. to 4:30 p.m., Wednesday, July 25, 2001.

ADDRESSES: The ANS Task Force meeting will be held at the Westin, 909 North Michigan Avenue, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at *sharon_gross@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting on Tuesday and Wednesday include: An overview of regional issues identified by the ANS Task Force Great Lakes Regional Panel; a discussion on the draft strategic plan for the ANS Task Force; an update of activities from the Task Force's regional panels and a recommendation for forming a new Northeast Regional Panel; status and updates from several other Task Force committees including the Caulerpa Prevention Committee and the Communications, Education and Outreach Committee; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: July 10, 2001.

Cathleen I. Short,

Co-chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 01–17629 Filed 7–12–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of two currently approved information collections (OMB Control Numbers 1010–0018 and 1010–0039).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval two information collection requests (ICRs). We are also soliciting comments from the public on these ICRs., titled ''Form MMS–126, Well Potential Test Report (WPT)''; and ''Form MMS–127, Sensitive Reservoir Information Report (SRI).'' The submissions to OMB request approval of revisions (to both forms) that clarify the submittal requirements and eliminate certain data elements. The current title (Request for Reservoir Maximum Efficient Rate) of Form MMS–127 is renamed.

DATES: Submit written comments by August 13, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0018 or 1010–0039), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the e-mail address is: rules.comments@mms.gov. Reference ''Information Collection Form MMS–126'' or ''Form MMS–127'' as appropriate in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your

comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the revised forms MMS–126 and MMS–127.

SUPPLEMENTARY INFORMATION:

Titles and OMB Control Numbers:

Form MMS–126, Well Potential Test Report (WPT), 1010–0039.

Form MMS–127, Sensitive Reservoir Information Report (SRI), 1010–0018.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop oil and gas or sulphur resources on the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources offshore; preserve and maintain free-enterprise competition; and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations ''to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein'' and to include provisions ''for the prompt and efficient exploration and development of a lease area.''

To carry out these responsibilities, MMS has issued regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases. Various sections of 30 CFR part 250, subpart K, require respondents to submit forms MMS–126 and MMS–127.

For several years, the MMS Gulf of Mexico Region (GOMR) has issued instructions to lessees and operators that when they submit these forms, they do not need to request a maximum production rate (MPR) or a maximum efficient rate (MER), nor complete data elements 110 through 114 on cumulative well production during approved testing periods. The GOMR does, however, retain the authority to set MPRs for individual well completions, and to set MERs for individual reservoirs, if necessary to ensure natural resources conservation and to maximize ultimate recovery.

The MMS Alaska and Pacific OCS Regions agree with the determination that MMS no longer needs to collect the information reported in data elements 110 through 114 on both forms. They will still require lessees and operators in those regions to complete data element 91 (Requested MPR) on form MMS–126 and data elements 119 and 120 (Present and Requested MER) on form MMS–127. The revised forms reflect these decisions. When we next revise the 30 CFR 250, subpart K, regulations, we anticipate proposing to officially incorporate these changes in regulation.

MMS District and Regional Supervisors use the information on form MMS–126 for various environmental, reservoir, reserves, and conservation analyses, including the determination of MPRs when necessary for certain oil and gas completions. The form contains information concerning the conditions and results of a well potential test. This requirement implements the conservation provisions of the OCS Lands Act and 30 CFR 250. The information obtained from the well potential test is essential to determine if an MPR is necessary for a well and to establish the appropriate rate. It is not possible to specify an MPR in the absence of information about the production rate capability (potential) of the well.

MMS District and Regional Supervisors use the information submitted on form MMS–127 to determine whether a rate-sensitive reservoir is being prudently developed. This represents an essential control mechanism that MMS uses to regulate production rates from each sensitive reservoir being actively produced. Occasionally, the information available on a reservoir early in its producing life may indicate it to be non-sensitive, while later and more complete information would establish the reservoir as being sensitive. Production from a well completed in the gas cap of a sensitive reservoir requires approval from the Regional Supervisor. The information submitted on form MMS–127 provides reservoir parameters that are revised at least annually or sooner if reservoir development results in a change in reservoir interpretation. The engineers and geologists use the information for rate control and reservoir studies.

Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), 30 CFR 250.196 (Data and information to be made available to the public), and 30 CFR part 252 (OCS Oil and Gas Information Program). Proprietary information concerning geological and geophysical data will be protected according to 43 U.S.C. 1352.

Frequency: The frequency is ''on occasion,'' but not less than annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The average ''hour'' burden for both forms MMS–126 and MMS–127 is 1 hour.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burden associated with either form MMS–126 or MMS–127.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 6, 2001, we published a **Federal Register** notice (66 FR 18294) announcing that we would submit these ICRs to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at anytime on these collections of information; and provides the address to which they should send comments. This information is also contained in the PRA statement on each of the forms. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, send your comments

directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 13, 2001. The PRA provides that 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.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 5, 2001.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 01–17617 Filed 7–12–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved information collection (OMB Control Number 1010–0067).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled ''30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations.'' We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by August 13, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0067), 725 17th Street, NW., Washington, DC 20503. Also, provide a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817. Or, you may e-mail comments to: rules.comments@mms.gov. Reference ''Information Collection 1010–0067'' in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations

OMB Control Number: 1010–0067.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on resources offshore; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This collection of information addresses 30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations.

Last year we submitted an ICR to the Office of Management and Budget (OMB) to renew the information collection requirements of the subpart E regulations. That approved information collection covered the paperwork burdens specifically required in § 250.517 (tubing and wellhead equipment and their requirements). This included the requirement under § 250.517(c) to notify the District Supervisor if sustained casing pressure (SCP) is observed on a well. This situation represents an ongoing safety hazard and can cause serious or immediate harm or damage to human life, the marine and coastal environment, and property.

After receiving notification, the Region provides the lessee/operator the procedures and requirements necessary to monitor and report SCP conditions, and the process for obtaining a departure to produce wells with SCP. Because the Gulf of Mexico Region (GOMR) now has over 8,000 wells affected by SCP, the GOMR plans to issue an NTL updating its policy and procedures on SCP. The NTL will detail the SCP reporting and recordkeeping requirements. The paperwork burden for these are included in our revised ICR to OMB for approval of the information collection requirements in the subpart E regulations and related NTLs.

The MMS District Supervisors analyze and evaluate the information and data collected under subpart E to ensure that planned well-completion operations will protect personnel safety and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, MMS uses the information to ensure: (a) Compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits. The MMS district and regional offices will use paperwork requirements in the new GOMR NTL to determine that production from wells with SCP continues to afford the greatest possible degree of safety under these conditions.

Responses are mandatory. No items of a sensitive nature are collected. Proprietary information respondents submit is protected according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), 30 CFR 250.196 (Data and information to be made available to the public), and 30 CFR part 252 (OCS Oil and Gas Information Program).

Frequency: Varies by section, but is mostly ''on occasion'' or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The following chart details the components of the information collection requirements in subpart E and related NTLs—which we estimate to be a total of 9,575 burden hours. In estimating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden. The paperwork

requirements of the GOMR SCP NTL increase the currently approved burden by 3,903 hours.

Citation 30 CFR 250 subpart E and NTL sec.	Reporting and recordkeeping requirement	Hour burden per requirement
Reporting Requirements		
502	Request approval not to shut-in well during equipment movement	1 hour.
502 (MMS condition of approval)	Notify MMS of well-completion rig movement on or off platform or from well to well on same platform.	6 minutes.
505; 513; 515(a); 516(g), (j); NTL I.C, III.B.	Submit forms MMS–123, MMS–124, MMS–125 for various approvals, including remediation procedure for SCP.	Burden covered under 1010–0044, 1010–0045, 1010–0046.
512	Request field well-completion rules be established and canceled (on occasion, however, there have been no requests in many years).	1 hour.
515(a)	Submit well-control procedure	1 hour.
517(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	4 hours.
517(c); NTL I, III.B	Notify MMS if sustained casing pressure is observed on a well	¼ hour.
NTL I.A, I.E, I.G, I.H, II, III Appendix	Submit results of diagnostic tests, departure requests and supporting information, including plan of action for non-producing wells.	2 hours.
NTL I.C	Notify MMS when remediation procedure is complete	1 hour.
NTL I.D	Appeal departure request denial according to 30 CFR part 290	Burden covered under 1010–0121.
500–517	General departure and alternative compliance requests not specifically covered elsewhere in subpart E regulations.	2 hours.
Recordkeeping Requirements		
506	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews × 2 weeks per completion = 4).	10 minutes.
511	Perform operational check of traveling-block safety device; document results (weekly × 2 weeks per completion = 2).	6 minutes.
516 tests; 516(i)	Perform BOP pressure tests, actuations & inspections; record results; retain records 2 years following completion of well (when installed; minimum every 14 days; as stated for component).	6 hours.
516(d)(5) test; 516(i)	Function test annulars and rams; document results (every 7 days between BOP tests—biweekly; note: part of BOP test when conducted).	10 minutes.
516(e)	Record reason for postponing BOP system tests (on occasion)	6 minutes.
516(f)	Perform crew drills; record results (weekly for 2 crews × 2 weeks per completion = 4).	½ hour.
NTL I.F	Retain complete record of well's casing pressure and diagnostic tests for 2 years.	¼ hour.
NTL & Appendix	Perform diagnostic tests and record results; perform follow-up tests at least annually to determine departure status.	4 hours.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 8, 2001, we published a **Federal Register** notice (66 FR 13960) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 displays the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at anytime on these collections of information; and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 13, 2001. The PRA provides that 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.

We will provide you, without charge, a copy of our submission to OMB which includes the regulations and Notice to Lessees and Operators (NTL) that require the subject collection of information.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the

record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 4, 2001.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 01–17617 Filed 7–12–01; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–449]

In the Matter of Certain Abrasive Products Made Using a Process for Making Powder Preforms, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') amending the complaint and notice of investigation in the above-captioned investigation to include allegations of infringement of additional claims of the patent in issue.

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–0663. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing the Commission's internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–Line) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 6, 2001, based on a complaint filed on behalf of Minnesota Mining and Manufacturing Co. of St. Paul, Minnesota and Ultimate Abrasive systems, L.L.C. of Atlanta, Georgia. The complaint named two respondents, Kinik Company of Taipei, Taiwan and Kinik Corporation of Anaheim, California.

On June 8, 2001, complainants filed a motion pursuant to Commission rule 210.14 for an order amending the complaint and notice of investigation by including allegations of infringement of dependent claims 4, 5, and 8 of U.S. Letters Patent 5,620,489, in addition to independent claim 1 of that patent that is already in issue. Respondents opposed the motion and the Commission investigative attorney supported it. On June 19, 2001, the presiding ALJ issued an ID (Order No. 16) granting the motion. No party petitioned for review of the ID.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., DC 20436, telephone (202) 205–2000.

Issued: July 10, 2001.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17620 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731–TA–943–947 (Preliminary)]

Circular Welded Non-Alloy Steel Pipe From China, Indonesia, Malaysia, Romania, and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of circular welded non-alloy steel pipe,[2] provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines [3] that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Indonesia, Malaysia, Romania, and South Africa of circular welded non-alloy steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation with respect to China. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if its preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigation with respect to China. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] For a complete description of the product, see Commerce's **Federal Register** Notice of Initiation of Antidumping Duty Investigations, June 21, 2001, 66 FR 33227.

[3] Commissioners Lynn M. Bragg and Dennis M. Devaney dissenting.

Background

On May 24, 2001, a petition was filed with the Commission and Commerce on behalf of Allied Tube & Conduit Corp., Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; LTV Copperweld, Youngstown, OH; Northwest Pipe Co., Portland, OR; Western Tube & Conduit Corp., Long Beach, CA; Century Tube Corp., Pine Bluff, AR; Laclede Steel Co., St. Louis, MO; Maverick Tube Corp., Chesterfield, MO; Sharon Tube Co., Sharon, PA; Wheatland Tube Co., Wheatland, PA; and the United Steelworkers of America, AFL–CIO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of circular welded non-alloy steel pipe from China, Indonesia, Malaysia, Romania, and South Africa. Accordingly, effective May 24, 2001, the Commission instituted antidumping duty investigations Nos. 731–TA–943–947 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 June 4, 2001 (66 FR 29988). The conference was held in Washington, DC, on June 14, 2001, 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 July 9, 2001. The views of the Commission are contained in USITC Publication 3439 (July 2001), entitled Circular Welded Non-Alloy Steel Pipe from China, Indonesia, Malaysia, Romania, and South Africa: Investigations Nos. 731–TA–943–947 (Preliminary).

Issued: July 10, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17618 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–455]

In the Matter of Certain Network Interface Cards and Access Points for Use in Direct Sequence Spread Spectrum Wireless Local Area Networks and Products Containing Same; Notice of Decision to Affirm Two Initial Determinations Granting Intervention but Denying Respondent Status

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt two initial determinations (''IDs'') (Orders Nos. 12 and 13) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation, granting the motions of Intersil Corporation (''Intersil'') and Agere Systems, Inc. (''Agere''), respectively, to intervene, but denying the parties respondent status. The Commission has also issued an opinion clarifying its views on intervention.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 9, 2001, based on a complaint filed by Proxim, Inc. (''Proxim'') against 14 entities other than Intersil or Agere. The notice of investigation was published in the **Federal Register** on April 9, 2001. 66 FR 18507. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain wireless network interface cards and access points by reason of infringement of certain U.S. patents owned by Proxim. On April 16, 2001, Intersil and Agere each filed separate motions to intervene as respondents in the investigation.

Proxim filed a response to Intersil's motion in which it opposed the intervention of Intersil as a respondent, but did not object if Intersil was permitted to become a party to the investigation as an intervenor. The Commission investigative attorney (''IA'') supported intervention of Intersil as an intervenor, but not as a respondent.

Proxim and the IA did not oppose intervention of Agere. However, Proxim noted that Agere failed to state why it should be considered a respondent rather than an intervenor and, therefore, Proxim saw no reason to designate Agere as a respondent. The IA supported intervention of Agere as an intervenor, but opposed granting Agere respondent status.

On May 8, 2001, and on May 15, 2001, the ALJ issued two IDs (Orders Nos. 12 and 13) allowing Intersil and Agere, respectively, to become intervenors in the present investigation, but denying Intersil and Agere respondent status. On May 18, 2001, Intersil filed a petition for review of Order No. 12. No party petitioned for review of Order No.13. On June 15, 2001, the Commission determined to review both IDs because they affected Commission policy.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.45).

Issued: July 9, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17502 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–445]

In the Matter of Certain Plasma Display Panels and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting a Motion to Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting complainants'' motion to amend the complaint and notice of investigation in the above-captioned investigation to add ''components thereof'' to the investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 16, 2001, based on a complaint filed by the Board of Trustees of the University of Illinois, of Urbana, Illinois, and Competitive Technologies, Inc. of Fairfield, Connecticut. The respondents named in the investigation are Fujitsu Limited, Fujitsu General Limited, Fujitsu General America Corp., Fujitsu Microelectronics, Inc. and Fujitsu Hitachi Plasma Display Ltd. (collectively ''Fujitsu''). The complaint alleged that Fujitsu violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain plasma display panels and products containing same by reason of infringement of certain claims of U.S. Letters Patents Nos. 4,866,349, and 5,081,400.

On June 15, 2001, complainants moved pursuant to rule 210.14(b) to amend the complaint and notice of investigation to add ''components thereof'' to the complaint and notice. Fujitsu responded to the motion, but did not oppose it.

On June 21, 2001, the ALJ issued an ID granting complainants' unopposed motion. No petitions for review of the ID were filed.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Copies of the 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: July 10, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17619 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–949 and 950 (Preliminary)]

Processed Gum Arabic From France and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigations.

SUMMARY: On July 5, 2001, the Department of Commerce and the Commission received a letter from petitioner in the subject investigations (Importers Service Corporation, Jersey City, NJ) withdrawing its petition. Commerce has not initiated investigations as provided for in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigations concerning processed gum arabic from France and the United Kingdom (investigations Nos. 731–TA–949 and 950 (Preliminary)) are discontinued.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained 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). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: July 10, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–17621 Filed 7–12–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects

to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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Massachusetts
MA010001 (Mar. 02, 2001)
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MA010007 (Mar. 02, 2001)
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NY010003 (Mar. 02, 2001)
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NY010013 (Mar. 02, 2001)
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MI010082 (Mar. 02, 2001)
MI010083 (Mar. 02, 2001)
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NV010007 (Mar. 02, 2001)
NV010009 (Mar. 02, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800. When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 5th day of July 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–17291 Filed 7–12–01; 8:45 am]

BILLING CODE 4510–21–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 98–54

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Exemption 98–54 (PTE 98–54). A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before September 11, 2001.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

PTE 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, which are parties in interest with respect to such plans, pursuant to standing instructions. In the absence of an exemption, foreign exchange transactions pursuant to standing instructions would be prohibited under circumstances where the bank or broker-dealer is a party in interest or disqualified person with respect to the plan under the Employee Retirement Income Securities Act (ERISA) or the Internal Revenue Code (Code).

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

III. Current Actions

The class exemption has five basic information collection requirements. The first requires the bank or broker-dealer to maintain written policies and procedures for handling foreign exchange transactions for plans for which it is a party in interest which ensure that the party acting for the bank or broker-dealer knows it is dealing with a plan. The second requires that the transactions are performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan. The third requires that the bank or broker-dealer provides the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and de minimis purchase and sale transactions prior to the execution of a transaction. The fourth requires the bank or broker-dealer to furnish the authorizing fiduciary a written confirmation statement with respect to each covered transaction within five days of execution. The fifth requires that the bank or broker-dealer maintains records necessary for plan fiduciaries, participants, and the Department and Internal Revenue Service to determine whether the conditions of the exemption are being met for period of six years form the date of execution of a transaction.

This notice requests comments on the extension of the ICR included in the PTE 98–54. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: Prohibited Transaction Class Exemption 98–54.

OMB Number: 1210–0111.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 35.

Frequency of Response: On occasion.

Responses: 8,400.

Estimated Total Burden Hours: 4,200.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 9, 2001.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 01–17550 Filed 7–12–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request; Comment Request; Prohibited Transaction Class Exemption 77–4

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and

financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Class Exemption 77–4 for certain transactions between investment companies and employee benefit plans. A copy of the proposed information collection request (ICR) can be obtained by contacting the person listed below in the **ADDRESSES** section.

DATES: Written comments must be submitted on or before September 11, 2001.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; FAX (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company (mutual fund) when a fiduciary with respect to the plan (e.g., investment manager) is also the investment advisor for the investment company. In the absence of the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

Without the relief provided by this exemption, an open-end mutual fund would be unable to sell shares to or purchase shares from a plan when the fiduciary with respect to the plan is also the investment advisor for the mutual fund. As a result, plans would be compelled to liquidate their existing investments involving such transactions and to amend their plan documents to establish new investment structures and policies.

In order to insure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department has included in the exemption three basic disclosure requirements. The first requires at the time of the purchase or sale of such mutual fund shares that the plan's independent fiduciary receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charges to or paid by the plan and the open-end mutual fund to the investment advisor. The second requires that the independent fiduciary approve in writing such purchases and sales. The third requires that the independent fiduciary, once notified of changes in the fees, re-approve in writing the purchase and sale of mutual fund shares.

Type of Review: Extension of a currently approved collection.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

OMB Numbers: 1210–0049.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 431.

Frequency of Response: On occasion.

Total Responses: 82,000.

Average Time Per Response: 5 minutes.

Total Annual Burden: 7,000 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 9, 2001.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 01–17551 Filed 7–12–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Alternative Method of Compliance for Certain SEPs Pursuant to 29 CFR 2520.104–49

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the collection of information included in the alternative method of compliance for certain simplified employee pensions regulation (29 CFR 2520.104–49). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 11, 2001.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782, FAX (202) 219–4782 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 110 of the Employment Retirement Income Security Act (ERISA) authorizes the Secretary to prescribe alternative methods of compliance with the reporting and disclosure requirements of Title I of ERISA for pension plans. Simplified employee pensions (SEPs) are established in section 408(k) of the Internal Revenue Code (Code). Although SEPs are primarily a development of the Code and subject to its requirements, SEPs are also pension plans subject to the reporting and disclosure requirements of Title I of ERISA.

The Department previously issued a regulation under the authority of section 110 of ERISA (29 CFR 2520.104–49) that intended to relieve sponsors of certain SEPs from ERISA's Title I reporting and disclosure requirements by prescribing an alternative method of compliance. These SEPs are, for purposes of this Notice, referred to as ''non-model'' SEPs because they exclude (1) those SEPs which are created through use of Internal Revenue Service (IRS) Form 5305–SEP, and (2) those SEPs in which the employer limits or influences the employees' choice to IRAs into which employers' contributions will be made and on which participant withdrawals are prohibited. The disclosure requirements in this regulation were developed in conjunction with the Internal Revenue Service (IRS Notice 81–1). Accordingly, sponsors of ''non-model'' SEPs that satisfy the limited disclosure requirements of the regulation are relieved from otherwise applicable reporting and disclosure requirements under Title I of ERISA, including the requirements to file annual reports (Form 5500 Series) with the Department, and to furnish summary plan descriptions and summary annual reports to participants and beneficiaries.

This ICR includes four separate disclosure requirements. First, at the time an employee becomes eligible to participate in the SEP, the administrator of the SEP must furnish the employee in writing specific and general information concerning the SEP; a statement on rates, transfers and withdrawals; and a statement on tax treatment. Second, the administrator of the SEP must furnish participants with information concerning any amendments. Third, the administrator must notify participants of any employer contributions made to the IRA. Fourth, in the case of a SEP that provides integration with Social Security, the administrator shall provide participants with statement on Social Security taxes and the integration formula used by the employer.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

The existing collection of information should be continued because the alternative disclosure arrangement provided through this regulation relieves sponsors of ''non-model'' SEPs of most of the reporting and disclosure requirements under Title I of ERISA. Also, the disclosure requirements set forth in this regulation, insure that administrators of ''non-model'' SEPs provide participants with specific written information concerning SEPs.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Alternative Method of Compliance for Certain SEPs pursuant to 29 CFR 2520.104–49.

OMB Numbers: 1210–0034.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 460.

Total Responses: 20,700.

Frequency of Response: On occasion.

Average Time per Response: 35 minutes.

Estimated Total Annual Burden: 2,000 hours.

Total Burden Cost (operating/maintenance): $7,900.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 9, 2001.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 01–17552 Filed 7–12–01; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice of Availability of 2002 Competitive Grant Funds for Service Area MI–1, MI–2, MI–3, MI–4, MI–5, MI–6, MI–7, MI–8, MI–9, MI–10, and MI–11 in Michigan

AGENCY: Legal Services Corporation.

ACTION: Solicitation of Proposals for the Provision of Civil Legal Services for Basic Field-General service areas MI–1, MI–2, MI–3, MI–4, MI–5, MI–6, MI–7, MI–8, MI–9, MI–10, and MI–11 in Michigan.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

LSC hereby announces that it is reopening competition for 2002 competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in the Basic Field General service areas in Michigan. The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2002 are not known, although it is anticipated that the funding amount will be similar to calendar year 2001 funding. LSC has canceled the competition and rejected all bids for Michigan service areas MI–12, MI–13, MI–14, and MI–15.

DATES: Request for Proposals(RFP) are available from *www.ain.lsc.gov.* A Notice of Intent to Compete is due by 5:00 p.m. EDT, July 30, 2001. Grant proposals must be received at LSC offices by 5:00 p.m. EDT, September 4, 2001.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Jennifer Bateman, Grants Coordinator, Office of Program Performance, (202) 336–8835.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from non-profit

organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available at *www.ain.lsc.gov.*

Dated: July 10, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 01–17610 Filed 7–12–01; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–088]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, July 25, 2001, 8:30 a.m. to 5:30 p.m.; Thursday, July 26, 2001, 8:30 a.m. to 5:30 p.m.; and Friday, July 27, 2001, 8:30 a.m. to Noon.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Conference Room 6H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following:

—Associate Administrator's Program Status Report
—Subcommittee Reports
—OSS Program Status
—IT Security Issues
—Technology Programs Update
—Space Operations Status
—Research Programs Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 9, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–17509 Filed 7–12–01; 8:45 am]

BILLING CODE 7510–01–U

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in July 2001. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 2001. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in July 2001 is 4.82 percent (*i.e.,* 85 percent of the 5.67 percent yield figure for June 2001)

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between August 2000 and July 2001.

For premium payment years beginning in:	The assumed interest rate is:
August 2000	4.97
September 2000	4.86
October 2000	4.96
November 2000	4.93
December 2000	4.91
January 2001	4.67
February 2001	4.71
March 2001	4.63
April 2001	4.54
May 2001	4.80
June 2001	4.91
July 2001	4.82

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 2001, as announced by the IRS, is 7 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	9/30/01	7

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the third quarter (July through September) of 2001 (*i.e.,* the rate reported for June 15, 2001) is 7.00 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in August 2001 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of July 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–17575 Filed 7–12–01; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 44528; File No. SR–CBOE–2001–31]

In the Matter of Chicago Board Options Exchange, Incorporated; Order of Summary Abrogation

July 9, 2001.

Notice is hereby given that the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(3)(C) of the Securities Exchange Act of 1934 (''Act''),[1] is summarily abrogating a rule of the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'').

On June 11, 2001, the CBOE filed with the Commission a rule change (''Rule Change'') establishing a new fee to be imposed on clearing firms. The new fee applies to each contract that the clearing firm sends to the Exchange's Public Automated Routing (''PAR'') system in a given month, if the total number of contracts cancelled by the firm on the PAR system that month exceeds 40% of the total number of contracts that the firm sent to PAR in that same month. The fee does not apply to any clearing firm that sends fewer than 4,000 contracts to PAR in a given month. The CBOE designated the Rule Change to take effect upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[2]

On July 6, 2001, the Commission published notice of the filing and immediate effectiveness of the Rule Change (''Notice'').[3] In the Notice, the Commission specifically noted that section 19(b)(3)(C) of the Act provides that, within 60 days of the filing of the Rule Change, the Commission may summarily abrogate the Rule Change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[4]

It appears that the Rule Change raises questions as to whether the fee is consistent with the Act. Accordingly, the Commission believes that the procedures provided by section 19(b)(2) will provide a more appropriate mechanism for determining whether the Rule Change is consistent with the provisions of the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to abrogate the Rule Change.

It Is Therefore Ordered, pursuant to section 19(b)(3)(C) of the Act, that the Rule Change (File No. SR–CBOE–2001–31) is summarily abrogated as of this date, and that, if the CBOE chooses to refile the Rule Change, it do so pursuant to section 19(b)(2) of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17516 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44521; File No. 4–443]

Joint Industry Plan; Order Approving a Proposed Options Listing Procedures Plan by the American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, The Options Clearing Corporation, Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

July 6, 2001.

I. Introduction

On January 11, 2001, pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Inc. (''CBOE''), International Securities Exchange LLC (''ISE''), The Options Clearing

[1] 15 U.S.C. 78s(b)(3)(C).

[2] 15 U.S.C. 78s(b)(3)(A).

[3] Securities Exchange Act Release No. 44489 (June 28, 2001), 66 FR 35683 (July 6, 2001).

[4] *Id.*

[5] 17 CFR 200.30–3(a)(58).

[1] 15 U.S.C. 78k–1(a)(3)(B).

[2] 17 CFR 240.11Aa3–2.

Corporation (''OCC''), Pacific Exchange, Inc. (''PCX''), and Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, the ''Sponsors'') filed with the Securities and Exchange Commission (''Commission'') a proposed options listing procedures plan (''OLPP'' or ''Plan'').[3] The Sponsors filed amendments to the proposed Plan on March 3, 2001[4] and May 9, 2001.[5] The proposed OLPP, as amended, was published in the **Federal Register** on May 16, 2001.[6] No comments were received.

II. Background

On September 17, 1991, the Commission approved the Joint-Exchange Options Plan (''JEOP''), which sets forth procedures governing the listing of new options.[7] The Amex, CBOE, PCX, Phlx, and New York Stock Exchange[8] were parties to the JEOP.[9] On September 11, 2000, the Commission instituted public administrative proceedings pursuant to Section 19(h)(1) of the Act[10] against, and simultaneously accepted offers of settlement from, the Amex, CBOE, PCX, and Phlx (collectively, the ''respondent exchanges'').[11] Under the Settlement Order, the respondent exchanges were ordered to amend the JEOP to eliminate provisions that require advance notice to any other exchange of the intention to list a new option and to eliminate provisions that prevent or delay a market from commencing to list or trade any option.[12]

On January 11, 2001, the respondent exchanges, along with the ISE and the OCC, submitted the proposed OLPP to the Commission to replace and supersede the JEOP and to comply with the respondent exchanges' obligations under Section IV.B.a. of the Settlement Order. Although not parties to the Settlement Order, the ISE and the OCC have elected to become Sponsors of the proposed OLPP to facilitate the listing and trading of standardized options contracts.

III. Description of the OLPP

The proposed Plan would provide procedures for: (i) Listing and trading new options classes; (ii) selecting new options series; (iii) petitioning the OCC to review the eligibility, pursuant to the exchanges' listing standards, of a selected option class without delaying the trading of that option class; (iv) determining operational details for option contracts adjusted pursuant to OCC By-Laws; (v) admitting new sponsors; and (vi) losing eligibility to participate in the Plan.

A. Selection of an Option Class

Under the proposed OLPP a Sponsor that seeks to trade an option on an equity security (''Selecting Exchange'') would be required to submit a certificate notifying the OCC of its intention to trade the option. If the option was not currently trading on another exchange, or had not been certified for listing and trading on another exchange, the Selecting Exchange would be required to provide the options symbol, initial exercise prices, expiration cycle, and the position and exercise limits for the selected option class. The OCC would notify all Selecting Exchanges and all other exchanges that traded the option class of identity of each Selecting Exchange.

B. Selection of a New Option Series

The proposed OLPP would provide procedures for each of the Sponsors to trade additional series of an option class it currently trades. The OLPP would require different procedures if the addition of a new series would involve the introduction of a new expiration month. With respect to adding new option series and melding LEAP series into near—term series, the proposed OLPP would permit an exchange they wanted to trade a new series and any other exchange that traded the same option class to determine jointly, when necessary, the symbol and trading codes for the new series.

C. Petition To Review the Eligibility of a New Option Class

Under the proposed Plan, a Sponsor would be permitted to petition the OCC to review whether an option class was eligible for listing on the day a Selecting Exchange certified the option for listing and trading. The exchange listing and trading the option class would be permitted to continue to do so unless and until the OCC determined that the class was ineligible. The proposed OLPP would set forth the procedures to be followed by the petitioning exchange, the OCC, and the Selecting Exchange. If the OCC determined that the option class was ineligible, each Selecting Exchange would be required, on the first trading day after the OCC's determination, to delist any option series written open interest and allow only closing transaction in any series with open interest. If the option class subsequently became eligible, any Sponsor would be permitted to submit a certificate to the OCC to list and trade the option class.

D. Adjustment Pursuant to OCC By-Laws

The OCC's By-Laws permit a securities committee composed of representatives from each registered options exchange trading options on a particular security to determine whether to make adjustment to reflect particular events affecting the underlying security, as well as operational issues attendant to the adjustment.[13] Events affecting the underlying security that may require an

[3] *See* Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''OLPP''), dated January 11, 2001. The proposed OLPP is available at the Commission's Public Reference Room.

[4] Letter dated March 2, 2001, from Claire P. McGrath, Vice President and Special Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). Amendment No. 1 provided information required by Rule 11Aa3–2(b)(4) under the Act, 17 CFR 240.11Aa3–2(b)(4), regarding implementation of the proposed OLPP, the proposed OLPP's impact on competition, and written agreements or understandings among the Sponsors of the Plan.

[5] Letter dated May 4, 2001, from Claire P. McGrath, Vice President and Special Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission (''Amendment No. 2''). Amendment No. 2 would add procedures for new eligible exchanges to become Sponsors of the Plan and a provision for Sponsors that are no longer eligible to participate in the Plan.

[6] *See* Securities Exchange Act Release No. 44287 (May 10, 2001), 66 FR 27184.

[7] *See* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48954 (September 25, 1991). The JEOP provides specific procedures governing the selecting, listing, challenging, and arbitrating the eligibility of new equity options overlying both exchange-traded and over-the-counter listed securities.

[8] The NYSE later sold its options business to the CBOE. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[9] The parties filed, and the Commission approved, the JEOP as identical proposed rule changes. In addition, the ISE incorporated the JEOP into its rules at the time its application for registration as a national securities exchange was approved by the Commission. *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The proposed OLPP would not replace these rules. The Sponsors would have to file proposed rule changes to amend their rules.

[10] 15 U.S.C. 78s(h)(1).

[11] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000) (''Settlement Order''). The Settlement Order states that the respondent exchanges have significantly impaired the operations of the options markets by, among other things, refraining from multiply listing a large number of options.

[12] *See* Section IV.B.a. of the Settlement Order. The Settlement Order requires an exchange to provide to the OCC (i) not more than one business day's notice of the exchange's intent to list an existing option, and (ii) reasonable advance notice of the exchange's intention to list a new option. *Id.*

[13] *See* Article VI, Section 11 of the OCC By-Laws. Operational issues attendant to the adjustment could include option symbols and trading codes, contract multipliers, and position and exercise limits applicable to the adjusted option class.

adjustment would include, among other things, stock dividends or distributions, stock splits, rights offerings mergers, and reorganizations. The proposed OLPP would permit the Sponsors to make these adjustments, as well as determine operational issues in connection with such adjustments.

E. New Plan Sponsors

The proposed OLPP contains a self-effecting provision for the addition of new sponsors, in which an ''Eligible Exchange'' would be able to become a sponsor of the Plan by: (i) Executing a copy of the Plan; (ii) providing each then-current Plan Sponsor with a copy of such executed Plan; and (iii) effecting an amendment to the Plan reflecting the addition of the new sponsor's name.[14] An Eligible Exchange would be defined as a national securities exchange registered with the Commission in accordance with section 6(a) of the Act[15] that: (i) has effective rules for the trading of option contracts issued and cleared by OCC approved in accordance with the provisions of the Act and the rules and regulations thereunder; and (ii) is a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.[16]

F. Loss of Eligibility

An exchange would no longer be an Eligible Exchange when it ceased trading OCC issued and cleared option contracts, or, if it had become a Plan Sponsor and it had not commenced, within one year of becoming a Plan Sponsor, to list and trade OCC issued and cleared option contracts.

IV. Discussion

In section 11A of the Act,[17] Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act. Section 11A(a)(3)(B) of the Act[18] authorizes the Commission ''by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof.'' Rule 11Aa3–2 under the Act[19] establishes the procedures for filing, amending, and approving national market system plans. Pursuant to paragraph (c)(2) of Rule 11Aa3–2, the Commission must approve a national market system plan if it finds that the proposed plan ''is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.''[20]

After careful review, the Commission has determined to approve, pursuant to section 11A(a)(3)(B) of the Act and Rule 11Aa3–2 thereunder, the proposed OLPP. The Commission finds that approval of the Plan is consistent with the Act, the rules thereunder, and specifically, with the objectives set forth in section 11A of the Act and in Rule 11Aa3–2 thereunder. The Commission believes that, by ensuring uniform procedures for the listing of standardized options, the proposed OLPP will help to maintain fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system. Specifically, the Commission believes that by providing uniform procedures for selecting option classes and series, as well as adjusting options to reflect particular events affecting the underlying security, the proposed OLPP will ensure the continued fungibility of option contracts and permit effective multiple trading of options. The Commission also believes that the proposed OLPP will minimize potential confusion among member firms and investors by ensuring uniformity with respect to symbology, trading codes, and contract terms.

In addition, the Commission believes that the proposed procedures for petitioning the OCC to review the eligibility of a new option class will minimize the potential for trading options on ineligible securities, without preventing or delaying an exchange from commencing to list or trade any option, as required by the Settlement Order. The Commission notes that these proposed procedures would not prohibit a Sponsor from submitting a certificate to list an option class, while at the same time petitioning for review of another Sponsor's listing of the same class. The Commission, however, notes that, as self-regulatory organizations, each exchange has an obligation to enforce its own rules, including its listing standards.

The Commission believes that the proposed provisions governing the admission of new sponsors to the OLPP and the circumstances under which a Sponsor would no longer be eligible to participate in the OLPP are consistent with the Act. The proposed procedures would permit new eligible exchanges to become sponsors of the Plan without the approval of current Sponsors, which should promote the multiple trading of options without permitting anticompetitive actions on the part of existing Sponsors to prevent or delay the plans of the new entrant into the market. In addition, the proposed procedures reasonably address the need to limit the eligibility to participate in the Plan of Sponsors that no longer trade, or never commenced trading, OCC issued and cleared options.

Finally, the Commission finds that the proposed OLPP would comply with the respondent exchanges' obligations under the Settlement Order. The proposed OLPP contains no requirement of advance notice of the intention to list a new option or provisions that would allow one exchange to prevent or delay another exchange from commencing to list or trade any option class other than the one-day advance notice requirement to the OCC needed for operational purposes.

V. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[21] and Rule 11Aa3–2 thereunder,[22] that the proposed OLPP, as amended, is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17519 Filed 7–12–01; 8:45 am]

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[14] An amendment to the Plan may be effected by a new Eligible Exchange executing a copy of the Plan, as then in effect (with the only change being the addition of the new Plan Sponsor's name in Section 9 of the Plan) and submitting such executing Plan to the Commission. Such amendment will be effective when it has been approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.

[15] 15 U.S.C. 78f(a).

[16] *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981.).

[17] 15 U.S.C. 78k–1.

[18] 15 U.S.C. 78k–1(a)(3)(B).

[19] 17 CFR 240.11Aa3–2.

[20] 17 CFR 240.11Aa3–2(c)(2).

[21] 15 U.S.C. 78k–1(a)(3)(B).

[22] 17 CFR 240.11Aa3–2.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 16, 2001.

An open meeting will be held on Wednesday, July 18, 2001, in Room 1C30, the William O. Douglas Room, at

10:00 a.m., and closed meetings will be held on Wednesday, July 18, 2001, at 3:00 p.m., and Thursday, July 19, 2001, at 11:00 a.m.

The subject matters of the open meeting on Wednesday, July 18, 2001, will be:

(1) The Commission will hear oral argument on an appeal by the Division of Enforcement from an administrative law judge's initial decision.

The law judge dismissed proceedings against Quest Capital Strategies, Inc., a registered broker-dealer and investment adviser, and David Chen Yu, Quest's president and sole owner. Quest and Yu were charged with failing to exercise reasonable supervision over John Nakoski, a Quest branch manager, from August 1992 through August 1993. The law judge concluded that Nakoski engaged in a complex fraudulent scheme that, through no fault of Quest and Yu, circumvented their reasonable supervisory controls.

Among the issues likely to be argued are the following:

For further information, contact Roy Sheetz at (202) 942–0950.

(a) whether the response of Quest and Yu to the notice they received of Nakoski's activities was adequate;

(b) whether the Division of Enforcement obstructed the supervisory efforts of Quest and Yu; and

(c) what sanctions, if any, are appropriate.

For further information contact William Stern at (202) 942–0949.

(2) The Commission will also hear oral argument on an appeal by Stonegate Securities, Inc. (''Stonegate'') and J.W. Barclay & Co., Inc. (''Barclay''), a registered broker-dealer.

The law judge found that Stonegate and Barclay willfully violated the reporting provisions of federal securities laws by failing to file Part II of Commission Form BD–Y2K until over a month after it was due. The law judge censured Stonegate and Barclay, and ordered them to pay $50,000 each in civil money penalties.

Among the issues likely to be argued is whether the sanctions assessed by the law judge are in the public interest.

For further information, contact Roy Sheetz at (202) 942–0950.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), 9(B), and (10) and 17 CFR 200.402(a)(5), (7), (9)(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Wednesday, July 18, 2001, will be: Post argument discussion.

The subject matter of the closed meeting scheduled for Thursday, July 19, 2001, will be: Institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: July 11, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–17764 Filed 7–11–01; 3:50 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44512; File No. SR–NASD–00–39]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to Proposed Rule Change Amending Schedule A of the NASD By-Laws for the Timely Filing of Reports, and Amendments to IM–9216, Minor Rule Violation Plan

July 3, 2001.

On June 20, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through it wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to amend Schedule A of the NASD By-Laws for the timely filing of reports, and amendments to IM–9216, the Minor Rule Violation Plan (''MRVP''). NASD Regulation amended the proposal on September 5, 2000.[3] NASD Regulation again amended the proposal on September 21, 2000.[4] The proposed rule change, including Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register** on September 29, 2000.[5] No comments were received on the proposal. On June 28, 2001, NASD Regulation amended the proposal.[6] This order approves the proposed rule change. Also, Amendment No. 3 is approved on an accelerated basis.

The Commission has reviewed carefully the proposed rule change, and Amendment Nos. 1, 2 and 3, and finds the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[7] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* September 1, 2000 letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation to Joseph P. Morra, Special Counsel, Division of Market Regulation (''Division''), SEC (''Amendment No. 1''). In Amendment No. 1, NASD Regulation made technical, non-substantive changes to the original proposal. In addition, NASD Regulation provided clarifying language to assist in describing the requirements under Rule 1120.

[4] *See* September 19, 2000 letter from Gregory J. Dean, Jr., Assistant General Counsel, NASD Regulation to Joseph P. Morra, Special Counsel, Division, SEC (''Amendment No. 2''). In Amendment No. 2, NASD Regulation corrected the reference to SEC Rule 19d–1(c)(2) in the title to IM–9216.

[5] Securities Exchange Act Release No. 43330 (September 22, 2000), 65 FR 58585.

[6] *See* June 28, 2001 letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC (''Amendment No. 3, NASD Regulation made the following changes to the proposal regarding the MRVP: (1) Member firm violations of the Regulatory Element of NASD Rule 1120, Continuing Education, will not be eligible for consideration under the MRVP; (2) untimely notifications filed pursuant to NASD Rule 4619(d) may be appropriate for disposition as a minor violation, where, for example, a member inadvertently misses the filing deadline but files the notification the following day before the commencement of trading and no customer harm has occurred; intentionally late filings are inappropriate for disposition as a minor violation of the rule; (3) synchronization of business clocks pursuant to NASD Rule 6953 is deleted from the proposal; (4) Securities Exchange Act Rule 17a–11, Notification Provisions for Brokers and Dealers, is deleted from the proposal; (5) payment of annual fees pursuant to MSRB Rule A–14 is clarified to reflect that, in the event NASD Regulation staff were to issue a minor violation to a firm for failure to pay the annual fee in a timely manner, the firm would remain obligated to pay the annual fee to the MSRB; firms would not be permitted to pay the minor violation fine in lieu of paying the annual fee to the MSRB; and (6) changes in language to the ''Purpose'' section of the proposal as originally filed (the new language is delineated in Amendment No. 3).

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Act,[8] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds that the proposal, as amended, is consistent with section 15A(b)(7) of the Act,[9] in that it will allow for reasonable safeguarding of investors' interests while establishing fair and reasonable rules for the Association's members and persons associated with its members. The Commission also finds the proposal is consistent with section 15A(b)(8) of the Act,[10] in that it furthers the statutory goal of providing a fair procedure for disciplining the Association's members and associated persons. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d–1(c)(2)[11] that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Association's MRVP. The Commission believes that the violation of any self-regulatory organizations' rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Association with greater flexibility in addressing certain violations, the MRVP provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Association will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under its MRVP, on a case by case basis, or if a violation requires formal disciplinary action.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing of Amendment No. 3 in the **Federal Register.** The Association filed Amendment No. 3 largely in response to concerns raised by the Commission regarding language in the original proposal, and ambiguity regarding how the Association intended to monitor violations of certain rules if those rules were administered under the Association's MRVP. Amendment No. 3 clarifies the ambiguities noted by the Commission and eliminates some rules that did not lend themselves to enforcement through an MRVP to address the Commission's concerns. The substantive changes implemented in Amendment No. 3 warrant accelerated approval. For these reasons, the Commission finds good cause for accelerating approval of Amendment No. 3.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether proposed Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–39 and should be submitted by August 3, 2001.

It Therefore Is Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–00–39), including Amendment Nos. 1, 2 and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17518 Filed 7–12–01; 8:45 am]

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[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78o–3(b)(7).

[10] 15 U.S.C. 78o–3(b)(8).

[11] 17 CFR 240.19d–1(c)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44522; File No. SR–NASD–2001–36]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Eliminate the Service Desk Feature of the Automated Confirmation Transaction Service

July 6, 2001.

On May 16, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–6 thereunder,[2] a proposed rule change to eliminate the Service Desk feature of the Automated Confirmation Transaction Service (''ACT''). Nasdaq amended the proposal on May 31, 2001,[3] and again amended the proposal on June 7, 2001.[4]

The proposal, as amended, was published in the **Federal Register** on June 19, 2001.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 15A(b)(6) of the Act,[8] which requires that the Association's rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–6.

[3] *See* May 30, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission and attachments.

[4] *See* June 6, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission.

[5] *See* Securities Exchange Act Release No. 44411 (June 12, 2001), 66 FR 32971.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds good cause for granting accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Notice of the proposal indicated that the Commission would consider granting accelerated approval of the proposed rule change after a 15-day comment period.[9] The Commission received no comments on the proposal. Given the absence of comments, and Nasdaq's desire to eliminate this service while simultaneously offering to assist members in transitioning towards other methods of reporting trades to ACT, the Commission finds good case to approve the proposal on an accelerated basis.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2001–36), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17520 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[9] *See* footnote 5, *supra.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44526; File No. SR–NASD–00–30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change To Include UTP Exchanges on a Voluntary Basis in the Nasdaq National Market Execution Service

July 6, 2001.

I. Introduction

On May 25, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant, to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to include unlisted trading privilege exchanges (''UTP Exchanges'') in the automatic-execution function of the Nasdaq National Market Execution Service (''NNMS'') on a voluntary basis. The proposed rule change was published for comment in the **Federal Register** on June 5, 2000.[3] The Commission received one comment letter on the proposed rule change.[4] On July 6, 2001, the Association submitted Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change. The Commission also is granting accelerated approval to Amendment No. 1 to the proposed rule change and is soliciting comment on Amendment No. 1 from interested persons.

II. Description of the Proposal

On January 14, 2000, the Commission approved the NNMS trading platform, which is scheduled to be phased-in on July 9, 2001.[6] As approved, the NNMS will be an automatic execution system that will serve as the primary trading platform for Nasdaq National Market securities. Under the NNMS rules, participation in the NNMS will be mandatory for Nasdaq market makers, and those market makers will be required to participate in the automatic-execution function of the system. In this proposed rule change, Nasdaq amended the NASD rules governing the NNMS to enable UTP Exchanges to participate in the automatic-execution function of the NNMS. Participation by UTP Exchanges in the NNMS, however, is voluntary.[7]

In the NNMS, the quotes of market makers, ECNs[8] (Full Participant ECNs and Order Entry ECNS), and UTP Exchanges are accessed in general price/time priority. As the NNMS was originally proposed and approved, UTP Exchanges would only receive orders through Nasdaq's SelectNet system. This was because UTP Exchanges have traditionally received orders against their quotes through the order-delivery functionality of SelectNet. Because SelectNet is an order-delivery system—as opposed to an automatic-execution system like the NNMS—UTP Exchanges that receive SelectNet orders must manually respond to the order to complete a trade.

After the Commission approved the NNMS, the Chicago Stock Exchange (''CHX'') and Nasdaq began discussion the possibility of the CHX participating in the automatic-execution functionality of the NNMS. Both Nasdaq staff and the CHX recognized that there cold be delays in processing orders if a UTP Exchange is alone at the inside and does not respond, within 90 seconds, to orders delivered to its quote.[9] This could occur if the UTP Exchange is experiencing system problems, is slow to process an order, or if there are delays in Nasdaq systems.

In light of the above, Nasdaq is proposing to permit UTP Exchanges to participate in the automatic-execution functionality of the NNMS. Participation by UTP Exchanges is voluntary. The proposed rule change also clarifies that if a UTP Exchange participates in the automatic-execution functionality of the NNMS, orders preferenced to the UTP Exchange's quotes mut meet the oversized requirement or other conditions of the rule. This is to limit the potential for dual liability for UTP Exchanges.

In addition, Nasdaq is proposing non-substantive rule changes to correct drafting errors in the original rule proposal to clarify that orders sent to quotes of Order Entry ECNs are not subject to the oversized order or the requirements in the rule, while orders sent to Full Participant ECNs are subject

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42847 (May 26, 2000), 65 FR 35690.

[4] *See* letter to Jonathan G. Katz, Secretary, SEC, from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., dated October 25, 2000 (''Archipelago Letter'').

[5] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, from Thomas Moran, Associate General Counsel, Nasdaq, dated July 6, 2001 (''Amendment No. 1''). In Amendment No. 1, the Association amended the language of NASD Rule 4720 to reflect amendments recently published by the Commission. *See* Securities Exchange Act Release No. 44506 (July 3, 2001). In addition, the Association clarified that participation by UTP Exchanges in the NNMS is voluntary. Finally, the Association added language to clarify the continued use SelectNet upon implementation of NNMS.

[6] The NNMS trading platform was scheduled for implementation on July 10, 2000, prompting Nasdaq's request for approval of this proposed rule change by that date. On June 30, 2000, Nasdaq announced that it was postponing the implementation until the last quarter of 2000. Telephone conversation between Tom Moran, Associate General Counsel and John Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on July 5, 2000. *See also* Securities 2000) (approving the new NNMS trading platform).

[7] *See* Amendment No. 1.

[8] For a description of the NNMS and the terms used in this order, *see* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[9] While this is also a concern with ECNs, Nasdaq believes the concern is substantially smaller because ECNs are required to provide an automated response to SelectNet messages, and, in Nasdaq's experience, they generally respond in 5 seconds or less to orders presented to their quotes. UTP Exchanges are not under the same explicit obligation.

to these requirements. Further, the proposed rule change clarified the use of SelectNet for order sent to, or orders sent by, UTP Exchanges that do participant in the automatic functionality of the NNMS. Finally, the Association proposed a definition for ''UTP Exchange'' are eliminated the definition and references to ''UTP Specialists''.

Summary of Comments

The Commission received one comment letter on the proposed rule changes from Archipelago.[10] This commenter objected to the differing treatment of ECNs and UTP Exchanges in the NNMS. Specifically, the commenter whether it was consistent with the Act for the Association to permit ECNs to participate in the NNMS as either a Full Participate ECN or an Order Entry ECN, while only permitting UTP Exchanges the option of participating fully in the automatic execution functionality of the NNMS; *i.e.,* UTP Exchanges that choose to participate in NNMS must both route orders for automatic execution in the NNMS as well as provide automatic execution for orders routed to their quotes.

The commenter also argued that as a securities information processor (''SIP''), Nasdaq should remain neutral with respect to all market centers and that Nasdaq therefore should not be able to treat UTP Exchanges differently than NASD members.

The Commission notes that the Archipelago Letter was submitted prior to the Commission's SuperMontage Order,[11] which specifically addressed Archipelago's concerns.[12] In that order, the Commission stated that the NASD did not have to make accommodations for competing exchanges that are comparable to accommodations provided to its members. The Commission further noted that it believed that NASD should be able to provide access to a competing exchange that is equivalent to the access the competing exchange provides for NASD members. In addition, the Commission also addressed Nasdaq's role as an exclusive SIP.[13] Specifically, in the SuperMontage Order, the Commission directed the NASD and the UTP Exchanges to re-evaluate the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'').[14]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[15] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposal is consistent with the requirements of sections 15A(b)(6)[16] of the Act because the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in the regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that, by allowing UTP Exchanges to participate in the automatic-execution functionality of the NNMS, the proposed rule change will eliminate the potential for order queuing or for the system to stop processing orders when an UTP Exchange is alone at the best bid/best offer. The Commission notes that UTP Exchange participation in the auto-ex feature of NNMS is voluntary; these rules merely describe how a UTP Exchange that chooses to participate in the automatic execution function will need to operate.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The NASD plans to implement the NNMS system on July 9, 2001 and thus, accelerated approval is necessary to accommodate this timeframe. Since Amendment No. 1 clarifies the application of the proposed rule change, but did not change the intent of the proposal, the Commission believes that good cause exists, consistent with section 15A(b)(6)[17] and 19(b) of the Act[18] to accelerate approval of Amendment No. 1 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–30 and should be submitted by August 3, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change, as amended, (SR–NASD–00–30), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17522 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44527; File No. SR–Phlx–2001–19]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Institute an Antitrust Compliance Policy

July 9, 2001.

On March 5, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act

[10] *See* note 4 *supra.*

[11] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (''SuperMontage Order'').

[12] For the Commission's complete discussion, *see* SuperMontage Order, Section V.G.

[13] *See* SuperMontage Order, Section V.I.3.

[14] The Commission notes the UTP Plan participants are currently considering these issues.

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78*o*–3(b)(5).

[18] 15 U.S.C. 78s(b).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, a proposal to institute an Antitrust Compliance Policy. On June 7, 2001, the Commission published the proposed rule change in the **Federal Register.**[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.[5]

In September 2000, the Commission issued an order instituting public administrative proceedings against Phlx and other options exchanges, finding that Phlx and the other options exchanges had, among other things, followed a course of conduct that limited multiple listing of options, impeded competition in multiple listing, and failed appropriately to enforce rules relating to harassment and intimidation of members.[6] The Commission believes that Phlx's establishment of an Antitrust Compliance Policy should help to promote just and equitable principles of trade.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2001–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17517 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44373 (May 31, 2001), 66 FR 30783.

[4] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] *See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*, Securities Exchange Act Release No. 43268 (September 11, 2001).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44514; File No. SR–Phlx–2001–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to PACE Delivery of Certain Orders Without Agency Execution Guarantees

July 5, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Phlx submitted Amendment No. 1 on June 14, 2001,[3] Amendment No. 2 on June 26, 2001,[4] and Amendment No. 3 on June 29, 2001.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to modify the order delivery aspect of PACE[6] to permit the specialist to choose to accept orders through PACE, without participating in the PACE execution guarantees for agency orders, where the entering member organization has elected not to receive automatic execution or primary market print protection for electronically delivered limit orders, in accordance with the procedures established by the Floor Procedure Committee. The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis in accordance with the provisions of this Rule. Securities admitted to dealings on the equity floor are eligible for trading on the PACE System in which equity specialists and member organizations may choose to participate. The conditions under which orders will be accepted and executed are set forth below. When used in the Rule, PRL means a combined round-lot and odd-lot order, and PACE Quote means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate. The PACE rules, conditions and guidelines do not apply to orders not on the system, and existing rules governing orders not on the system are not affected hereby.

Supplementary Material

The following PACE execution parameters are minimum standards applicable to agency orders received through PACE. Orders transmitted to the floor through the PACE system can be executed on a basis better than the applicable minimum standard:

.01 Member organizations wishing to participate in PACE may send to the Philadelphia trading floor market and limit orders up to the maximum number of shares in securities traded under PACE as shall be fixed by the Exchange from time to time. All orders in eligible securities shall be executed in whole or in part on a first in first out basis.

.02 Specialists are required to provide, at a minimum, PACE execution parameters, as defined by the Rule, to agency orders received through the system, *except as provided below.*

Although specialists are not required to provide PACE execution parameters to non-agency orders received through PACE, if the specialists choose to execute non-agency orders automatically through PACE, they must provide the same PACE executions to non-agency orders as they provide to agency orders. If however, the specialists choose to execute non-agency orders manually, the must adhere to existing Exchange rules governing orders not on the system with respect to such orders.

For purposes of the PACE System, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 11, 2001 (''Amendment No. 1''). In Amendment No. 1, the Phlx clarified the procedures required to permit the specialist to choose to accept orders through the Philadelphia Stock Exchange Automated Communications and Execution System (''PACE'') without participating in PACE execution guarantees for agency orders.

[4] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 25, 2001 (''Amendment No. 2'').

[5] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 27, 2001 (''Amendment No. 3''). Amendment No. 3 replaced Amendment No. 2 in its entirety and deleted the term ''generally'' from the proposed rule text.

[6] PACE is the Exchange's electronic order routing, delivery, execution and reporting system. *See* Phlx Rule 229.

dealer has any direct or indirect interest. Non-agency orders are not permitted on PACE except where the Exchange has been provided with a Specialist Agreement, signed by the respective specialist, acknowledging the acceptance of such non-agency orders from the specific firm(s), and any minimum execution parameters (order size guarantees) agreed to be provided to such orders by the respective specialist. Any such Specialist Agreement must provide the same minimum execution parameters to all non-agency orders by that specialist and will not provide for greater order size guarantees to non-agency orders than those provided to agency orders.

The specialist may choose to accept orders through PACE, without participating in the PACE execution guarantees for agency orders, where the entering member organization has elected not to receive automatic execution or primary market print protection for electronically delivered limit orders, in accordance with the procedures established by the Floor Procedure Committee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit equity specialists to accept orders for delivery over PACE, without necessarily having to provide them with the agency execution guarantees detailed within Phlx Rule 229.

PACE is a voluntary system, meaning order-entry (entering) member organizations may choose to establish PACE connectivity and deliver orders to the Exchange's equity floor via PACE. Similarly, Phlx equity specialists may choose to participate in PACE with respect to specialty securities. Currently, under Phlx Rule 229, specialists are required to provide, at a minimum, PACE execution parameters, as defined by the rule, to agency orders received through the system. Specialists may also choose to accept non-agency (broker-dealer) orders, as long as they also receive agency orders, pursuant to the rule. This proposal modifies the order delivery aspect of PACE to provide a third category of PACE processing that would be available to specialists who could choose to receive orders from member organizations who, in turn, choose not to elect certain execution guarantees. This proposal is intended to permit specialists to choose the third category of PACE processing, without either: (i) Agency orders entitled to PACE execution parameters; or (ii) agency and broker-dealer orders.

Specifically, the new paragraph in Commentary .02 to Phlx rule 229 permits the specialist to accept electronically-delivered orders over PACE, pursuant to procedures determined by the Floor Procedure Committee.[7] This provision would apply where the entering member organization has elected not to receive automatic execution or primary market print protection for limit orders.[8]

Over time and in response to various market developments, the Exchange has modified various aspects of the PACE system, such as the order delivery size, automated price improvement features and, most recently, the elections of order-entry member organizations respecting PACE guarantees.[9] The Exchange believes that the proposal and hand to provide a third category of PACE processing is similar in that it addresses the specific requests and needs of order delivery firms respecting their particular order flow character and demands.

Under the proposal, equity specialists are afforded a third alternative respecting PACE processing. Thus, a specialist may determine to accept PACE orders in a security under this provision, in lieu of eliminating the security from the PACE eligibility list (noting that the PACE system is voluntary). The Phlx represents that many factors drive whether a specialist chooses to accept orders over PACE, including customer demand and competitive pressures (such as what other exchanges guarantee). some of these factors are unique to a particular security, such as its votalility, liquidity, volume, and and trading patterns. Where a specialist believes that a security may not be well-suited for automatic execution, or primary market print protection, the proposal preserves the specialist's ability to accept orders electronically over PACE, without the concomitant execution guarantees. Thus, the Exchange believes that the proposal should assist a specialist's ability to accept orders electronically, without impairing the ability to make fair and orderly markets.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with the provisions of section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5)[11] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by encouraging specialists to participate in PACE order delivery, even where a security may not be appropriate for agency-type guarantees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[12] and subparagraph (f)(5) of Rule 19b–4 thereunder[13] because it effects a change in an existing order-entry or trading system of the Exchange that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on

[7] Under the proposal, the specialist will be required to submit a letter to the appropriate Exchange department stating the specialist's intentions to accept orders over the modified PACE system and to specify that the specialist is accepting orders over PACE under the proposal without agency guarantees. In addition, the proposal provides that the Floor Procedure Committee may change this procedure. *See supra* note 3.

[8] *See* Phlx Rules 229.10 (a)(i) and (ii), respectively, containing those guarantees. Under the proposal, the entering member organization would communicate its election not to receive certain automatic execution or primary market print protection guarantees by submitting a letter to the Exchange. *See supra* note 3.

[9] *See* Securities Exchange Act Release Nos. 41081 (February 22, 1999), 64 FR 10053 (March 1, 1999) (SR–Phlx–1998–46); 42973 (June 21, 2000), 65 FR 39974 (June 28, 2000) (SR–Phlx–2000–43); and 43059 (July 20, 2000), 65 FR 46541 (July 28, 2000) (SR–Phlx–2000–58).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(5).

competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of the proposed rule change as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2001–53 and should be submitted by August 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–17521 Filed 7–12–01; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3345]

State of West Virginia (Amendment #3)

In accordance with a notice received from the Federal Emergency Management Agency, dated July 5, 2001, the above-numbered Declaration is hereby amended to include Calhoun and Putnam Counties in the State of West Virginia as a disaster area caused by flooding, severe storms, and landslides beginning on May 15, 2001 and continuing.

In addition, applications for economic injury loans from small businesses located in Gilmer and Ritchie Counties in the State of West Virginia may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 2, 2001, and for loans for economic injury is March 4, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 9, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–17540 Filed 7–12–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: August 21, 2001, 10 a.m.–5 p.m. Pacific Time (PT), August 22, 2001, 9 a.m.–5 p.m. PT, August 23, 2001, 9 a.m.–4 p.m. PT.

ADDRESSES: Doubletree Hotel—Portland Downtown, 310 SW Lincoln Street, Portland, OR 97201, Phone: (503) 221–0450, Fax: (503) 226–6260.

The hotel is located in downtown Portland and 25 minutes from the airport. The hotel offers complimentary shuttle service to/from the airport. Upon arriving at the airport, follow the signs to Baggage Claim and then follow the signs to hotel shuttle. Board the Doubletree Downtown-Lloyd Center shuttle.

SUPPLEMENTARY INFORMATION: *Type of meeting:* This is a quarterly meeting open to the public. The interested public is invited to participate by coming to the address listed above. Public comment will be taken. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel will meet in person commencing Tuesday, August 21, 2001 from 10 a.m. to 5 p.m. PT; Wednesday, August 22, 2001 from 9 a.m. to 5 p.m. PT; and Thursday, August 23, 2001 from 9 a.m. to 4 p.m. PT. The Panel will use the meeting time to receive public testimony, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA, hold committee meetings, receive briefings and conduct business. Public testimony will be heard in person on Wednesday, August 22, 2001 from 9:30 a.m. to 10:30 a.m. PT. The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel/* one week before the meeting or can be received in advance electronically or by fax upon request.

Individuals interested in providing testimony in person should contact the Panel staff as outlined in the ''Contact Information'' section below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or e-mail on an on-going basis to the Panel for consideration. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024;

- Telephone contact with Kristen Breland at (202) 358–6423;
- Fax at (202) 358–6440;
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: July 9, 2001.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 01–17495 Filed 7–12–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–246]

North American Free Trade Agreement Conference

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice (1) announces a North American Free Trade Agreement (NAFTA) information conference, to be held at the Hyatt Hotel in San Antonio, Texas, October 21–24, 2001, (2) provides information about the conference for prospective attendees; and (3) identifies a dedicated website that will provide continuously updated information about the conference including registration information. U.S., Canadian, and Mexican government officials representing agencies that have inspection, security and other defined responsibilities affecting the clearance of cross-border transport operations will conduct panel sessions that convey information about the requirements that each of their agencies imposes on motor carrier operations.

Background

The North American Free Trade Agreement (NAFTA) created a timetable for the removal of barriers to the provision of transportation services among the NAFTA countries for carriage of international cargo and of passengers. For trucks and buses, NAFTA was to have liberalized access for motor carriers on a phased schedule over six years from entry into force of the agreement, and it provided for liberalizing investment restrictions on trucking companies established in Mexico and the United States. Liberalization was to have begun in 1995, but the United States postponed implementation due to concerns regarding safety and enforcement. A NAFTA dispute resolution panel subsequently ruled that the U.S. blanket prohibition on processing Mexican applications for operating authority violated the NAFTA. Since 1995, the United States has taken steps to augment its ability to assure compliance with U.S. motor carrier safety regulations. These efforts enable the United States to safely comply with the dispute panel's findings and move forward with implementation of NAFTA's access provisions no later than January 1, 2002.

All foreign motor carriers operating in the United States are subject to the same federal and state regulations and procedures that apply to U.S. carriers. These include safety regulations, insurance requirements, tariff requirements, and payment of all taxes and fees. In addition, foreign motor carriers and drivers must comply with applicable customs and immigration laws and regulations. Under NAFTA, these compliance obligations are completely reciprocal so that U.S. carriers and drivers are similarly obligated to comply with Canadian and Mexican statutory and regulatory requirements while conducting operations in those countries.

While U.S. and Canadian carriers have been conducting operations in each other's respective countries for some time, implementation of NAFTA's access provisions will mean that many Mexican motor carriers will be operating in the United States for the first time. Similarly, operations into Mexico will be a new experience for most U.S. and Canadian motor carriers. The many federal and state regulatory requirements and the multiplicity of federal and state agencies imposing them may be confusing and intimidating to these first-time entrants and could discourage them from attempting to take advantage of NAFTA's transportation provisions. For this reason, the Department of Transportation, in cooperation with Canada, Mexico, other federal agencies, and state and provincial representatives, will host a NAFTA information conference in San Antonio, Texas, October 21–24, 2001 to promote an understanding of the requirements for legal cross-border transport operations among the three NAFTA countries.

Who Should Attend: This conference will be beneficial for commercial truck carriers, bus operators, customs brokers, shippers, and other companies and/or associations that have an interest in the conduct of cross-border business that will involve transport operations.

Meetings and Deadlines: The NAFTA conference will include panels that convey information about: (1) Applying for federal motor carrier operating authority; (2) immigration requirements for drivers operating outside of their own country; (3) Customs requirements for foreign trucks engaged in international operations; (4) agriculture regulations applicable to imported commodities; (5) tax obligations for companies operating commercial vehicles outside their own country; (6) motor carrier safety standards; (7) hazardous materials transportation safety regulations; (8) vehicle weight and dimensions standards; and other requirements. In addition, state and provincial jurisdictions will provide information on their operating requirements. Other panels may be added as preparations for the conference progress. Representatives from the various agencies will be available following panel discussions to address questions from conference attendees. Finally, each attendee will be provided a resource book from each country containing additional information, contact names, e-mail and phone numbers that may be used to obtain additional information.

Languages: All conference sessions will be conducted with simultaneous translation in English and Spanish. To the extent possible, agency representatives who address specific questions from attendees will be bilingual as well.

Updated Information and Hotel Registration: To provide a continuous source of updated conference information, the Department of Transportation's Office of International Transportation & Trade has established a website for prospective attendees and other interested parties. The DOT website will contain an updated schedule of events, guest speakers, and agendas for the panel sessions as they are developed. The website can be accessed by going to the DOT homepage at www.dot.gov/NAFTA.

The DOT website also has a link to the Free Trade Alliance San Antonio's website, where a registration forms for the conference can be downloaded. All participants are requested to fill out a conference registration form, which should be returned to the Free Trade Alliance, 203 South St. Mary's Street, Suite 130, San Antonio, Texas 78205, or faxed to 210–229–9724. Registration forms and information about the conference, hotel accommodations, and the city of San Antonio can also be obtained by writing to the Free Trade Alliance or by telephoning 210–229–9036.

A block of rooms is reserved at the Hyatt Hotel, 123 Lasoya Street, San Antonio, Texas 78205. Interested parties can contact the hotel by telephone at 210–222–1234 or by fax at 210–227–4927. Further information about accommodations can be found on the

Free Trade Alliance website at www.freetradealliance.org.

Address and Phone Numbers: For further information please contact Eddie Carazo, U.S. Department of Transportation, OST/X–20, Room 10300, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2892, or fax (202) 366–7417.

Dated: July 9, 2001.

Bernestine Allen,

Director, Office of International Transportation and Trade.

[FR Doc. 01–17571 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10066]

Define Inflatable Liferafts as Associated Equipment for Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) recommended that the Coast Guard (we) extend the application of our existing authority so that, when necessary, we can recall defective inflatable liferafts carried on recreational vessels. We would like your comments to help us determine the current extent of any problems with inflatable liferafts. Comments received will help us fully evaluate the NBSAC recommendation.

DATES: Comments and related material must reach the Docket Management Facility on or before October 11, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Rick Gipe, Project Manager, Office of Boating Safety, telephone 202–267–0985, e-mail *rgipe@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or read it on the Internet at the Web Site for the Office of Boating Safety at *http://www.uscgboating.org* or at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 46 U.S.C. 4310, manufacturers of recreational boats and certain items of associated equipment identified by regulation must notify owners and recall and repair or replace their products when the products either fail to comply with an applicable Coast Guard safety standard or contain defects that create a substantial risk of personal injury to the public. The defect-notification regulations in 33 CFR part 179 currently apply to the following items of designated associated equipment: (1) An inboard engine, (2) an outboard engine, (3) a stern drive unit, and (4) an inflatable personal flotation device approved under 46 CFR 160.076.

By law, the Coast Guard Office of Boating Safety is required to consult with the National Boating Safety Advisory Council (NBSAC) in prescribing regulations and regarding other major boating safety matters. NBSAC is made up of 21 members: Seven from the boating industry, seven who are State boating officials, and seven who represent national boating organizations or the general public.

At a May 2000 meeting, a NBSAC member, who is also an inflatable boat and liferaft manufacturer, briefed the council about problems with the construction of certain inflatable liferafts typically carried by recreational boaters. Liferafts that do not deploy properly, e.g., fail to inflate or fail to maintain inflation, are a danger to recreational boaters who depend upon them as a safety device. We informed NBSAC that, unlike Coast Guard approved liferafts which are required to be carried on commercial vessels, the liferafts typically carried by recreational boaters are not constructed to any specific standard and do not fall within the Coast Guard's existing recall authority. Therefore, NBSAC passed a resolution urging the Coast Guard to consider making inflatable liferafts carried on recreational vessels an additional item of designated associated equipment subject to the existing defect-notification requirements.

Questions

To assist us in considering NBSAC's resolution, we ask for your comments, particularly in response to the following questions:

1. What data or studies are available indicating failure rates or failure modes for inflatable liferafts carried on recreational vessels?

2. What types of defects in the construction of inflatable liferafts carried on recreational vessels should be considered severe enough to require a manufacturer to conduct defect notification?

3. What are the economic and other impacts on inflatable liferaft manufacturers if the Coast Guard were to require those companies to notify owners and to recall and repair or replace defective liferafts that contain defects that create a substantial risk of personal injury to the public?

4. Would the designation of inflatable liferafts carried on recreational vessels as ''associated equipment'' place an inappropriate and inconsistent burden on manufacturers in relation to other items of ''associated equipment?'' Why or why not?

5. The Coast Guard is mindful of the potential adverse impacts on small business entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. To what extent are small entities engaged in the manufacture of inflatable liferafts carried on recreational vessels?

6. How many companies are currently manufacturing inflatable liferafts for use on recreational vessels?

7. In order to properly designate inflatable liferafts carried on recreational vessels as ''associated equipment,'' we request your suggestions on how to define these liferafts so as to distinguish them from

similar equipment, such as inflatable buoyant apparatus for merchant vessels approved under 46 CFR 160.010–3, inflatable liferafts for domestic service approved under 46 CFR part 160, subpart 160.051, SOLAS inflatable liferafts approved under 46 CFR part 160, subpart 160.151, and water toys used at beaches and in swimming pools. In other words, how should we define the term ''inflatable liferaft carried on recreational vessels''?

8. U.S. manufacturers and importers of recreational boats and designated associated equipment are required by law to maintain first purchaser lists and conduct recalls when their products fail to comply with an applicable Coast Guard safety standard or contain substantial risk defects. However, currently we have no legal authority over foreign manufacturers of inflatable liferafts carried on recreational vessels. How could we ensure that foreign manufacturers of inflatable liferafts carried on recreational vessels would be legally responsible for the safety of their products?

9. What other information about boating accidents involving the use of inflatable liferafts carried on recreational vessels should we consider?

Request for Comments

We encourage you to participate in this request for comments by submitting comments and related material and answering the above questions. If you do so, please include your name and address, identify the docket number for this notice (USCG–2001–10066), indicate by number each question you are answering, and give the reason for each comment. You may submit your comments and material by mail, hand-delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Your comments will help us to determine whether to initiate a rulemaking in response to the NBSAC resolution.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid the consideration of the NBSAC resolution, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Dated: July 6, 2001.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 01–17570 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction At of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the new Information Collection Request (ICR) abstracted below had been forwarded to the Office of Management and Budget (OMB) for review and request for clearance. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following new collection of information was published on April 25, 2001, pages 20848–20849.

DATES: Comments must be submitted on or before (August 13, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Form 1200–5, NAS Data Release Request.

Type of Request: New.

OMB Control Number: xxxx–xxxx.

Forms(s) FAA Form 1200–5.

Affected Public: An estimated 9 respondents (vendors in private industry who have been contacted by airport authorities to conduct various studies such as noise abatement pollution reduction, or private airport operators who may have a need to study various radar tracts to ascertain airport position.)

Abstract: The FAA is collecting basic vendor information such as name, address, phone number, point of contact, purpose of request, type of data requested, and method of acquiring FAA NAS data. The FAA is collecting this information in order to assess the validity of the data requestor. This is a standardized collection vehicle that will eliminate confusion among the nine FAA regions, and allow electronic tracking of the standard data requested for trend analysis.

Estimated Annual Burden Hours: 27 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 6, 2001.

Steve Hopkins,

Manager, Standards and Information Division.

[FR Doc. 01–17568 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting for James M. Cox-Dayton International Airport, Vandalia, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement and hold public scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA) intends to prepare an Environmental Impact Statement (EIS) to address anticipated environmental impacts associated with the implementation of proposed improvements at James M. Cox-Dayton International Airport. Because the project includes the realignment of off-Airport roadways, the Federal Highways Administration (FHWA) will be a cooperating agency.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Community Planner; Federal Aviation Administration; Detroit Airports District Office; Willow run Airport East; 8820 Beck Road; Belleville, Michigan 48111; Telephone: (734) 487–7280; E-mail: *Ernest.Gubry@faa.gov*

SUPPLEMENTARY INFORMATION: The FAA intends to prepare an EIS for proposed runway improvements and associated airfield improvements and roadway realignments at James M. Cox-Dayton International Airport. The project proposes to: (1) Extend Runway 6R–24L 4,400 feet to the southeast and decommission the northeastern 400 feet of the runway for a total runway length of 11,000 feet and (2) extend Runway 18–36 4,100 feet to the north and decommission the southern 3,100 feet of the runway for a total runway length of 9,500 feet. The project also includes the associated airfield improvements. The proposed extension of Runway 6R–24L would require the realignment of the Airport Access Road and U.S. 40. Therefore FHWA will be the cooperating agency.

The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA), following the guidelines for airport projects as outlined in FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts and FAA Order 5050.4A, Airport Environmental Handbook. The EIS will also be prepared to meet the requirements of FHWA.

Public Scoping Meetings

The FAA intends to conduct an agency scoping meeting and three public scoping meetings to obtain input regarding any issues of concern associated with the proposed project. Federal, State, and local agencies which have jurisdiction by law or have specific qualifications or expertise with respect to the potential environmental impacts will be notified and invited by letter to attend a scoping meeting on Tuesday, August 14, 2001, from 10:00 a.m. until noon at the Dayton Airport Hotel.

Members of the public are invited to attend public scoping meetings to be held on the following dates and times at the following locations:

Tuesday, August 14, 2001, 4 p.m. to 8 p.m., Butler High School Cafeteria, 600 South Dixie Drive, Vandalia, Ohio 45377

Wednesday, August 15, 2001, 4 p.m. to 8 p.m., Dayton Convention Center, Room 106, 22 East Fifth Street, Dayton, Ohio 45402

Thursday, August 16, 2001, 4 p.m. to 8 p.m., L.T. Ball Junior High School Cafeteria, 575 N. Hyatt Street, Tipp City, Ohio 45371

The meetings will all be identical in terms of content and format and are intended to allow the public an opportunity to provide their input to the process. Letters are being sent inviting individuals who have participated in meetings for the FAR part 150 Noise Compatibility Study Update or the Strategic Master Plan Update. A notice will also be placed in newspaper(s) of general and wide circulation in the project area inviting the public to the public scoping meetings. It should be noted that all comments provided at the scoping meetings will be considered equally and that a comment provided at more than one meeting by the same individual will not be considered any more heavily than a comment made by an individual at only one of the meetings. Written scoping comments may be sent to Mr. Gubry at the above noted address to be received prior to August 31, 2001.

Issued in Des Plaines, Illinois, on July 6, 2001.

Larry Ladendorf,

Assistant Manager, Airports Division, FAA, Great Lakes Region.

[FR Doc. 01–17569 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–51]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 2, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 10, 2001.

Gary A. Michel,

Acting, Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9982.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought: To permit Cessna to equip Cessna Model 608 Sovereign airplanes with multiple-occupancy side-facing couches that are not designed to include the general occupant protection requirements of § 25.785(b).

[FR Doc. 01–17567 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–99–6585]

Hours-of-Service of Drivers; Pilot Program for Drivers Delivering Home Heating Oil

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final determination.

SUMMARY: The FMCSA announces the initiation of a pilot program to grant an exemption from the weekly hours-of-service restrictions for drivers of commercial motor vehicles (CMVs) making home heating oil deliveries that occur within a 100 air-mile radius of a central terminal or distribution point, during the winter months. The FMCSA will also allow States to grant temporary exemptions from the weekly restrictions in their intrastate hours-of-service regulations for the transportation of home heating oil during the winter months for the purpose of enabling intrastate motor carriers conducting such operations to do so under terms and conditions identical to those used in the FMCSA's pilot program. The intrastate carriers will be required by the States in which they operate to report certain accident data to the FMCSA so that the agency can monitor their safety performance, combine the intrastate data with the interstate data, and analyze the results. Under the current regulations, drivers operating in interstate commerce may not drive after being on duty 60 hours in any seven consecutive days if the motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the motor carrier operates CMVs every day of the week (70-hour rule). During the pilot program, participating motor carriers will be allowed to ''restart'' calculations for the 60- or 70-hour rule, whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the period of midnight to 6 a.m. This action is in response to a request from the Petroleum Marketers Association of America (PMAA). The exemption preempts inconsistent State and local requirements applicable to interstate commerce.

DATES: The pilot program begins July 13, 2001. The exemption covers the period between November 1 and April 30 for three consecutive heating seasons, the first of which begins on November 1, 2001.

ADDRESSES: Home heating oil transporters (both interstate and intrastate) interested in participating in the pilot program should submit written, signed requests, containing the information required by this notice to: Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations (MC–PSD)—Home Heating Oil Program, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, MC–CC, (202) 366–1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

PMAA Request for Home Heating Oil Delivery Flexibility Program

The PMAA requested that the FMCSA implement a three-year Winter Home Heating Oil Delivery Flexibility Program. A copy of the request is included in the docket. The PMAA requested that the new program be available to interstate and intrastate motor carriers operating in any State. The association indicated that elements of the previous heating oil program initiated in response to section 346 of the National Highway System (NHS) Designation Act (Pub.L. 104–59, 109 Stat. 569, at 615, November 28, 1995) could be used to address most of the guidelines for the new program, as well as satisfy most of the rules in 49 CFR 381.505, concerning minimum requirements for a pilot program. (For more information about the previous pilot program see 61 FR 51486, October 2, 1996; and 62 FR 4372, January 29, 1997.) The PMAA believes a home heating oil program would benefit many citizens and help to ensure that consumers are not deprived of an essential product during severe weather, all without compromising safety.

Notice of Proposal to Initiate a Pilot Program

On February 16, 2000 (65 FR 7906), the FMCSA published a notice announcing its proposal to initiate a pilot program in which the agency would grant an exemption from the weekly hours-of-service restrictions for drivers of CMVs making home heating oil deliveries. The notice discussed the proposed structure of the program and requested public comment.

The agency received comments from: Advocates for Highway and Auto Safety (Advocates); National Propane Gas Association (NPGA); Parents Against Tired Truckers (PATT); Petroleum Marketers Association of America (PMAA); and the National Tank Truck Carriers, Inc. A summary of the comments is presented below.

Comments Opposed to Conducting a Pilot Program

Advocates and PATT were opposed to the initiation of a pilot program for hours of service. Advocates argued that the research cited in the notice proposing a home heating oil pilot program does not support the proposed exemption. Advocates stated that there was no analysis of the actual number or percentage increase in driving hours over different time frames provided in the notice proposing the pilot program. Also, there was no review of the differences in risk exposure that could be produced by granting the exemption and installing a minimum 32-hour restart. Advocates believes the agency did not comply with the requirements of TEA–21 because the agency did not ''propose the machinery for conducting the pilot project, including its data collection and safety analysis activities.'' Advocates states that the program fails to address the TEA–21 requirement that each pilot program include adequate countermeasures to protect the health and safety of study participants and the general public.

PATT expressed concern that the proposed pilot program would have the effect of causing truck drivers to experience a high level of fatigue. PATT states:

> Every year when the Petroleum Industry asks the State Police to waive the Hours of Service for their drivers because of a claimed shortage of heating oil, we get many calls from the delivery drivers, explaining that they really don't want to do the extra time that is forced on them because they fear a tragedy that can be caused by fatigue.

Comments Supporting the Pilot Program But Requesting a Revised Program Structure

The NPGA supports the proposal for a home heating oil pilot program but requested that the program be expanded to include transporters of propane, or that the FMCSA establish a separate pilot program for drivers delivering propane. NPGA believes the delivery infrastructure for both fuels is virtually identical. Both fuels are carried by pipeline, railcar, or trucks from the point of production to central

distribution facilities. Smaller local delivery trucks are used to serve each company's customers. NPGA indicated that both industries are busiest during the winter heating season, and sometimes have to respond to supply challenges beyond the industry's control.

NPGA believes there will be significant confusion within companies that serve both fuel oil and propane customers if the FMCSA covers only home heating oil. NPGA argues that ''* * * it would be unfair for FMCSA to grant regulatory relief to one fuel over another, when companies are competing within an increasingly deregulated energy marketplace.''

NTTC noted that its members compete economically with PMAA members. Both groups of motor carriers operate cargo tanks and both transport home heating oil. The difference is that NTTC members do not make deliveries to residences and PMAA members focus heavily on such deliveries. NTTC explained that residential deliveries are made by single-unit or straight trucks while deliveries to large commercial customers are made by combination units (i.e., towing unit and a trailer).

NTTC argues that the pilot program should be more rigidly controlled to avoid giving a marketplace advantage to PMAA members. It requested that the program be applicable to deliveries to terminals and distribution points, and be limited to vehicles with gross weights between 10,001 pounds and 40,000 pounds. The NTTC believes the weight range would ensure that only straight trucks are used in the program.

PMAA Comments

PMAA requested that the FMCSA not limit the number of States in the pilot program. They believe the program will become a regional program because of the use of home heating oil in certain parts of the country. PMAA does not believe the number of participants should be limited because weather patterns will limit the amount of data gathered.

PMAA submitted additional comments in response to Advocates and PATT comments. PMAA explained that all home heating oil delivery drivers work daytime hours. Customers do not want drivers delivering heating oil at nighttime. Also, it is not safe for drivers to fill tanks in the dark. During the winter months, drivers generally begin delivering oil at 7 a.m. and complete their deliveries by 5 p.m.

The PMAA stated that drivers sleep at home every night. The drivers work within a 100 air-mile radius of the normal work-reporting location. On average, the typical driver spends nine hours on duty, not driving, and two and one-half hours driving. The PMAA argues that sleep debt is not relevant to these drivers since they are working and resting on a ''synchronous circadian rhythm shift rotation.''

FMCSA Response to Commenters

The FMCSA has considered the comments submitted and decided to exercise its authority under TEA–21 to initiate a pilot program.

The agency has carefully reviewed the comments from Advocates and PATT. Although Advocates explained its reasons for arguing that none of the studies cited by the FMCSA in the notice of proposal supports the initiation of a pilot program, the agency does not agree. The agency did not claim that the research reports cited in the proposal support conducting this specific pilot program. However, the research is a strong indicator that under certain conditions, it is more likely than not that motor carriers could use an alternative to the current rule concerning a restart of the 60-/70-hour rule, and achieve a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The agency believes an off-duty period encompassing two consecutive nights off-duty that include the period of midnight to 6 a.m. is an appropriate restart period for drivers delivering home heating oil to consumers.

Under the current regulations the time required to restart the 60-/70-hour ''clock'' may vary depending on the driver's schedule. In an example of a worse-case scenario, if a driver using the 70-hour rule worked an intensive schedule starting at 12:01 a.m on Monday morning and alternated non-stop between 15 consecutive hours on-duty (10 hours driving time and 5 hours on-duty, not driving) and 8 hours off duty, the driver would be prohibited from driving a CMV from 6 a.m. on Friday until 12:01 a.m. the following Tuesday (a period of 90 consecutive hours). If the driver started at the same time on Monday but alternated non-stop between 10 consecutive hours driving and 8 hours off-duty, the driver would be prohibited from driving a CMV from 10 p.m. on Friday until 12:01 a.m. the following Tuesday.

Under the alternative restart that will be used for the pilot program, the driver in both of these examples could return to work as early as 7 a.m. on Sunday, approximately 41 hours earlier than the current regulations allow. The driver would basically be restarting the 70-hour clock two days earlier than the current regulations allow. Therefore, if the driver continued to operate on an equally intensive schedule, the next work week would begin on Sunday and end around Thursday afternoon for a driver alternating between 15 hours on-duty and 8 hours off duty. The work week would end early Friday morning for the driver alternating between 10 hours driving and 8 hours off duty.

These worst-case scenarios, however, are not representative of the home heating oil industry's scheduling practices. The information presented in the PMAA's comments make it clear that the drivers' schedules would be far less intensive than the ones described above. Advocates and PATT did not present any information suggesting that the restart provision used for this program would reduce the level of safety for the home heating oil residential-delivery segment of the motor carrier industry.

While it is clear that drivers will be allowed to work more hours over the course of seven or eight consecutive days than under the 60- or 70-hour rule, the scheduling practices for delivering heating oil to residential customers combined with the alternative restart provision will ensure a level of safety that is equal to, or greater than, that achieved by using a minimally compliant scheduling system (i.e., either one of the worse-case scenarios described above).

As for PATT's comment that drivers are being forced to work longer hours than they consider safe, the FMCSA is not aware of drivers' concerns about working additional hours. The agency requested comments from all interested parties but received no comments from current or former drivers responsible for delivering home heating oil, or organizations or groups representing the drivers. Therefore, the FMCSA can neither confirm nor refute the statement.

However, the pilot program does not diminish in any way Federal protection of drivers' rights to a safe workplace. Current Federal regulations prohibit motor carriers from requiring or permitting a driver to operate a CMV while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause that it is unsafe for the driver to begin or continue to operate the CMV (49 CFR 392.3). This rule applies to the pilot program. Section 405 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 31105) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms,

conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. This means that the participating drivers may contact the FMCSA at any time they are being forced to violate safety regulations or the terms and conditions of this pilot program. Drivers may use the FMCSA's toll free telephone number: 1–800–DOT–SAFT to report unsafe operations.

With regard to the Advocates' comment about compliance with TEA–21 requirements for pilot programs, the FMCSA published a detailed description of the program, including the exemption being considered. The notice discussed the safety measures (i.e., criteria for participating drivers and carriers, accident reporting requirements) intended to achieve a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The FMCSA discussed each of the following elements of its proposed design of the pilot program as required by section 4007 of TEA–21:

1. A scheduled life of not more than 3 years for the pilot program.
2. A data collection and safety analysis plan that identifies a method for comparison.
3. A ''reasonable'' number of participants to yield statistically valid findings.
4. An oversight plan to ensure that participants comply with the terms and conditions of participation.
5. Adequate countermeasures to protect the health and safety of study participants and the general public.
6. A plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public.

The agency indicated that the exemption offered as part of the pilot program would be in effect during the period between November 1 and April 30 for three consecutive heating seasons, the first of which would have begun on November 1, 2000. The agency explained its plan to perform a before-and-after comparison of the accident experiences and hazardous materials incidents for each of the participating motor carriers. The agency also explained why a more scientifically rigorous data collection and analysis scheme was not used, such as a comparison of the safety performance of participating carriers with that of a control group (i.e., home heating oil transporters operating under the current regulations) and requested comments.

Although the agency did not propose a minimum number of participating carriers to ensure that the results are statistically valid or meaningful, the agency requested comments. None of the commenters provided suggestions or recommendations for a minimum or maximum number of motor carriers. Therefore, the agency will use its discretion to determine whether the number of motor carrier applicants, the number of drivers employed by these motor carriers, and the number of States in which they operate would form the basis for initiating a pilot program.

On the subject of an oversight plan, the agency proposed requirements for accident and hazardous materials incident reporting. The agency could conduct random visits to participating carriers, in addition to periodic reviews of each interstate motor carrier's accident experience reported by State officials through SAFETYNET, and Hazardous Materials Incident Reports (DOT Form F 5800.1) (see 49 CFR 171.16) filed with the Research and Special Programs Administration (RSPA) by the motor carriers. The participating motor carriers would continue to be subject to compliance reviews and investigations conducted independently of their involvement in the pilot program.

The FMCSA does not believe it would be appropriate at this time to expand the pilot program to include transportation of propane as requested by the NPGA. Although residential demand for propane is significant, it does not appear to be as urgent as the demand for home heating oil.

The FMCSA has reviewed information from the U.S. Department of Energy's Energy Information Administration (EIA) to determine the number of households that rely on home heating oil and propane. Of the 101.5 million households in the U.S., approximately 7.7 million use heating oil. Residential space heating is the primary use for heating oil, making the demand highly seasonal. The area of the country most reliant on heating oil is the Northeast. Approximately 4.6 million households rely on propane for their primary heating fuel. Propane is most commonly used to provide energy to areas not serviced by the natural gas distribution system. Therefore, it competes mainly with heating oil for space heating purposes. Homeowners in the Midwest use it predominantly for heating, while Northeast residences rely on it more for cooking.

The FMCSA believes that the motor carrier and driver populations required to service residential users of home heating oil provide a better opportunity for conducting a pilot program. The agency does not believe that limiting the program to home heating oil will adversely impact motor carriers transporting propane, or consumers relying on propane as their primary means of residential space heat. It is very unlikely that residential propane customers would switch or alter their heating systems to use heating oil simply because the agency is conducting a pilot program for three consecutive winter seasons. This is especially the case given that there are no guarantees that the regulatory alternative allowed during the pilot program will become part of the Federal hours of service rules. Nor is it clear that any cost savings realized by companies delivering home heating oil under the pilot program would be passed along to consumers. Therefore, the implementation of a pilot program should not, in and of itself, place propane distributors at an economic disadvantage compared to transporters of home heating oil.

As for the NTTC, the agency does not believe the program should be expanded to include deliveries to terminals and distribution points. The purpose of the program is to test an alternative to the current 60-/70-hour rule for a segment of the trucking industry responsible for delivering heating fuel to residential customers. To include terminals and distribution points would shift the focus away from the potential needs of residential customers, and towards business and/or commercial activities that may not be as much of a factor in making certain consumers have an adequate supply of heating fuel.

The FMCSA does not consider it necessary to include a restriction on the size of the vehicles used in the pilot program. Since the program limits participation to motor carriers making residential deliveries, the maximum size of the vehicles used would be governed by the residential street configuration, and applicable local rules restricting certain classes of CMVs from residential neighborhoods. While NTTC members may compete with PMAA members, both groups can participate in the program provided they are delivering home heating oil within a 100 air-mile radius of a central terminal or distribution point. Membership in the PMAA is not a prerequisite for participation in the pilot program.

FMCSA Determination

The FMCSA is exercising its authority under TEA–21 to initiate a pilot program in which the agency will grant an exemption from the weekly (but not the daily) limitation in the Federal

hours-of-service regulations for drivers of CMVs making home heating oil deliveries in interstate commerce. The program would cover deliveries that occur within a 100 air-mile radius of central terminals or distribution points, during the winter months (November 1 to April 1). Deliveries between terminals and distribution points would not be covered by the exemption. The exemption to enable interstate motor carriers to participate in the pilot program would preempt inconsistent State hours-of-service requirements applicable to interstate commerce.

The FMCSA will include drivers making intrastate deliveries of home heating oil in the pilot program and is therefore requesting assistance from the States in which these drivers operate. The agency is allowing States to grant temporary exemptions from the weekly limitations provisions of their intrastate hours-of-service regulations for the transportation of home heating oil during the winter months for the purpose of enabling intrastate motor carriers conducting such operations to do so under State-established terms and conditions identical to those used by the FMCSA. The States may grant the intrastate exemptions without jeopardizing MCSAP funding to those States.

Intrastate motor carriers transporting home heating oil in States that have established identical terms and conditions for the temporary hours-of-service exemption must submit all required information to the FMCSA. The FMCSA will, in turn, provide the respective States with lists of the intrastate motor carriers and drivers the FMCSA believes should be considered eligible for the States' approval for participation. The States may allow the intrastate motor carriers and drivers to operate under the terms and conditions of the study based on recommendations from the FMCSA. This process is necessary because the FMCSA does not have the authority to grant intrastate exemptions.

Unlike the previous pilot program for drivers delivering home heating oil, this one does not require the States to meet any criteria (e.g., having an approved plan for monitoring the motor carriers, or having a substantial number of citizens relying upon home heating oil, etc.) before being allowed to grant the temporary exemptions.

The FMCSA has determined that the proposed eligibility requirement for motor carriers and drivers is, with one exception (concerning carriers currently under investigation), appropriate for use in the pilot program. The agency is requiring that interstate motor carriers meet three eligibility criteria discussed below for participating in the pilot program. The States granting temporary exemptions must require that intrastate carriers meet the same eligibility requirements in order to take advantage of the exemption. The purpose of the eligibility criteria for motor carriers is to keep entities with questionable safety performance and/or safety management controls out of the program.

The first criterion is that participating motor carriers be either ''unrated,'' or have a current safety rating of ''Satisfactory.'' Unrated motor carriers are those that have not received compliance reviews or audits. The compliance review is an on-site examination of a motor carrier's operations, including records on drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The FMCSA is allowing unrated motor carriers to participate since it would be unfair to exclude them simply because they were not selected by the agency for a compliance review. The absence of a compliance review is in no way an indication that the carrier has done anything wrong or has safety problems.

Motor carriers that have received compliance reviews are required to have a ''satisfactory'' rating. This means that a motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are appropriate for the size and type of operation of the motor carrier. The agency is not allowing motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate there are safety management control problems. There is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions for participating in the pilot program.

The second criterion is that motor carriers must not have been the subject of a Federal or State investigation resulting in penalties or fines for violations of motor carrier safety, or hazardous materials transportation, regulations or laws within the last three years. If a motor carrier's operating practices are such that an investigation followed by penalties or fines was necessary, its safety management controls are not adequate for the purposes of the pilot program. This criterion will be used irrespective of a motor carrier's safety rating.

The third criterion involves accidents. A motor carrier cannot participate in the program if the cause of, or a contributing factor to, any of its accidents in the past three years was determined to be (1) a CMV owned or operated by the carrier that was in unsafe operating condition or (2) a driver for the carrier who violated Federal or State regulations. For purposes of this criterion, ''accidents'' are the incidents specified in 49 CFR 390.5. An unsafe operating condition is typically one that is likely to cause an accident or a breakdown of the vehicle (which could also trigger an accident). A Federal, State, or local official responsible for investigating the cause of CMV accidents must make the determination of causation.

With regard to the proposed criterion that motor carriers must not currently be the subject of any Federal or State investigation of alleged violations of motor carrier safety or hazardous materials transportation regulations or laws, the agency has reconsidered this requirement and has determined that it is inappropriate. The proposed criterion implied wrongdoing on the part of the motor carrier whenever allegations of regulatory violations are made. This approach would be fundamentally unfair to motor carriers. Allegations are not evidence. They are sometimes based on a misunderstanding of the regulations; in rare cases, they may even be made in bad faith. The FMCSA (or a State applying the same standards) will not bar a motor carrier from the program unless it has evidence that the carrier fails to meet the criteria for eligibility.

The FMCSA has determined that drivers must also meet criteria to participate in the pilot program. Participating drivers must not have committed, during the past three years, any disqualifying offenses listed in (1) 49 CFR 383.51 concerning commercial driver's license disqualifications and penalties, (2) 49 CFR 391.15 concerning disqualification of drivers operating CMVs in interstate commerce, or (3) comparable State regulations or laws concerning disqualifications of individuals operating vehicles with a gross vehicle weight rating/gross combination weight rating or gross weight of 10,001 pounds or more. The disqualifying offenses include regulatory violations such as driving a commercial motor vehicle while under the influence of alcohol, driving under the influence of a controlled substance, leaving the scene of an accident, and using a commercial motor vehicle in the

commission of a felony involving manufacturing, distributing, or dispensing a controlled substance. The driver criteria are intended to prevent unsafe drivers from participating in the pilot program. This determination will be made independent of any decision concerning the motor carrier's eligibility. If the driver has been convicted of a disqualifying offense within the last three years, the driver cannot be included in the participating carrier's pool of drivers that use the alternative restart.

Structure of the Home Heating Oil Pilot Program

The FMCSA's Home Heating Oil Pilot Program is a simplified version of the intrastate program established in 1997 in response to the NHS Designation Act. The program will include interstate and intrastate motor carriers delivering home heating oil within a radius of 100 air-miles of a central terminal or distribution point, during the winter. Deliveries between terminals or distribution points are not covered by this exemption. The exemption covers three consecutive winters, beginning with November 1, 2001, through April 30, 2002, and followed by two successive winters. The length of the exemption period is intended to accommodate motor carriers operating in regions of the country where there is a significant demand for heating oil before the first official day of winter, or after the first day of spring. Through this notice of final determination, the FMCSA is establishing the criteria for motor carriers to participate in the study. The agency will collect and analyze data concerning the safety performance of these carriers during the study.

The FMCSA believes the terms and conditions of the pilot program will ensure that the program achieves a level of safety equivalent to, or greater than, that achieved through compliance with the safety regulations. The terms and conditions, or safety measures, presented below are designed to ensure that the program does not adversely affect safety.

Alternative Hours-of-Service Restart

The FMCSA is allowing participating motor carriers to ''restart'' calculations for the 60- or 70-hour rule, whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m. However, if the driver reached the 60- or 70-hour limit without having taken any such off-duty period, he or she is required to do so at that time. Drivers are required to comply with the 10-hour driving limit in § 395.3(a)(1).

The FMCSA continues to believe there is sufficient scientific information to justify a limited pilot program allowing drivers for motor carriers that deliver home heating oil to ''restart'' their calculations for the 60-hour or 70-hour rule, whichever is applicable, after having an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m.

The FMCSA believes an off-duty period that includes two consecutive midnight to 6 a.m. periods to obtain restorative sleep would ensure these carriers a level of safety that is equivalent to, or greater than, the level of safety that they would achieve by complying with the current weekly limitations in the hours-of-service regulations. A minimum 32 to 56-hour break that includes the minimum of two consecutive nights of sleep would provide drivers a full day off with two sleep periods between the hours of midnight and 6 a.m.

The minimum off-duty periods are intended to afford the drivers the opportunity for restorative sleep. The ''weekend'' may be longer depending on when the motor carrier releases the driver from duty on the last workday of the workweek. However, the alternative ''restart'' in the pilot program would allow drivers to take as few as 32 consecutive hours off-duty on a ''weekend,'' if the time period includes two consecutive midnight to 6 a.m. periods and the driver is released from work at exactly 11 p.m. on the last workday of the workweek.

It is unreasonable to expect that a driver will get full advantage of two consecutive midnight to 6 a.m. sleep periods if he/she is released at or just before midnight, and required to return to work at or just after 6 a.m. Therefore, the FMCSA has chosen 11 p.m. as the latest time drivers could get off work and still get to sleep for the first full midnight to 6 a.m. period on the first night of a ''weekend.'' Likewise, the agency has chosen 7 a.m. as the earliest time drivers could start a new workweek and still sleep the last full midnight to 6 a.m. period on the last night of a ''weekend.''

Generally, drivers would be off duty for more than the minimum 32 consecutive hours, but fewer than the 63 consecutive hours in a ''normal weekend'' (5 p.m. Friday to 8 a.m. Monday). A driver completing a workweek at 11 p.m., for example, could take the minimum 32 hours before beginning the next workweek. A driver completing a workweek at 11:10 p.m., though, would have to be off-duty for approximately 56 hours before beginning the next workweek.

The FMCSA is not suggesting that participating motor carriers provide only 32 hours that include the two consecutive midnight to 6 a.m. periods. That is the minimum off-duty time. The FMCSA expects the participating motor carriers to provide, and drivers to take, as much time as necessary to recover from any sleep debts and other conditions resulting from cumulative weekly fatigue.

Drivers and motor carriers utilizing the ''restart'' provisions will, of course, continue to operate as their customers insist, generally making home heating oil deliveries only between the hours of 7:00 a.m. and 5:00 p.m. That fact, combined with the 10- and 15-hour rules which remain applicable to the pilot program [§§ 395.3(a)(1) and 395.3(a)(2), respectively] and the ''weekend'' requirements discussed above, ensures that drivers should have enough daily rest to avoid a significant sleep debt and enough time periodically off duty to eliminate any cumulative fatigue that may occasionally develop despite these precautions.

Management of the Program

The FMCSA is managing the home heating oil program, including the collection and analysis of all data, and the monitoring of all motor carriers participating in the program. However, we are requesting that the States make compliance with the FMCSA's monitoring requirements a condition of their waiving the intrastate hours-of-service requirements. The agency has developed a pilot program plan which includes the elements specified in 49 CFR 381.505.

Pilot Program Plan

The FMCSA will review participating carriers'accident data from the three-years prior to entering the pilot program, and compare this pre-pilot program safety performance data with data collected during the program. This before-and-after comparison will provide a practical and effective means of determining whether the alternative restart provision affects safety performance, provided there are no other significant changes in the operating practices of the participating carriers that could also affect safety performance.

Eligibility Criteria for Motor Carriers To Participate

The FMCSA is requiring that interstate motor carriers meet all of the eligibility criteria listed below for

participating in the pilot program. The States granting temporary exemptions must require that intrastate carriers meet the same eligibility requirements in order to take advantage of the exemption. The purpose of the eligibility criteria is to keep motor carriers with questionable safety performance and/or safety management controls out of the program. Participating motor carriers—

1. Must be either ''unrated,'' or have a current safety rating of ''Satisfactory'' issued, by the FMCSA (or the FHWA or OMCS prior to the establishment of the FMCSA), or a State;

2. Must not have been the subject of a Federal or State investigation resulting in penalties or fines for violations of motor carrier safety or hazardous materials transportation regulations or laws within the last three years;

3. Must not have had, during the last three years, any accidents (as defined in 49 CFR 390.5) in which a determination was made by a Federal, State, or local official responsible for investigating the cause of CMV accidents, that the motor carrier's CMV was in unsafe operating condition (i.e., a condition likely to cause an accident, or breakdown of the vehicle) and the mechanical condition was a contributing factor in the accident, or that the driver was cited for violation of Federal or State motor carrier safety regulations or laws (whichever were applicable at the time of the accident) and the driver's violation of those regulations or laws was a contributing factor in the accident.

Participating drivers must not have committed, during the past three years, any disqualifying offences listed in (1) 49 CFR 383.51 concerning commercial driver's license disqualifications and penalties, (2) 49 CFR 391.15 concerning disqualification of drivers operating CMVs in interstate commerce, or (3) comparable State regulations or laws concerning disqualifications of individuals operating vehicles with a gross vehicle weight rating/gross combination weight rating or gross weight of 10,001 pounds or more.

Process for Motor Carriers To Apply for Participation in the Pilot Program

In order to be considered for the pilot program interstate motor carriers (or intrastate motor carriers operating in States that agree to grant exemptions consistent with the requirements and conditions of this program) must submit, in writing, the following to the FMCSA:

(1) The name of the motor carrier;

(2) USDOT Number, MC Number, and State-issued motor carrier identification number;

(3) The address for the principal place of business, telephone number, and fax number;

(4) Name and title of company official who will serve as the carrier's point of contact for inquiries from the FMCSA;

(5) A driver roster consisting of names and driver license numbers and State of licensure for all participating drivers;

(6) The number of home heating oil delivery vehicles that will be operated by drivers using the alternative restart;

(7) The total number of accidents, as defined in § 390.5, for each of the previous three calendar years, and the number of accidents that occurred during each of the previous winter seasons (November 1 through April 30);

(8) The following certification signed by a motor carrier official:

I certify that *(Name of the motor carrier)* operates CMVs used to deliver home heating oil, and is not currently rated ''Unsatisfactory'' or ''Conditional'' by the FMCSA (or the FHWA prior to the establishment of the FMCSA), or a State. I certify that each of the drivers listed on the roster is eligible to participate in the project, that each operates a CMV used predominantly to transport home heating oil, and that we have verified that the driving record of each driver does not include any convictions within the past three years of any disqualifying offense. I have read and agree to be bound by the requirements for notification and submission of information to the FMCSA outlined in the section entitled ''The Agreement'' in the notice of final determination for this project. I certify under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct.
Executed on ____ (Date)

Signature _____
Name _____
Title _____
Name of Motor Carrier _____

Intrastate motor carriers operating in States that provide a temporary exemption must also submit their requests for participation to the FMCSA. The FMCSA will provide the State with a list of the motor carriers and drivers for the State's approval for participation in the Study. If the State agrees with the FMCSA's recommendation, the carriers and drivers will be allowed to participate in the study and must agree to submit required accident information to the FMCSA during the study.

If the FMCSA determines that a motor carrier applicant is qualified to participate in the pilot program, the agency will notify the carrier by letter. The agency will notify intrastate motor carriers after the State in which they operate approves their participation in the study. A copy of the letter must then be made available by the motor carrier to each driver and carried onboard the vehicle at all times the vehicle is being operated under the terms and conditions of this program.

The Agreement

All motor carriers participating in the pilot program must limit participation in the program to only those drivers predominantly engaged in the delivery of home heating oil to residential customers within a 100 air-mile radius of central terminals or distribution points, during winter months. A driver is not ''predominantly engaged'' in residential deliveries if more than 20 percent of his or her deliveries, on a weekly basis, are to non-residential customers. Motor carriers and drivers must meet the eligibility requirements to be accepted into the pilot program, and to remain in the program.

Participating motor carriers are allowed to ''restart'' calculations for the 60- or 70-hour rule (§ 395.3(b)(1) or (b)(2), respectively), whichever is applicable, after the driver has an off-duty period encompassing two consecutive nights off-duty that include the periods from midnight to 6 a.m. However, if the driver reaches the 60- or 70-hour limit without having taken any such off-duty period, he or she is required to do so at that time. Drivers must comply with the 10-hour driving limit in § 395.3(a)(1), and the 15-hour on-duty limit in § 395.3(a)(2).

The off-duty period used to ''restart'' the calculations for the 60- or 70-hour rule must not begin any later than 11 p.m. for the first full midnight to 6 a.m. period on the first night of a ''weekend.'' The earliest time drivers may start a new workweek and still sleep the last full midnight to 6 a.m. period on the last night of a ''weekend'' is 7 a.m. Participating motor carriers must provide, and driver must take, as much time as necessary to recover from any sleep debts and other conditions resulting from cumulative weekly fatigue.

Participating drivers must comply with § 395.3(b)(1) or (b)(2), whichever is applicable, while performing driving tasks other than delivering home heating oil to residential customers within 100 air-miles of central terminals or distribution points.

By agreement, participating motor carriers must do the following:

1. Within 10 business days following an accident (as defined in 49 CFR 390.5) or any unintentional discharge of home heating oil that requires the submission of the Department of Transportation Hazardous Materials Incident Report (DOT Form F 5800.1) (see 49 CFR

171.16) involving any of the motor carrier's CMVs, irrespective of whether the CMV was being operated by a participating driver, the motor carrier must submit the following information:

(a) Date of the accident,

(b) City or town in which the accident occurred, or city or town closest to the scene of the accident,

(c) Driver's name and license number,

(d) Vehicle number and State license number,

(e) Number of injuries,

(f) Number of fatalities, and

(g) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released,

(h) The police-reported cause of the accident,

(i) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge.

(j) Whether the driver was participating in the pilot program, and if so, the total driving time, on-duty time since the last restart period prior to the accident, and the length of the last restart period.

2. Notify the FMCSA of the addition of a new driver operating under the alternative restart pilot program within 10 business days, providing the name, driver license number, and date of employment of the new driver.

3. Notify the FMCSA within 10 business days after a participating driver ceases to be employed by the motor carrier providing the driver's name, license number, and date of termination.

4. Notify the FMCSA within 10 business days after a participating driver leaves the pilot program, providing the driver's name, license number, and date participation ended.

Removal From the Project

The FMCSA expects that any motor carrier satisfying the eligibility criteria of this project will maintain its safety record. However, should any deterioration occur, the FMCSA will, consistent with the statutory requirements of TEA–21, take all steps necessary to protect the public interest, as well as the integrity of the program. Participation in this program is voluntary, and the FMCSA will immediately revoke participation of an interstate motor carrier or driver for failure to comply with the terms and conditions of the pilot program, or immediately terminate the pilot program if its continuation proves to be inconsistent with the goals and objectives of the safety regulations issued under the authority of 49 U.S.C. chapter 313, or 49 U.S.C. 31136.

With regard to intrastate motor carriers and drivers, the FMCSA will notify State officials immediately if the agency determines that the carrier or driver has failed to comply with the terms and conditions of the pilot program. The FMCSA will request that the State agency granting the temporary exemption immediately revoke participation of the intrastate motor carrier or driver.

FMCSA Use of Data

The FMCSA plans to carefully review the data collected as a result of the program in preparing a report to the Congress, as required by the TEA–21. The agency will document findings, conclusions, and recommendations of the program, including any suggested amendments to laws and regulations that would enhance motor carrier and driver safety and improve compliance with the hours-of-service regulations.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this program is subject to the PRA and the required clearance documents were submitted to the OMB for its approval of this information collection requirement.

This **Federal Register** notice establishes a voluntary pilot program for participation by certain motor carriers that transport home heating oil. In return for receiving an exemption from the weekly limitations in the Federal hours-of-service regulations, or comparable State hours-of-service requirements, each program motor carrier is required to develop and/or furnish certain information about its operations, determine the eligibility of its drivers to participate in the program, provide information about past accidents, and agree to provide detailed information about accidents that occur during the pilot program. It is anticipated that the initial application will require on average, about one hour to complete. This document is necessary to identify those motor carriers that believe they are eligible to participate in the project, and to indicate their desire to be included in the project.

Participating motor carriers are required to submit to the FMCSA: (1) The total number of CMVs that will be operated by a driver using the alternative to the 60-/70-hour restart; (2) the names and driver license numbers for all drivers using the alternative restart; (3) the total number of accidents (as defined in 49 CFR 390.5) for each of the three years prior to participating in the project, including the total number of injuries and fatalities; (4) information about all accidents that occur while the carrier is participating in the program; and (5) information about the addition or removal of drivers from the project.

The most likely respondents to this information collection will be motor carriers operating CMVs transporting home heating oil during the winter, with a safety rating of satisfactory or unrated. The FMCSA does not have a precise count of the total number of carriers that would be eligible to participate in the program. However, the PMAA represents approximately 8,000 motor carriers that supply home heating oil. For the purposes of estimating the information collection burden, the FMCSA used an estimate of 8,000 motor carriers.

Each accident involving project drivers must be reported to the FMCSA within 10 calendar days. This information is necessary in order to detect immediately those motor carriers whose safety performance is declining during the project and will also be used to assist in making the before-and-after comparison of each carrier's safety performance. The reporting and recordkeeping burden for this information is estimated to be 15 minutes per accident.

With regard to the total reporting requirement, if 8,000 motor carriers participate, a total of 8,000 hours would be expended by these carriers to apply for the project. If each of the motor carriers averages two accidents per winter, the burden for each year would be 4,000 hours (0.25 hours per accident × (2 accidents per year × 8,000 motor carriers) = 4,000 hours per year. The total burden for submitting accident data during the three-winter period would be 12,000 hours. Therefore, the FMCSA estimates approximately 20,000 burden hours during the pilot project.

The FMCSA requested public comment on the collection of information discussed above as part of the February 16, 2000, notice of proposal to conduct the pilot program. None of the commenters to the docket discussed the information collection burden. Therefore, the FMCSA is using the estimates included in the proposal for the pilot program.

Issued on: July 9, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 01–17573 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10094]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TONYA LEE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10094. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* Tonya Lee. Owner: Thomas E. Weske and Judith A. Weske.

(2) Size, capacity and tonnage of vessel. According to the applicant: "* * * Gross Tons 10, Net Tons 8, Length 28 ft, Breadth 10 ft, Depth 5.5 ft"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Coastwise passenger: Charter Fishing, Sightseeing, Whale Watching. Southeast Alaska: Juneau to Skagway to Cross sound to Sitka to Ketchikan to Juneau."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1978. Place of construction: Unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will have no more or less impact on the charter fleet or any other commercial operators than other vessel licensed to operate in this geographic area."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This vessel * * * will have no effect on any U.S. shipbuilders now or in the future."

Dated: July 10, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–17582 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10095]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the coastwise trade laws for the vessel ADVENTURE CAT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before August 13, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10095. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime

Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Adventure Cat.* Owner: J.B. Ewing Enterprises, Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: "* * * 9.7 tons. It is a 47 feet catamaran with a 23-foot beam and has 4 staterooms."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "This is a charter vessel with a captain and crew and no more than 12 guests for sailing in the Gulf of Mexico from the Sanibel Island area."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1998. Place of construction: Bordeaux, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Currently there is no other vessel of this class, size and capacity offing sailing services in the Southwest Florida or the Gulf waters. We do have within 100 miles, larger vessels who market themselves as 50 or more guests for fishing, sightseeing and gambling."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The U.S. boat manufacturers passed on the construction of large sailing catamaran, as it was not view as a profitable market. I also learn from U.S. salesmen for Beneteau Group (who own Lagoon) that the France government had made available tax relief for this vessel type and class allowing it to be made in France. If I were a U.S. boat builder back then, looking at this market size, I too would let someone else build the vessel and focus all my resources to a more production volume vessel for the U.S. market."

Dated: July 10, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–17581 Filed 7–12–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34064]

Waccamaw Coast Line Railroad—Modified Rail Certificate

On June 25, 2001, the Waccamaw Coast Line Railroad (WCLR), a division of The Baltimore and Annapolis Railroad Company (B&A), a Class III rail carrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate approximately 14.1 miles of rail line owned by Horry County, SC, between the connection with the B&A d/b/a The Carolina Southern Railroad Company tracks at Station 9 + 34.65 (milepost 336.18) in the City of Conway, SC, and the end of track beyond the Intracoastal Waterway at Station 748 + 30.23 (milepost 350.17) within the limits of the City of Myrtle Beach, SC.

Horry County, SC, a political subdivision of the State of South Carolina, owns the track and right-of-way that is the subject of this notice. Horry County purchased the trackage in 1984 under 49 CFR 1150.22, after it was abandoned by the Seaboard System Railroad (now CSX Transportation, Inc.). *See Seaboard System Railroad Inc.—Abandonment—In Horry County, South Carolina,* ICC Docket No. AB–55 (Sub-No. 107) (ICC served Sept. 12, 1984). The trackage is approximately 14.1 miles in length, running between Conway and Myrtle Beach. Horry County received title by deed dated October 22, 1984.

The Horry County Railroad Company was the initial operator over the line, later changing its name to WCLR. Ownership of WCLR changed in 1990. A dispute subsequently developed regarding car interchange at Conway between WCLR and the Mid-Atlantic Railroad Co., Inc. (MRR), the sole interline connection for WCLR. On or about September 22, 1995, B&A, successor-in-interest to MRR, acquired most of the assets of WCLR, including the track lease, and continued operation of WCLR as a separate division under a series of a short-term leases from Horry County.

The initial term of the lease between Horry County and B&A is 30 years. The lease commenced on February 9, 2001, with one renewal term of 20 years.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

WCLR indicates that no subsidy is involved, that there are no preconditions for shippers to meet in order to receive rail service, and that B&A has obtained liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G St., NW., Suite 520, Washington, DC 20005.

Decided: July 9, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17580 Filed 7–12–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–565 (Sub-No. 1X) and AB–55 (Sub-No. 598X)]

New York Central Lines, LLC—Abandonment Exemption—in Middlesex County, MA; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Middlesex County, MA

On June 25, 2001, New York Central Lines, LLC (NYC), and CSX Transportation, Inc. (CSXT), jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for NYC to abandon and

CSXT to discontinue service over a 4.80-mile portion of a line of railroad known as the Albany Division, Fitchburg Subdivision, extending from milepost QBS 0.00 at Framingham to milepost QBS 4.80 at South Sudbury, in Middlesex County, MA.[1] The line traverses U.S. Postal Service Zip Code 01701. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroads' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 12, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 2, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–565 (Sub-No. 1X) and AB–55 (Sub-No. 593X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the exemption petition are due on or before August 2, 2001.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 9, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17579 Filed 7–12–01; 8:45 am]

BILLING CODE 4915–00–P

[1] CSX Corporation, CSXT's parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc., and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line to be abandoned is included among the property being operated by CSXT pursuant to the NYC operating agreement.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Acceptance Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 20 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000 at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40869, June 30, 2000.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–17504 Filed 7–12–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—Amwest Surety Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Amwest Surety Insurance Company, a Nebraska company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 65 FR 40873, June 30, 2000. The Company's authority was terminated by the Department of the Treasury effective May 31, 2001. Notice of the termination was published in the **Federal Register** of May 31, 2001, on page 29632.

On, June 7, 2001, upon a petition by the Director of Insurance for the State of Nebraska, the District Court of Lancaster County, Nebraska, issued an Order of Liquidation with respect to Amwest Surety Insurance Company. L. Tim Wagner, Director of Insurance for the State of Nebraska, was appointed as the Liquidator. All persons having claims

against Amwest Surety Insurance Company must file their claims by June 7, 2002, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875, Attn: Mr. Randy Harwell, Attorney.

The above office will consolidate and file any and all claims against Amwest Surety Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307–0180.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 01–17507 Filed 7–12–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Bankers Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 21 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000 at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 65 FR 40874, June 30, 2000.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–17505 Filed 7–12–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—Credit General Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Credit General Insurance Company, an Ohio company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 64 FR 35872, July 1, 1999. The Company's authority was terminated by the Department of the Treasury effective June 29, 2000. Notice of the termination was published in the **Federal Register** of July 13, 2000, on page 43404.

On January 5, 2001, upon a petition by the Superintendent of Insurance for the State of Ohio, the Court of Common Pleas of Franklin County, Ohio, issued an Order of Liquidation with respect to Credit General Insurance Company. Douglas L. Hertlein was appointed as the Chief Deputy Liquidator. All persons having claims against Credit General Insurance Company must file their claims by January 31, 2002, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875, Attn: Mr. Randy Harwell, Attorney.

The above office will consolidate and file any and all claims against Credit General Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307–0180.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 30, 2001.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 01–17506 Filed 7–12–01; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 66, No. 135

Friday, July 13, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket No. FGIS-2001-001b]

RIN: 0580-AA75

Fees for Official Inspection and Official Weighing Services

Correction

In rule document 01–17005 beginning on page 35751 in the issue of Monday, July 9, 2001, make the following correction:

§800.71 [Corrected]

On page 35753, §800.71(a), in Table 1, ''(1) Inspection and Weighing Services Hourly Rates (per service representative)'' should appear directly beneath the table heading.

[FR Doc. C1–17005 Filed 7–12–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 3575]

Bureau of Political-Military Affairs; Amendments to the International Traffic in Arms Regulation: Canadian Exemption

Correction

In rule document 01–3877 beginning on page 10575 in the issue of Friday, February 16, 2001, make the following corrections:

§126.5 [Corrected]

1. On page 10576, second column, §126.5 (b), fifth line, ''paragraph'' should read ''paragraphs''.
2. On the same page, second column, §126.5 (b), sixth line, ''section'', should read ''section,''.
3. On the same page, third column, §126.5 (b), first line, ''section'', should read ''section,''.

[FR Doc. C1–3877 Filed 7–12–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 7, and 23

[Docket No. 01–13]

RIN 1557–AB94

Investment Securities; Bank Activities and Operations; Leasing

Correction

In rule document 01–16328 beginning on page 34784 in the issue of Monday, July 2, 2001, make the following corrections:

1. On page 34786, in the preamble, in the third column, in the second paragraph, in the 12th line, remove the word ''is'' after ''however,''.

2. On the same page, in the preamble, in the same column, in the third paragraph, in the 13th line, remove the '','' and insert a ''.'' after the word ''change'', and remove the text ''and, therefore, we adopt it in the final rule as proposed. change.'' that follows.

[FR Doc. C1–16328 Filed 7–12–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
July 13, 2001

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6768–3]

RIN 2060–AE48

National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. The EPA has identified integrated iron and steel manufacturing facilities as a major source of hazardous air pollutant (HAP) emissions. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the integrated iron and steel manufacturing source category include metals (primarily manganese and lead with small quantities of other metals) and trace amounts of organic HAP (such as polycyclic organic matter, benzene, and carbon disulfide). Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system.

DATES: *Comments.* Submit comments on or before October 11, 2001.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 3, 2001, a public hearing will be held on August 13, 2001.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–44, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–44, Room M–1500, U.S. EPA, 401 M Street, SW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public hearing. If a public hearing is held, it will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC beginning at 10 a.m.

Docket. Docket No. A–2000–44 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Mulrine, Metals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5289, electronic mail address: mulrine.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: air-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–2000–44. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. EPA, OAQPS Document Control Officer, Attn: Phil Mulrine, 411 W. Chapel Hill Street, Room 740B, Durham, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mary Hinson, Metals Group, Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5601, in advance of the public hearing. Persons interested in attending the public hearing must also call Mary Hinson to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Example of regulated entities
Integrated iron and steel mills	3312	331111	Steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7781 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

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G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act

I. Background

A. What Is the Statutory Authority for NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed NESHAP, Integrated Iron and Steel Manufacturing, was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

The NESHAP for new and existing sources developed under section 112 must reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental benefits, and energy requirements. Emission reductions may be accomplished through promulgation of emission standards under section 112(d). These may include, but are not limited to:

- Reducing the volume of, or eliminating emissions of HAP through process changes, substitution of materials, or other modifications;
- Enclosing systems or processes to eliminate emissions;
- Collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point;
- Design, equipment, work practice or operational standards or any combination thereof if it is not feasible to prescribe or enforce an emission standard (including requirements for operator training or certification); or
- A combination of the above.

Section 112 requires us to establish standards that are no less stringent than a certain minimum baseline, we refer to this as the ''MACT floor.'' For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories and subcategories with 30 or more sources. For categories and subcategories with fewer than 30 sources, the standards cannot be less stringent than the average emission limitation achieved by the best-performing five sources.

We may take alternative approaches to establishing the MACT floor, depending on the type, quality, and applicability of available data. The three approaches most commonly used involve reliance on State regulations or permit limits, source test data that characterize actual emissions, and use of a technology floor with an accompanying demonstrated achievable emission level that accounts for process and/or air pollution control device variability.

Section 112(d) allows us to distinguish among classes, types, and sizes of sources within a category or subcategory. For example, we can establish classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent as the MACT floor for that class of sources.

We evaluate several alternatives (which may be different levels of emission control or different levels of applicability or both) to select the one that best reflects the appropriate MACT level. The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. In selecting an alternative, we consider the achievable HAP emission reduction (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emission reduction without unreasonable economic or other impacts. The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate regulatory decisions may be made for new and existing sources.

We then translate the selected regulatory alternative into a proposed rule. The public is invited to comment on the proposal during the public comment period. Based on an evaluation of these comments, we reach a final decision and promulgate the standards.

C. What Source Category Is Affected by This Proposed Rule?

Section 112(c) of the CAA requires us to list all categories of major and area

sources of HAP for which we will develop national emission standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). ''Integrated Iron and Steel Manufacturing'' is one the source categories on the initial list. The listing was based on our determination that integrated iron and steel manufacturing facilities may reasonably be anticipated to emit a variety of HAP listed in section 112(b) in quantities sufficient to be major sources.

An integrated iron and steel manufacturing facility produces steel from iron ore. The integrated iron and steel manufacturing source category includes sinter production, iron production, and steel production.

D. What Processes Are Used at Integrated Iron and Steel Manufacturing Facilities?

The primary processes of interest because of their potential to generate HAP emissions include sinter plants, blast furnaces that produce iron, and basic oxygen process furnaces (BOPF) that produce steel. There are also several ancillary processes, including hot metal transfer, desulfurization, slag skimming, and ladle metallurgy. Iron and steel are produced at 20 plant sites in the United States (U.S.) that have a total of 39 blast furnaces, 50 BOPF, and 9 sinter plants. Integrated iron and steel plants are located in ten States; however, the majority of the iron and steel is produced in Indiana, Ohio, and Illinois.

The sintering process converts fine-sized raw materials, including iron ore, coke breeze, limestone, mill scale, and flue dust, into an agglomerated product (sinter) of suitable size for charging into the blast furnace. The raw materials are mixed with water to provide a cohesive matrix and then placed on a continuous traveling grate called the sinter strand. A burner hood at the beginning of the sinter strand ignites the coke in the mixture, after which the combustion is self supporting and provides sufficient heat (2,400 to 2,700 degrees Fahrenheit) to cause surface melting and agglomeration of the mix. On the underside of the sinter strand are a series of windboxes that draw combusted air down through the material bed into a common duct leading to a gas cleaning device (either a venturi scrubber or a baghouse).

The fused sinter is discharged at the end of the sinter strand where it is crushed and screened. Undersize sinter is recycled to the mixing mill and back to the strand. The remaining sinter product is cooled in open air or in a circular cooler with mechanical fans. The cooled sinter is crushed and screened for a final time, then the fines are recycled and the product is sent to be charged to the blast furnace. Generally, 2.5 tons of raw materials, including water and fuel, are required to produce 1 ton of product sinter.

Iron is produced in blast furnaces by the reduction of iron bearing materials with a hot gas. The large, refractory lined furnace is charged through its top with iron ore, iron ore pellets, sinter, flux (limestone and dolomite), and coke, which provides fuel and forms a reducing atmosphere in the furnace. Many modern blast furnaces also inject pulverized coal to reduce the quantity of coke required. Iron oxides, coke, coal, and fluxes react with the heated blast air injected into the bottom of the furnace to form molten reduced iron, carbon monoxide (CO), and slag. The molten iron and slag collect in the hearth at the base of the furnace. The by-product gas is collected through offtakes located at the top of the furnace and is recovered for use as fuel.

The molten iron and slag are removed, or cast, from the furnace periodically. The casting process begins with drilling a hole, called the taphole, into the clay-filled iron notch at the base of the hearth. During casting, molten iron flows into runners that lead to transport ladles. Slag also flows from the furnace and is directed through separate runners to a slag pit adjacent to the casthouse, or into slag pots for transport to a remote slag pit. At the conclusion of the cast, the taphole is replugged with clay. The area around the base of the furnace, including all iron and slag runners, is enclosed by a casthouse.

The blast furnace by-product gas, which is collected from the furnace top, contains CO and particulate matter (PM). As a fuel, the blast furnace gas has a low heating value, about 75 to 90 British thermal units per cubic foot (Btu/ft^3). Before it can be efficiently burned, the PM must be removed from the gas. Initially, the gases pass through a settling chamber or dry cyclone to remove about 60 percent of the particulate. Next, the gases undergo a one or two stage cleaning operation. The primary cleaner is normally a wet scrubber, which removes about 90 percent of the remaining particulate. The secondary cleaner is a high-energy wet scrubber (usually a venturi) which removes up to 90 percent of the particulate that eludes the primary cleaner. Together, these control devices provide a clean fuel with less than 0.02 grains per dry standard cubic foot (gr/dscf) of PM. A portion of this gas is fired in the blast furnace stoves to preheat the blast air, and the rest is used in other plant operations.

After the molten iron (called ''hot metal'') is produced in the blast furnace, it is transferred to the BOPF shop. Brick-lined torpedo cars are used because their insulating properties lower heat loss from the iron. Hot metal transfer occurs when the molten iron is transferred (''reladled'') from the torpedo car to the BOPF shop ladle.

Hot metal is desulfurized by adding various reagents such as soda ash, lime, and magnesium. The reagents are usually injected pneumatically with either dry air or nitrogen. Following desulfurization, any slag formed is skimmed from the ladle and the hot metal is transferred to a BOPF.

In the BOPF, molten iron from a blast furnace and iron scrap are refined by lancing (or injecting) high-purity oxygen. The input material is typically 70 percent hot metal and 30 percent scrap metal. The oxygen reacts with carbon and other impurities to remove them from the metal. Because the reactions are exothermic, no external heat source is necessary to melt the scrap and to raise the temperature of the metal to the desired range for tapping. For a BOPF, tapping begins when the furnace is tilted to remove steel and slag and ends when the furnace returns to an upright position. The large quantities of CO produced by the reactions in the BOPF can be controlled by combustion at the mouth of the furnace and then vented to gas cleaning devices, as with open hoods, or combustion can be suppressed at the furnace mouth, as with closed hoods.

The BOPF is a large (up to 400-ton capacity) refractory lined pear-shaped furnace. There are two major variations of the process. Conventional BOPF have oxygen blown into the top of the furnace through a water-cooled lance (top-blown). In the newer Quelle Basic Oxygen process (Q-BOP), oxygen is injected through tuyeres located in the bottom of the furnace (bottom-blown). A typical BOPF cycle consists of the scrap charge, hot metal charge, oxygen blow (refining) period, testing for temperature and chemical composition of the steel, alloy additions and reblows (if necessary), tapping, and slagging. The full furnace cycle typically ranges from 25 to 45 minutes.

Ladle metallurgy is a secondary step of the steelmaking process performed in a ladle after the initial refining process in the BOPF is completed. The purpose of ladle metallurgy (also referred to as secondary steelmaking) is to produce steel that satisfies the many stringent requirements associated with surface and internal quality as well as

mechanical properties. Nearly all of the integrated iron and steel facilities perform some type of ladle metallurgy, such as vacuum degassing, ladle refining, reheating, alloy addition, argon/oxygen decarburization, argon stirring, and lance powder injection.

After the steel has been refined in the BOPF and ladle metallurgy operations, the molten metal is transferred to a continuous casting operation where it is cast and subsequently rolled into a semi-finished product, such as a bloom, billet, or slab.

E. What HAP Are Emitted and How Are They Controlled?

1. Sinter Plants

The primary source of HAP emissions from sinter plants (over 40 percent) is the windbox exhaust. The windbox exhaust is a high volume stream of hot gases on the order of 300,000 to 600,000 dscfm. Control devices applied include baghouses and venturi scrubbers. The HAP emissions include HAP metal compounds, primarily lead and manganese, which comprise about 3 percent of the total PM. Organic HAP compounds, including both volatile and semivolatile HAP such as polycyclic organic matter, are also emitted. The organic compounds are formed from oily materials, mostly rolling mill scale, that are used in the sinter feed. Most plants minimize emissions of organic compounds by carefully monitoring and limiting the quantity of oil introduced with the sinter feed.

The discharge end emission points include the crusher, hot screen and various transfer points as the hot sinter is conveyed to the cooler. The sinter cooler stack is also an emission point. These operations are a source of PM emissions from the dusty sinter product and account for only 7 percent of the HAP emissions from the sinter plant. The most significant HAP found in emissions from the discharge and sinter cooler is manganese, which comprises only about 0.75 percent of the PM.

2. Blast Furnace Casthouse

The primary source of blast furnace emissions is the casting operation. Particulate emissions are generated when the molten iron and slag contact air above their surface. Casting emissions are also generated by drilling and plugging the taphole. The occasional use of an oxygen lance to open a clogged taphole can increase emissions. During the casting operation, iron oxides, magnesium oxide and carbonaceous compounds are generated as PM. The only significant HAP found in the PM is manganese, which comprises about 0.6 percent of the PM.

Casting emissions are controlled by evacuation through capture hoods to a baghouse or by suppression techniques. The basic concept of suppression techniques that use steam or inert gas is to prevent the formation of pollutants by preventing ambient air from contacting the molten surfaces. Newer furnaces have been constructed with evacuated covered runners and local hooding ducted to a baghouse.

3. Hot Metal Transfer, Desulfurization, and Slag Skimming

Hot metal transfer from the torpedo car into the BOPF shop ladle is accompanied by the emissions of kish, a mixture of fine iron oxide particles together with larger graphite particles. The reladling generally takes place under a hood to capture these emissions. Emissions during desulfurization are created by both the reaction of the reagents injected into the metal and the turbulence during injection. The pollutants emitted are mostly iron oxides, calcium oxides, and oxides of the compound injected. The sulfur reacts with the reagents and is skimmed off as slag.

The emissions generated from desulfurization and slag skimming are usually collected by a hood positioned over the ladle and vented to a baghouse. Many plants perform hot metal transfer, desulfurization, and slag skimming at the same station to take advantage of a single capture and control system. Manganese is the predominant HAP in the PM emissions. The level of manganese is expected to be comparable to that of PM from the casthouse (on the order of 0.6 percent).

4. Basic Oxygen Process Furnace

Emissions from the BOPF occur during charging, the oxygen blow and tapping. Fugitive emissions escape through the BOPF shop roof monitor, and stack emissions are released through primary and secondary control systems. The predominant compounds emitted are iron oxides, and the most significant HAP is manganese. Manganese comprises about 1 percent of the particulate, which is more than all of the other HAP metals combined.

Emissions during oxygen blow periods are controlled using a primary hood capture system located directly over the open mouth of the furnaces. Two types of capture systems are used to collect exhaust gas as it leaves the furnace mouth: a closed hood design that suppresses combustion, and an open hood design that promotes combustion. A closed hood fits snugly against the furnace mouth, ducting all PM and CO to a venturi scrubber. The CO is flared at the scrubber outlet stack. The open hood design allows combustion air to be drawn into the hood, thus burning the CO. Electrostatic precipitators (ESP) and venturi scrubbers are used as the primary controls for open hood BOPF.

Charging and tapping emissions are controlled by a variety of evacuation systems and operating practices. Charging hoods, tapside enclosures, and full furnace enclosures are used to capture these emissions and send them either to the primary control device or to a secondary device, usually a baghouse. Almost all closed hood BOPF have a secondary capture and control system, whereas many open hood BOPF rely on the primary system for capture and control of fugitive emissions.

5. Ladle Metallurgy

Most BOPF shops have a ladle metallurgy station where various adjustments are made to the steel's physical and chemical properties. Almost all ladle metallurgy stations are enclosed or hooded, and any fume from the vessel is ducted to a baghouse. There are few data on the HAP composition of ladle metallurgy emissions; however, the composition should be similar to that of emissions from the BOPF (primarily manganese).

F. What Are the Health Effects Associated With Emissions From Integrated Iron and Steel Manufacturing Processes?

There are a variety of metal HAP contained in the PM emitted from iron and steel manufacturing processes. These include primarily manganese and lead, with much smaller quantities of antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, nickel, and selenium. Organic HAP compounds are released in trace amounts from the sinter plant windbox exhaust and include polycyclic organic matter (such as polynuclear aromatic hydrocarbons and chlorinated dibenzodioxins and furans), and volatile organics such as benzene, carbon disulfide, toluene, and xylene. These HAP are associated with a variety of adverse health effects including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system.

Manganese and lead comprise the majority of the metal HAP emissions. Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a

recommended daily allowance of 2 to 5 milligrams per day. Chronic exposure to high levels of manganese by inhalation in humans results primarily in central nervous system (CNS) effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese in Group D, not classifiable as to carcinogenicity in humans.

Lead is a very toxic element, causing a variety of effects at low dose levels. Brain damage, kidney damage, and gastrointestinal distress may occur from acute exposure to high levels of lead in humans. Chronic exposure to lead in humans results in effects on the blood, CNS, blood pressure, and kidneys. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted. Human studies are inconclusive regarding lead exposure and cancer, while animal studies have reported an increase in kidney cancer from lead exposure by the oral route. We have classified lead as a Group B2, probable human carcinogen.

Trace quantities of organic HAP, such as chlorinated dibenzodioxins and furans (CDD/F) and benzene, have been detected in the windbox exhaust at sinter plants. One CDD/F compound, 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD, commonly called ''dioxin'') is listed singly as a HAP. Other CDD/F compounds, many of which cause adverse health effects in the same way as dioxin, are HAP under the definition of polycyclic organic matter. Exposure to CDD/F mixtures causes chloracne, a severe acne-like condition, and has been shown to be extremely toxic in animal studies. Dioxin itself is known to be a developmental toxicant in animals, causing skeletal deformities, kidney defects, and weakened immune responses in the offspring of animals exposed during pregnancy. Human studies have shown an association between dioxin and soft-tissue sarcomas, lymphomas, and stomach carcinomas. We have classified dioxin as a probable human carcinogen (Group B2).

Acute inhalation exposure of humans to benzene may cause drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia, in occupational settings. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. We have classified benzene as a Group A, known human carcinogen.

In addition to HAP, the proposed rule also would reduce PM emissions, which are controlled under national ambient air quality standards. Briefly, emissions of PM have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

We recognize that the degree of adverse effects to health experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depends on:

- Pollutant-specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence);
- The ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain);
- The frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.,* genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population.

II. Summary of the Proposed Rule

A. What Are the Affected Sources and Emission Points?

The affected sources are each new and existing sinter plant, blast furnace, and BOPF shop at an integrated iron and steel manufacturing facility that is a major source. A new affected source is one constructed or reconstructed after July 13, 2001. An existing affected source is one constructed or reconstructed on or before July 13, 2001. The proposed rule covers emissions from the sinter plant windbox exhaust, discharge end, and sinter cooler; the blast furnace casthouse; and the BOPF, BOPF shop roof monitor, and BOPF ancillary operations (hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy).

B. What Are the Emission Limitations?

The proposed rule includes PM emission limits and opacity limits as well as operating limits for capture systems and control devices. Particulate matter and opacity serve as a surrogate measures of HAP emissions.

1. Sinter Plants

The proposed PM emission limit for the windbox exhaust stream, 0.3 pounds per ton (lb/ton) of product sinter, is the same for existing and new sinter plants. The proposed rule limits PM emissions from a discharge end to 0.02 gr/dscf for an existing plant and 0.01 gr/dscf at a new plant. The discharge end PM limit is a flow-weighted average for one or more control devices that operate in parallel. A 20 percent opacity limit is proposed for secondary emissions from a discharge end at an existing sinter plant; a 10 percent opacity limit is proposed for a new sinter plant. The proposed PM emission limits for sinter cooler stacks are 0.03 gr/dscf for an existing plant and 0.01 gr/dscf for a new plant.

2. Blast Furnaces

The proposed PM emission limit for a control device applied to emissions from a casthouse is 0.009 gr/dscf for the casthouse at a new or existing blast furnace. The proposed opacity limits are 20 percent for a casthouse at an existing blast furnace and 15 percent for a casthouse at a new blast furnace (both 6-minute averages).

3. Basic Oxygen Process Furnaces

For primary emissions from BOPF, we are proposing different PM emission limits based on hood system (closed or open). For BOPF with closed hood systems, we are proposing a PM emission limit of 0.024 gr/dscf which would apply only during periods of primary oxygen blow. For BOPF with open hood systems, we are proposing a PM emission limit of 0.019 gr/dscf which would apply during all periods of the steel production cycle. The primary oxygen blow is the period in which oxygen is initially blown into the furnace and does not include any subsequent reblows. The steel production cycle begins when the furnace is first charged with either scrap or hot metal and ends 3 minutes after slag is removed. The PM emission limits are the same for BOPF at new and

existing BOPF shops. The proposed PM emission limits for a control device applied solely to secondary emissions from a BOPF are 0.01 gr/dscf for an existing BOPF shop and 0.0052 gr/dscf for a new BOPF shop. Secondary emissions are those not controlled by the primary emission control system, including emissions that escape from open and closed hoods and openings in the ductwork to the primary control system.

For the BOPF shop, a PM emission limit of 0.007 gr/dscf is proposed for a control device applied to emissions from ancillary operations (hot metal transfer, skimming, desulfurization, or ladle metallurgy) at a new or existing BOPF shop. For the BOPF roof monitor, a 20 percent opacity limit is proposed for secondary emissions from the BOPF or BOPF shop operations in an existing BOPF shop. This opacity limit is based on 3-minute averages. For a new BOPF shop housing a bottom-blown furnace, a 10 percent opacity limit is proposed (6-minute average) except that one 6-minute period not to exceed 20 percent may occur once during each steel production cycle. For a new BOPF shop housing a top-blown furnace, a 10 percent opacity limit is proposed (3-minute average) except that one 3-minute period greater than 10 percent but less than 20 percent may occur once during each steel production cycle.

For capture systems applied to emissions from a sinter plant discharge end or blast furnace casthouse, the proposed rule provides two options: maintain the hourly average volumetric flow rate through each separately ducted hood at or above the level established during the performance test, or maintain the total hourly average volumetric flow rate at the control device inlet at or above the level established during the performance test with all capture system dampers in the same positions as during the performance test.

The same options are available in the operating limits proposed for capture systems applied to secondary emissions from a BOPF. However, the averaging period is the steel production cycle rather than each 1-hour period.

The proposed operating limit for baghouses requires that the bag leak detection system alarm not sound for more than 5 percent of the total operating time in a semiannual reporting period. For a venturi scrubber, the hourly average pressure drop and scrubber water flow rate must remain at or above the level established during the initial performance test. For an ESP, the hourly average opacity must remain at or below the level established during the initial performance test. The proposed rule requires plants to submit information on monitoring parameters if another type of control device is used.

The proposed rule also requires sinter plants to maintain the oil content of the feedstock at or below 0.025 percent. This limit is based on a 30-day rolling average.

C. What Are the Operation and Maintenance Requirements?

All plants subject to the proposed rule would be required to prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in § 63.6(e) of the NESHAP General Provisions. A written operation and maintenance plan is also required for capture systems and control devices subject to an operating limit. This plan must describe procedures for monthly inspections of capture systems, preventative maintenance requirements for control devices, and corrective action requirements for baghouses. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 24 hours, and completing all corrective actions needed to fix the problem as soon as practicable.

D. What Are the Initial Compliance Requirements?

The proposed rule requires performance tests to demonstrate that each affected source meets all applicable emission and opacity limits. The PM concentration would be measured using EPA Method 5, 5D, or 17 in 40 CFR part 60, appendix A. The proposed rule also allows plants to use a method developed by the American Society for Testing and Materials (ASTM), Standard Test Method for High-Volume Sampling for Solid Particulate Matter and Determination of Particulate Emissions (ASTM D4536–96). Plants may use this method instead of the sampling equipment and procedures required by EPA Method 5 or 17 when testing a positive pressure baghouse, but must use the sample traverse location and number of sampling locations required by EPA Method 5D. The EPA Method 9 in 40 CFR part 60, appendix A, is proposed for determining the opacity of emissions, with special instructions for computing 3-minute averages. The proposed testing requirements also include procedures for establishing site-specific operating limits for capture systems and control devices and for revising the limits, if needed, after the performance test.

The proposed rule also requires a performance test to demonstrate initial compliance with the operating limit for the oil content of the sinter plant feedstock. This test would require measurements of the oil content using EPA Method 9071B (Revision 2, April 1998) for 30 consecutive days and computing the 30-day rolling average. To demonstrate initial compliance with the proposed operation and maintenance requirements, plants would certify in their notification of compliance status that they have prepared the written plans and will operate capture systems and control devices according to the procedures in the plan.

E. What Are the Continuous Compliance Requirements?

The proposed rule would require plants to conduct performance tests at least twice during each title V operating permit term (at midterm and renewal) to demonstrate continuous compliance with the emission and opacity limits. Plants also would be required to monitor operating parameters for capture systems and control devices subject to operating limits and carry out the procedures in their operation and maintenance plan.

For capture systems, a continuous parameter monitoring system (CPMS) is required to measure and record the volumetric flow rate through each separately ducted hood or the total volumetric flow rate at the control device inlet. Plants electing to monitor the total volumetric flow rate also must check the capture system dampers at least once a day (every 24 hours) to verify that all dampers are in the same position as during the initial performance test. To demonstrate continuous compliance, plants must keep records documenting compliance with the rule requirements for monitoring, the operation and maintenance plan, and installation, operation, and maintenance of CPMS.

For baghouses, plants would be required to monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The bag leak detection system must be installed and operated according to the EPA guidance document ''Fabric Filter Bag Leak Detection Guidance,'' EPA 454/R–98–015, September 1997. The document is available on the TTN at http:www.epa.gov/ ttnemc01/cem/ tribo.pdf. If the system does not work based on the triboelectric effect, it must be installed and operated consistent

with the manufacturer's written specifications and recommendations. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles by an appropriate method.

To demonstrate continuous compliance, the proposed rule requires records of bag leak detection system alarms and records documenting conformance with the operation and maintenance plan, as well as the inspection and maintenance procedures.

For venturi scrubbers, plants would be required to use CPMS to measure and record the hourly average pressure drop and scrubber water flow rate. To demonstrate continuous compliance, plants would keep records documenting conformance with the monitoring requirements and the installation, operation, and maintenance requirements for CPMS.

For ESP, plants would be required to use a continuous opacity monitoring system (COMS) to measure and record the average hourly opacity of emissions exiting each stack of the control device. Plants must operate and maintain the COMS according to the requirements in § 63.8 of the NESHAP General Provisions and Performance Specification 1 in 40 CFR part 60, appendix B. These requirements include a quality control program including a daily calibration drift assessment, quarterly performance audit, and annual zero alignment.

To demonstrate continuous compliance with the operating limit for the sinter plant feedstock, plants would be required to determine the oil content every 24 hours (from the composite of three samples taken at 8-hour intervals) and compute and record the 30-day rolling average oil content for each operating day.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 4 to proposed subpart FFFFF lists each of the requirements in the General Provisions (§§ 63.2 through 63.15) with an indication of whether they do or do not apply.

The plant owner or operator would be required to submit each initial notification required in the NESHAP General Provisions that applies to their facility. These include an initial notification of applicability with general information about the facility and notifications of performance tests and compliance status.

Plants would be required to maintain the records required by the NESHAP General Provisions that are needed to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. Except for the operation and maintenance plan for capture systems and control devices, all records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The proposed rule requires that the operation and maintenance plan for capture systems and control devices subject to an operating limit be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the rule requirements.

Semiannual reports are required for any deviation from an emission limitation, including an operating limit. Each report would be due no later than 30 days after the end of the reporting period. If no deviation occurred, only a summary report would be required. If a deviation did occur, more detailed information would be required.

An immediate report would be required if there were actions taken during a startup, shutdown, or malfunction that were not consistent with the startup, shutdown, and malfunction plan. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the authority with delegation for enforcement that the source was operating in accordance with the startup, shutdown, and malfunction plan.

G. What Are the Compliance Deadlines?

The owner or operator of an existing affected source would have to comply within [24 MONTHS OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New or reconstructed sources that startup on or before the effective date of the final rule must comply by the effective date of the final rule. New or reconstructed sources that startup after the effective date of the final rule must comply upon initial startup.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Affected Sources?

Affected source means the collection of equipment and processes in the source category or subcategory to which the emission limitations, work practice standards, and other regulatory requirements apply. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we must decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

We considered three different approaches for designating the affected source: the entire integrated iron and steel manufacturing facility, groups of emission points, and individual emission points. In selecting the affected sources for regulation, we identified the HAP-emitting operations, the HAP emitted, and the quantity of HAP emissions from the individual or groups of emissions points. We concluded that designating the group of emission points associated with each of the major processes as the affected source is the most appropriate approach. The major processes include sinter production in a sinter plant, iron production in a blast furnace, and steel production in a BOPF shop. Consequently, we selected the sinter plant, blast furnace, and BOPF shop as the affected sources. The proposed rule includes requirements for the control of emissions from the windbox exhaust, discharge end, and cooler at sinter plants; the blast furnace casthouse; the BOPF shop including both primary and secondary emissions from the furnace; and the ancillary operations in the BOPF shop (hot metal transfer, desulfurization, slag skimming, and ladle metallurgy).

B. How Did We Select the Pollutants?

For the proposed rule, we decided that it is not practical to establish individual standards for each specific type of metallic HAP that could be present in the various processes (e.g., separate standards for manganese emissions, separate standards for lead emissions, and so forth for each of the metals listed as HAP and potentially could be present). When released, each of the metallic HAP compounds behave as PM. As a result, strong correlations exist between air emissions of PM and emissions of the individual metallic HAP compounds. The control technologies used for the control of PM emissions achieve comparable levels of performance on metallic HAP emissions. Therefore, standards requiring good control of PM will also achieve good control of metallic HAP emissions. Therefore, we decided to establish standards for total PM as a surrogate pollutant for the individual

types of metallic HAP. In addition, establishing separate standards for each individual type of metallic HAP would impose costly and significantly more complex compliance and monitoring requirements and achieve little, if any, HAP emissions reductions beyond what would be achieved using the surrogate pollutant approach based on total PM.

For stack discharges, we have traditionally relied on setting numerical emission limits, sometimes coupled with limits on opacity. In the case of fugitive emissions, we have traditionally relied on setting visible emission standards, typically expressed as opacity limits.

C. How did we determine the bases and levels of the proposed standards?

- Sinter plant windbox exhaust

There are nine sinter plants in the U.S.; however, only seven are currently operating. The windbox exhaust is controlled by a baghouse at four plants and by a venturi scrubber at five plants. Useful test data on actual emissions are available for six of the nine plants, two equipped with baghouses and four equipped with venturi scrubbers. In each case, the data reflect the results of performance tests comprised of the average of three test runs, expressed in terms of total PM.

An initial characterization of achievable performance based on concentration (gr/dscf) suggested that baghouses perform substantially better than do scrubbers. Concentration values recorded for the two baghouses are two to nearly four times lower than those recorded for the four scrubbers. Upon closer scrutiny, we determined that much of the difference in perceived performance is due to the fact that baghouses require the addition of relatively large quantities of ambient air to cool the hot windbox exhaust gases prior to control, whereas scrubbers do not. To correct for this difference, we transformed the test results into a pounds of PM emissions per ton of sinter format. The test results expressed in terms of the hourly mass rate were converted to annual emissions assuming 8,760 hours per operating year. The resultant annual emissions were then divided by a best estimate of annual sinter production for each plant (average for the 5-year period from 1995 through 1999). The results range from 0.26 to 0.33 lb PM/ton of sinter. Averaging the results for the top five performers produces a MACT floor value of 0.29 lb PM/ton of sinter. Relying on the median value produces a MACT floor value of 0.30 lb/ton. Included among the top five performers are two baghouses and three venturi scrubbers, which indicates that both control devices are capable of achieving the MACT floor level of control as expressed in the lb/ton format.

The windbox exhaust gas can contain appreciable quantities of organic HAP, including both volatile and semivolatile compounds. There is strong evidence that demonstrates that the quantity of organic HAP emitted is directly related to the quantity and oil content of the mill scale component of the sinter feed. United States sinter plants limit organic emissions by carefully monitoring and limiting the oil content of the sinter feed. This pollution prevention control measure is an effective method for preventing, and thus reducing, emissions of organic HAP. Two plants in Indiana have performed testing to relate oil content with emissions of volatile organic compounds (VOC). The test results show a strong correlation between oil content and potential VOC emissions.

One of the organic pollutants of concern that has been related to oil content is a family of compounds called polychlorinated dibenzodioxins and furans (D/F). A 1994 paper [1] identified sinter plants in Germany as one of the most important industrial sources of D/F. Tests showed an average concentration in the windbox exhaust of 47 nanograms (ng) expressed in toxic equivalency (TEQ)/per cubic meter (m^3) and annual emissions of 122 grams (g) TEQ. The D/F emissions were attributed to high levels of oils and chlorinated organics in the waste materials recycled to the sinter plant.

We decided to perform testing at two representative facilities to characterize D/F emissions from U.S. sinter plants, one that uses a venturi scrubber as the windbox control device and one that uses a baghouse. The tests were performed in 1997 on the venturi scrubber in East Chicago, IN and on the baghouse in Youngstown, OH. These plants routinely monitor the oil content of their sinter feed, which averages 0.014 percent oil at the East Chicago, IN facility and 0.025 percent oil at the Youngstown, OH facility. The average D/F concentration from three 4-hour runs at each plant ranged from 0.2 ng TEQ/m^3 at the East Chicago, IN facility to 0.8 ng TEQ/m^3 at the Youngstown, OH facility, both far below the levels reported for the German sinter plant. Assuming typical operation of each plant (310 days/yr), annual emissions would range from 0.7 to 2.8 g TEQ/yr, well below the levels indicated by the German data. Based upon emission factors derived from these test results, we estimate nationwide emissions from all U.S. sinter plants to be 26 g TEQ/yr, which corresponds to less than 1 percent of current estimates of the national inventory from all sources.

We surveyed the operators of all seven active sinter plants, as well as the two inactive plants, to obtain information on the oil content of their sinter feed. Four of the active plants provided data that ranged in magnitude from 976 samples collected over 1 year (sampling about three times per day) to 14 samples collected over 14 months (monthly sampling). All four plants carefully monitor their sinter feed for oil to minimize emissions of VOC. In addition, plants with baghouses are motivated to limit oil content due to concerns over blinding of bags and possible fire hazards. The other three active plants and the two inactive plants provided little data since none routinely monitor oil content. The four plants providing data reported long-term averages of 0.014, 0.02, 0.02, and 0.025 percent, respectively. We conclude that limiting substantially the oil content in the sinter feed represents the MACT floor for organic HAP in the windbox exhaust.

We know of no control devices besides venturi scrubbers and baghouses that can achieve better emissions reductions than that indicated by the level of performance selected as the MACT floor. As a result, we are selecting 0.3 lb/ton as the standard. We selected 0.3 lb/ton as opposed to either 0.29 or 0.30 lb/ton to provide a modest but warranted margin of safety given the relatively limited data available for this standard setting and the inherent uncertainty associated with the needed transformations of the test data from mass rate to mass per ton.

For the PM limit, we also considered setting alternative concentration limits that would be tailored to each type of control device—baghouses and venturi scrubbers. Concentration limits (*e.g.*, gr/dscf) have several advantages over a lb/ton format when determining compliance. A lb/ton format requires that three measurements be made very accurately: The concentration of PM in the exhaust gas, the volumetric flow rate of exhaust gas, and the sinter production rate. Concentration is directly measured by EPA reference methods (such as Method 5), and there is no uncertainty introduced by additional measurements or calculations. The concentration limit is a direct and accurate measure of how

[1] Lahl, Uwe. Sintering Plants of Steel Industry—PCDD/F Emission Status and Perspective. In Chemosphere, vol. 29, nos. 9–11, pages 1939–1945. 1994.

well the emission control device is performing.

The two plants with baghouses averaged 0.007 and 0.009 gr/dscf when meeting the 0.3 lb/ton MACT floor level of control. Individual runs ranged from 0.004 to 0.01 gr/dscf. Considering the run-to-run variability, we conclude that an appropriate alternative concentration limit for baghouses used for the control of windbox exhaust gases would be on the order of 0.01 gr/dscf. As noted previously, plants with baghouses introduce large volumes of tempering air to cool the windbox exhaust gas prior to entering the baghouse, whereas plants with venturi scrubbers do not. Consequently, a concentration limit for scrubbers, reflecting an equivalent level of control as baghouses, would of necessity be higher than one for baghouses. The four plants equipped with scrubbers recorded average concentration values of 0.017, 0.017, 0.025, and 0.026 gr/dscf when meeting the 0.3 lb/ton MACT floor level of control. Individual runs ranged from 0.014 to 0.029 gr/dscf. Since all four of these scrubbers represent MACT, an alternative concentration limit for scrubbers would be on the order of 0.03 gr/dscf considering run-to-run variability. We request comments on both the appropriateness of setting concentration limits in addition or instead of a lb/ton limit and on the suggested values for these limits.

Relative to sinter feed oil content, we know of no control measures beyond this pollution prevention measure which would be more effective in limiting HAP organic emissions from sinter plant windboxes. Based on our review of the data obtained through our survey on oil content, we select a limit of 0.025 percent oil in sinter feed as representative of the MACT floor. Although 0.025 percent is the highest average value reported by the four plants, all of the averages are low, all are indicative of careful control of oil content, and for all intents and purposes are indistinguishable.

- Sinter plant discharge end

The sinter plant discharge end is comprised of sinter breakers (crushers), hot screens, conveyors, and transfer points that are designed to separate undersize sinter and to transfer the hot sinter to the cooler. In most cases, these discharge end operations are housed in a building. Emissions are usually controlled by local hooding and ventilation to one or more baghouses or wet scrubbers. Seven plants use baghouses and two plants use wet scrubbers.

Existing State regulations include both building opacity standards to limit releases of fugitive emissions (those escaping capture) and PM emission standards assigned to control devices. Five of the seven operating sinter plants are subject to a building opacity limit. One plant is subject to a 10 percent limit (6-minute average), and four plants are subject to 20 percent limits (6-minute average). The PM limits for control devices vary substantially from plant to plant both in terms of format and numerical values. Four plants have concentration limits for total PM (0.01, 0.02, 0.02, and 0.03 gr/dscf), one has concentration limits for PM–10, and three have mass rate limits (42.9, 50, and 50 lb/hr).

We have credible source test data on actual emissions from only one plant—the refurbished sinter plant in Youngstown, OH. Captured emissions from the discharge end are ventilated to a relatively new baghouse (1991) for control. We have no data from any source on the opacity of fugitive emissions that escape capture from the discharge end.

In selecting the MACT floor for the discharge end, we evaluated all of the available information on control measures, State regulations, and actual emissions. Due to the limited information on actual emissions available, we concluded that the available information on State regulations provided the best and most complete information for establishing floor conditions for both the discharge end building and control devices. We believe that these State limits are in fact a reasonable representation of what is actually achieved in practice and are, therefore, suitable proxies for establishing MACT floor conditions. The existing State emission limits reflect a level of performance which we would expect from the capture systems and control devices which are currently applied to the control of emissions from sinter plant discharge ends.

As noted above, five plants are subject to State standards that limit the opacity of visible emissions released from the discharge end building. These range from 10 percent (one plant) to 20 percent (four plants). We chose the median value as the MACT floor, which is 20 percent opacity based on a 6-minute average.

For control devices, we examined the top five most stringent existing State permit limits for total PM emissions. These include the four concentration limits cited above and a fifth value derived from the lowest mass rate limit to which a plant is subject (42.9 lb/hr), which is equivalent to 0.02 gr/dscf. The resulting five most stringent limits are 0.01, 0.02, 0.02, 0.02 and 0.03 gr/dscf. Averaging these five values produces a MACT floor limit of 0.02 gr/dscf.

We examined options to go beyond the floor level of control. One option is a concentration limit lower than the floor level of 0.02 gr/dscf. For example, the installation of a new pulse jet baghouse could conceivably achieve a concentration limit of 0.01 gr/dscf. We estimate the capital cost of a new pulse jet baghouse designed for a flow rate of 120,000 dscfm (typical for discharge ends) to be $3.5 million and the total annual cost to be $840,000 per year. We estimate the corresponding reduction in HAP metals achieved by reducing the PM concentration from 0.02 to 0.01 gr/dscf (for 120,000 dscfm and 0.75 percent metal HAP in the PM) to be 0.34 tons per year. The cost per ton of HAP is $2.5 million. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond the floor alternative. We could not identify any other beyond the floor alternatives. Consequently, we chose the floor level of control (0.02 gr/dscf) as MACT.

For new source MACT, we chose an opacity limit of 10 percent (6-minute average) based on the most stringent emission limit currently in place (Sparrows Point, MD). For control devices used on the discharge end, we relied on test data for the baghouse at the Youngstown, OH sinter plant. We believe this baghouse represents the best controlled similar source among the seven operating plants. It is a relatively recent installation (1991) and is a state-of-the-art pulse jet unit. The discharge end at this facility is comprised of a sinter breaker, single deck hot screen, four-stack sinter cooler, and a double deck cold screen. Capture systems are used for the breaker, hot screen, cold screen, and about 40 transfer points. The capture system is ventilated to a four compartment pulse jet baghouse with polyester bags at a rate of 140,000 dscfm.

Three test runs were conducted in 1991. The runs range from 0.005 to 0.006 gr/dscf and average 0.006 gr/dscf. Rounding the results of this single performance test (average of three runs) would support a new source MACT concentration limit of 0.01 gr/dscf. We believe that rounding from 0.006 to 0.01 is justified given the data are limited to the one performance test conducted in 1991.

The numerical limit selected for the standard is the same as that established for MACT: (1) An opacity limit of 20 percent (6-minute average) for the building and a concentration limit of

0.02 gr/dscf for control devices for existing sinter plants, and (2) an opacity limit of 10 percent (6-minute average) and a concentration limit of 0.01 gr/dscf for new sinter plants.

For compliance demonstration purposes, we are proposing a flow-weighted average for emission control devices on the discharge end. Some plants employ multiple control devices applied to the several emission points that comprise the discharge end (crushers, screens, conveyor transfer points). For example, one plant routes emissions from the crusher to one baghouse, and emissions from screens and conveyors are sent to a second baghouse. Averaging emissions across multiple control devices provides flexibility and enhances achievability. With this approach, some air pollution control devices may under perform and others may over perform provided that the average concentration weighted by volumetric flow rate meets the concentration limit for the discharge end.

- Sinter plant cooler

Sinter plant coolers are large diameter circular tables through which ambient air is drawn to cool the hot sinter after screening. Seven plants operate sinter coolers to cool the sinter product prior to storage. Two plants that are not currently operating have no cooler and stockpile hot sinter directly. Of the seven plants with coolers, three vent directly to the atmosphere, one vents to a cyclone, two vent to a baghouse, and one vents half of the cooler exhaust to a baghouse with the remainder vented directly to the atmosphere. Five plants are currently subject to State emission limits expressed as concentration or mass rate while two plants are not subject to State emission limits. Information on actual releases is limited to one source test of controlled emissions from the cooler located at the Youngstown, OH plant that is equipped with a baghouse.

We examined all of the available information on controls, State limits, and actual emissions. We decided that existing State permit limits provide the best information for establishing the floor. Emission source test data on actual emissions are limited to one source. We believe that a technology approach would provide a limit that is less representative of actual performance because it would result in a floor based on cyclone control or a 50/50 no control/baghouse control split (technology for which we have no emission test data from within this source category).

Three plants are subject to State permit limits on emission concentrations (0.01, 0.03, and 0.03 gr/dscf), and two plants are subject to State mass rate permit limits. We converted the mass rates in lb/hr to equivalent concentration limits in gr/dscf based on the volumetric flow rate through the subject coolers. The two mass rate limits resulted in equivalent concentration values of 0.03 and 0.05 gr/dscf. Averaging the five concentration limits produces a floor value for existing sources of 0.03 gr/dscf.

We considered a level of control beyond the floor. A new pulse jet baghouse installed on the sinter cooler could reduce emissions to 0.01 gr/dscf. We estimated the capital cost of a new baghouse designed for a flow rate of 200,000 dscfm as $5.5 million with a total annual cost of $1.3 million per year. The reduction in HAP emissions associated with reducing the PM concentration from 0.03 to 0.01 gr/dscf (at 0.75 percent HAP in the PM) is from 1.7 to 0.6 tons per year. The cost per ton of HAP is $1.2 million. We believe that the high cost, coupled with the small emission reduction, does not justify this beyond the floor alternative. We could not identify any other beyond the floor alternatives. Consequently, we selected the floor (0.03 gr/dscf) as MACT for existing sources.

We evaluated the source test data for the baghouse located at Youngstown, OH and the most stringent existing limit to develop MACT for new sources. The baghouse is a modern pulse jet unit that averaged 0.009 gr/dscf during the test. Individual runs were 0.005, 0.005, and 0.018. Coincidentally, the most stringent existing State permit limit for sinter coolers, which is applied at a different plant, is 0.01 gr/dscf. Given that the baghouse source test result and the most stringent emission limit are ostensibly the same, we selected 0.01 gr/dscf as the proposed standard for sinter coolers at new sinter plants.

- Blast furnace casthouse

The casthouse is a building or structure that encloses the section of the blast furnace where hot metal and slag are tapped from the furnace. The emissions from the blast furnace casthouse are fugitive emissions that escape through the roof monitor and other building openings during tapping. The emissions are primarily metal oxide fumes that are formed when air contacts the surface of the molten metal. Factors affecting these emissions include the duration of tapping, the exposed surface area of metal and slag, and the presence or absence of runner covers and flame suppression, which reduce contact with air.

As described previously, these emissions are controlled in one of two fundamentally different ways, flame suppression or conventional ventilation practices and control. Flame suppression consists of blowing natural gas over the iron runners and torpedo cars. The combustion of the gas consumes oxygen, which retards (suppresses) the formation of emissions. Ventilation practices employed include the use of localized hooding and ventilation applied at the iron trough and iron and slag runners. Alternatively, the casthouse may be totally enclosed and evacuated. Eighteen of the 39 blast furnaces have capture and control systems, 16 are controlled by baghouses and two are controlled by one wet scrubber.

As a means for limiting fugitive emissions of PM from the casthouse during hot metal tapping, most States have developed visible emission standards that limit the opacity of emissions discharged from the casthouse roof monitor or other openings. The most common limit is 20 percent (6-minute average), which is applied to 24 of the 39 casthouses. States also apply particulate limits on gases discharged from control devices used to capture tapping emissions. The most common form is a concentration limit, typically on the order of 0.01 gr/dscf.

We evaluated the available information on actual emissions, State limits, and control measures in selecting the floor for opacity from existing casthouses. Attempts to locate actual opacity data proved unsuccessful. Since most of the States have developed opacity standards, we concluded that State regulations provided the best information for establishing floor conditions.

The most stringent opacity limit is 15 percent (6-minute average) and is applied to two casthouses. The next most stringent limit is 20 percent (6-minute average), which is applied to 24 casthouses. For existing sources, we selected the 20 percent opacity limit as the floor for the roof monitor, which is the median of the top five most stringent limits and by far the most representative.

As with existing sources, MACT for new sources is also based on existing State limits since we were unable to locate and obtain data on actual emissions. As noted above, the most stringent State limit is 15 percent opacity (6-minute average). This limit applies to the casthouses for the Number 7 blast furnace at East Chicago,

IN and the Number 3 blast furnace at Lorain, OH. Therefore, we have selected 15 percent opacity (6-minute average) as the floor for new sources.

We also examined available information on actual emissions, State limits, and control measures to develop the floor for control devices applied to casthouse emissions. There are 18 casthouses equipped with hooding and ventilation equipment to limit fugitive emissions. Sixteen use a baghouse for the control of captured emissions. Industry survey information on the baghouses indicate they are similar in design and performance. Most are pulse jet baghouses with air-to-cloth ratios of around 4 feet per minute (fpm). We selected baghouses with these minimum design features as the MACT floor technology for controlled emissions from blast furnace casthouses.

To determine the level of control associated with the use of a baghouse, we obtained available performance test data that characterized baghouse performance for four of the 16 baghouses. The database includes a total of eight source tests; four tests at one facility, two tests at another facility, and single tests at the two other facilities. Each performance test is comprised of three individual test runs. The three-run averages for each of the eight tests range from 0.002 to 0.009 gr/dscf. Results from individual runs range from 0.001 to 0.009 gr/dscf.

The highest emitting unit is the Granite City, IL facility for which we have information on four independent performance tests. The performance tests range from 0.006 to 0.009 gr/dscf with individual runs ranging from 0.003 to 0.009 gr/dscf. Three tests were conducted in 1988 and one in 1985, and all tests met the facility's State limit of 0.01 gr/dscf.

Since each of the baghouses is considered a MACT floor unit, we must set the standard at a point that accommodates the performance indicated by the highest emitting unit which we believe reflects a reasonable worst-case scenario. Consequently, the level of control associated with the MACT floor is 0.009 gr/dscf. We believe this emission limit represents a reasonable expectation of performance for an appropriately designed and well maintained and operated baghouse used to control blast furnace casthouse emissions. Therefore, we selected a concentration limit of 0.009 gr/dscf as the MACT floor for both new and existing blast furnace casthouses.

For the casthouse opacity standard, we selected the same format and values as that established for the MACT floors. For existing casthouses, we selected an opacity limit for the roof monitor of 20 percent using 6-minute averages. For new casthouses, we selected an opacity limit for the roof monitor of 15 percent using 6-minute averages.

Relative to control devices, we examined options for better emissions reductions. However, we could find no control alternatives that would provide additional reductions in HAP emissions for blast furnace casthouses beyond that achieved by a well-designed and operated baghouse. Consequently, we have chosen the limit of 0.009 gr/dscf, the level achieved in practice with the use of a baghouse, as the standard for both new and existing sources.

- BOPF primary emission control systems

Primary emissions from the BOPF refer to the particulate emissions generated during the steel production cycle which are captured and controlled by the primary emission control system. The majority of the emissions occur during the oxygen blow. The oxygen blow is the period in the steel production cycle when oxygen is lanced or injected into the vessel. Some shops operate open hood furnaces and others use closed hood systems. Open and closed hood furnaces are very different in terms of design and operation, pollutant loading, and emissions. Open hood systems are characterized by very high primary exhaust air flow rates due to the large quantities of combustion air introduced at the furnace mouth to support CO combustion. In contrast, closed hood systems, which include hoods that are tightly fitted to the vessel to suppress CO combustion, are characterized by much lower exhaust air flow rates. Typical flow rates for open hood systems are 200,000 to 500,000 acfm, while closed hood designs are usually less than 100,000 acfm.

There are 50 BOPF located in 23 BOPF shops. The 50 BOPF include 34 furnaces with open hood systems at 16 shops and 16 furnaces with closed hood systems at eight shops. All of the BOPF have capture and control systems for the primary emissions. For the open hood systems, eight shops are controlled by venturi scrubbers and eight shops are controlled by ESP. All eight of the closed hood shops are controlled by venturi scrubbers. Each shop is subject to existing State limits with a wide variety of formats, including concentration limits in gr/dscf and lb/1,000 lb gas for PM or PM_{10}, mass emission rate limits in lb/hr, and process weighted limits in lb/ton of steel. In addition, the emission test period required for compliance with the existing State limits varies from testing over the steel production cycle, only during the oxygen blow, for 1-hour runs, and for 2-hour runs.

We developed separate subcategories for open and closed hood furnaces due to the operational differences and volumetric air flow rates between the two designs. This subcategorization is consistent with the development of separate standards for open and closed hood BOPF for the new source performance standard (NSPS) in 40 CFR part 60, subpart N.

We examined the available test data for open hood BOPF, existing State limits, and control measures to evaluate options for selecting the MACT floor. We concluded that the source test data could not be used to rank the relative performance of all of the shops for two reasons. In several instances, the periods during which testing was conducted differed substantially from plant to plant. Some plants tested only during periods of oxygen blowing while others tested during the entire production cycle from charge to tap. The emissions generated and the control performance can be quite different depending on the part of the production cycle tested. For example, the largest amount of emissions is generated during the oxygen blow, and this period presents the greatest challenge to the control device. Another difficulty with some of the source test data is that measurements were made for PM–10 rather than for total PM which is the basis for the proposed PM limit.

As discussed earlier, there are two basic problems which prevent us from assessing the relative stringency of existing State limits and putting them on a common basis. The existing State limits are in different formats, and the required testing periods associated with the limits vary from plant to plant. Any attempt to convert them to a common basis requires assumptions on parameters such as typical volumetric flow rates and steel production rates, both of which have the potential to introduce significant errors in the conversion.

Because the available data and State limits are not useful to identify the five best-performing sources, we opted for the technology floor approach. Control devices applied to primary emissions at open hood shops include both ESP and venturi scrubbers. We have source test data and design information for seven of the 16 open hood shops, five with ESP and two with venturi scrubbers. The test data indicate that the ESP perform better than the venturi scrubbers. All the test data (charge-to-tap measurements) for the ESP are less than 0.019 gr/dscf. All of the ESP are similar in design and

operation. All have three to five fields in series and operate at specific collection areas greater than 300 square feet per thousand cubic feet per minute. Data for the two plants with venturi scrubbers, operating at pressure drops of 25 to 35 inches of water, averaged 0.025 and 0.035 gr/dscf, respectively. Based on these test data, we conclude the existing inventory of ESP constitutes the MACT floor technology for open hood BOPF.

We examined the test data for the five ESP for which we have both design information and emission source test data. As noted previously, all are similar in design and operation. We have data from 13 different source tests; seven emission source tests at one facility, three tests at another facility, and single tests at three other facilities. Each of the performance tests is comprised of three individual test runs. Each run was conducted over an entire furnace cycle from charge to tap.

The three-run averages for each of the 13 tests range from 0.004 to 0.019 gr/dscf. Results from individual runs range from 0.003 to 0.025 gr/dscf. Since each of the ESP is considered a MACT floor unit, we must set the MACT floor at a level that reflects a reasonable worst-case scenario and that accommodates the ordinary and unavoidable variability in the performance of the MACT technology. We selected the highest three-run average value of 0.019 gr/dscf for the MACT floor.

We also believe that this emission limit represents the best performance that can reasonably be expected of an appropriately designed and well maintained and operated ESP applied to open hood BOPF emissions. Therefore, we selected 0.019 gr/dscf as the MACT floor for open hood BOPF at both new and existing BOPF shops.

We examined the available test data for closed hood BOPF, existing State limits, and control measures to evaluate options for selecting the MACT floor. As was the case with open hood BOPF, we also had limited actual emission data and a mixture of different formats for State emission limits from closed hood BOPF. We looked at the technology used to control primary emissions from closed hood BOPF and found that all 16 of the furnaces at the eight closed hood shops use high-energy venturi scrubbers. Closed hood systems produce an exhaust gas high in CO which precludes the use of other types of control devices (such as baghouses or ESP) due to potential explosion or fire hazards.

We collected information on the design and operation of these scrubbers through an industry survey. These scrubbers operate at a pressure drop of 50 inches of water or more, and most have liquid-to-gas ratios greater than 10 gallons per thousand cubic feet of gas. We selected high-energy venturi scrubbers with a pressure drop of 50 inches of water or more as the floor technology for closed hood BOPF.

We have recent test data for only one of the eight closed hood shops. In addition, we have performance test data from five other furnaces that were collected and used to develop the NSPS. All tests include three test runs and all were performed only during the oxygen blow. Each of these plants use the MACT floor technology for closed hood shops, which is a high-energy venturi scrubber with a pressure drop of 50 inches of water or more. The three run averages for each of the six tests range from 0.015 to 0.024 gr/dscf. Results from individual runs range from 0.013 to 0.031 gr/dscf.

Since each of the scrubbers is considered a MACT floor unit, we must set the MACT floor emission limit at a level that reflects a reasonable worst-case scenario and that accommodates the ordinary and unavoidable variability in the performance of the MACT technology. We selected the highest three run average value of 0.024 gr/dscf as the MACT floor. We also believe that this value represents the best performance that can reasonably be expected of an appropriately designed and well maintained and operated high-energy venturi scrubber applied to closed hood BOPF emissions. Therefore, we have selected 0.024 gr/dscf as the MACT floor for closed hood BOPF at both new and existing BOPF shops.

We examined options for better emissions reductions for open hood BOPF. However, we could not find any control alternatives that would provide reductions in HAP emissions beyond that demonstrated to be achievable by ESP. Consequently, the floor (0.019 gr/dscf) was chosen as the standard for both new and existing sources.

We examined options for more effective control for closed hood BOPF. However, we could not find any alternative that would provide greater reductions in HAP emissions from closed hood BOPF than high energy venturi scrubbers. Consequently, the MACT floor (0.024 gr/dscf) was chosen as the standard for both new and existing sources.

- BOPF secondary emission control systems

Secondary or fugitive emissions occur from the BOPF when the molten iron and scrap metal are charged to the furnace, and when the molten steel and slag are tapped from the furnace. The emissions generated are primarily metal oxides formed when oxygen in the air reacts with the molten iron or steel. Twelve of the 23 BOPF shops have a separate capture and control system for BOPF charging and tapping emissions. Ten of these shops use baghouses and the other two use scrubbers. Existing State limits for the control devices range from 0.0052 to 0.015 gr/dscf and the NSPS limit is 0.01 gr/dscf. The most common limit is 0.01 gr/dscf. Available data on secondary BOPF emissions are limited to one test run at a facility using a baghouse, for which we have limited documentation. This one test run measured a concentration value of 0.001 gr/dscf.

In selecting the MACT floor for existing sources, we evaluated all of the available information on existing control measures, State regulations, and actual emissions. Due to the limited information on actual emissions available, we concluded that State regulations provided the best and most complete information for establishing floor limitations for secondary BOPF emission control systems. We believe that these State limits are in fact a reasonable representation of what is actually achieved in practice and are, therefore, suitable proxies for establishing MACT floor conditions. The existing State emission limits reflect a level of performance which, based on engineering judgement, we would expect from the capture systems and control devices which are currently applied to the control of emissions from secondary BOPF emission control systems.

We examined the top five most stringent existing emission limits for total PM. The five plants with the most stringent secondary BOPF emission State limits are subject to concentration limits of 0.0052, 0.006, 0.01, 0.01 and 0.012 gr/dscf. Each of these is associated with a facility with baghouse controls. The median of the five values produces a MACT floor limit of 0.01 gr/dscf.

It is not likely that one test run will adequately reflect the full range of performance of a particular technology, and the results of the one available test run appear to represent, at most, what this type of control is able to achieve under very favorable circumstances. Therefore, we do not believe that it represents the actual level of performance that this technology is capable of consistently achieving.

We believe that 0.01 gr/dscf reasonably represents the average emission limitation achieved by the best performing five sources in the category.

Consequently, we chose 0.01 gr/dscf as the MACT floor for existing sources.

As with existing sources, MACT for new sources is also based on existing State limits since we have no credible data on actual emissions beyond the single test run. As noted above, the most stringent State limit is 0.0052 gr/dscf. Consequently, we chose 0.0052 gr/dscf as the MACT floor for new sources.

Because of the limited amount of data available, we could not identify any basis for developing a limit more stringent than the floor for either new or existing BOPF shops. Consequently, we chose the MACT floor as the standard for new and existing BOPF shops, 0.01 gr/dscf for existing sources, and 0.0052 gr/dscf for new sources.

- Hot metal transfer, desulfurization, slag skimming, and ladle metallurgy

There are several different ancillary operations performed within the BOPF shop: (1) Operations associated with the molten iron before it is charged to the BOPF (hot metal transfer, desulfurization, and slag skimming), and (2) treatment of the molten steel after tapping (various ladle metallurgy operations). The emissions from these operations are primarily metal oxides formed when oxygen in the air reacts with the molten iron or steel.

Molten iron is transported from the blast furnace casthouse to the BOPF shop in a torpedo car and transferred to a vessel at the reladling (or hot metal) station, where it is usually desulfurized and slag is skimmed from the surface. Emissions from these operations are captured by local hooding and controlled by a baghouse. Existing State emission limits for these operations range from 0.0052 to 0.04 gr/dscf, but most are on the order of 0.01 gr/dscf.

The steel from the BOPF is usually transferred to a ladle where final adjustments in temperature and chemistry are made in an operation known as ladle metallurgy. Emissions from ladle metallurgy are captured by a close fitting hood and ducted to a baghouse. Existing State limits for ladle metallurgy are a mixture of mass emission rates in lb/hr and concentration limits in gr/dscf. The mass emission rate limits range from 0.42 to 7.5 lb/hr, and the concentration limits range from 0.0052 to 0.02 gr/dscf.

In selecting the MACT floor for existing sources, we evaluated all of the available information on control techniques, State regulations, and actual emissions. Relative to information on actual emissions, we have information on three tests of hot metal transfer and desulfurization and seven tests of ladle metallurgy. Since all of the facilities using controls use baghouses and have similar types of emissions, we selected baghouses as the MACT floor technology for hot metal transfer, desulfurization, slag skimming, and ladle metallurgy.

To develop the MACT floor limitation, we examined source test data for three of the 23 baghouses that control emissions from hot metal transfer and desulfurization, and for seven of the 20 baghouses that control emissions from ladle metallurgy. Each performance test is comprised of three individual runs. The three-run averages for the ten tests range from 0.001 to 0.012 gr/dscf. Results from individual runs range from 0.001 to 0.021 gr/dscf.

Since each of the baghouses is considered a MACT floor unit, we must set the MACT floor at a level that reflects a reasonable worst-case situation and that accommodates the ordinary and unavoidable variation in the performance of the MACT technology. We looked at both the highest three-run averages and highest individual runs measured. In this case, both were obtained on the same baghouse, 0.012 and 0.021 gr/dscf. An examination of the test results on all ten baghouses indicates that these results are 2 to 2.5 times higher than those obtained on the next highest emitting unit, suggesting that this baghouse is either an under performer or that the test results include an outlier. Eliminating the 0.021 gr/dscf value from the three-run average produces an average of 0.007 gr/dscf which is in line with the next highest emitting unit's three-run average of 0.006 gr/dscf and the highest individual run of 0.0085 gr/dscf. Consequently, we believe the 0.021 gr/dscf value is an outlier and does not reflect the level of performance demonstrated to be achievable for a baghouse applied to emissions from hot metal transfer, desulfurization, and ladle metallurgy operations.

We also believe that a concentration limit of 0.007 gr/dscf represents the best reasonable expectation of performance for a baghouse applied to these emission points. Therefore, we selected 0.007 gr/dscf as the MACT floor limit for emissions from hot metal transfer, desulfurization, and ladle metallurgy operations at both new and existing BOPF shops.

We know of no control alternatives that would provide additional reductions in HAP emissions for hot metal transfer, desulfurization, slag skimming, and ladle metallurgy beyond that achieved with baghouses. Consequently, the MACT floor (0.007 gr/dscf) was chosen as the standard for both new and existing sources.

- BOPF shop fugitive emissions

The BOPF shop is a building or structure that houses several operations involved in steelmaking. These include hot metal transfer, desulfurization, slag skimming stations; one or more BOPF for refining iron into steel; and ladle metallurgy stations. Fugitive emissions from these operations in the BOPF shop exit through the roof monitor and other building openings.

In selecting the MACT floor for existing sources, we evaluated all of the available information on existing control measures, State regulations, and actual emissions. We were unable to locate any opacity data to establish MACT floors for BOPF fugitive emissions based on actual opacity readings. However, most States have visible emission standards that limit opacity from BOPF shops during all periods of the production cycle. In addition, there are existing NSPS opacity limits applicable to fugitive emissions from BOPF shops. We believe that State regulations provide the best and most complete information for establishing floor limitations for fugitive emissions from BOPF shops. We believe that these State limits are in fact a reasonable representation of what is actually achieved in practice and are, therefore, suitable proxies for establishing MACT floor conditions. The existing State opacity limits reflect a level of performance which, based on engineering judgement, we would expect to be achievable for fugitive emissions from BOPF shops.

We decided to look at top and bottom blown furnaces independently based on operational differences between the two designs. For top blown furnaces, the most stringent and also the most common State standard is a 20 percent limit (3-minute average) that is applied to 13 of the 20 BOPF shops that operate top blown furnaces. For bottom blown furnaces, the BOPF shop with the most stringent standard is subject to a 10 percent opacity limit (6-minute average, with one exception per cycle up to 20 percent). A second shop has three furnaces subject to a 20 percent limit (3-minute average). A third shop has two furnaces subject to a 20 percent limit (6-minute average), and a third subject to a 10 percent limit (3-minute average), with one 3-minute average greater than 10 percent but less than 20 percent applied only during hot metal transfer or skimming operations. Similar to the existing State standards, the NSPS for top blown furnaces applies during the entire production cycle. However, the NSPS for bottom blown furnaces applies only during periods of hot metal transfer

and slag skimming. Both standards limit opacity to less than 10 percent (3-minute average), except that one 3-minute average greater than 10 percent but less than 20 percent can occur during each applicable performance period.

We are selecting a 20 percent (3-minute average) opacity limit as the MACT floor for existing sources for both new and existing top blown and bottom blown BOPF shops. In both cases, this level of control corresponds to the median level of control achieved by the top five performing shops. For top blown BOPF shops, the MACT floor for new sources is an opacity limit of 10 percent (3-minute average), except for one 3-minute average greater than 10 percent but less than 20 percent. This limit is based on the most stringent existing limit applicable to top blown BOPF shops (the existing NSPS). For bottom blown BOPF shops, we are selecting a MACT floor limit of 10 percent opacity (6-minute average with one exception per cycle up to 20 percent) for new sources, based on the most stringent existing State limit. This limit is more stringent than the NSPS since it applies during all periods of the production cycle rather than only during hot metal transfer and skimming.

Because of the limited amount of data available, we could not identify any basis for developing a limit more stringent than the floor for either new or existing BOPF shops. Consequently, we chose the MACT floor as the standard for both new and existing bottom and top blown BOPF shops. For both existing bottom blown and top blown BOPF shops, we selected an opacity limit for fugitive emissions of 20 percent using 3-minute averages. For new bottom blown BOPF shops, we selected an opacity limit for fugitive emissions of 10 percent opacity limit (6-minute average, with one exception per cycle up to 20 percent), which is based on the most stringent State limit. For new top blown BOPF shops, we are selecting an opacity limit of 10 percent (3-minute average), except that one 3-minute average greater than 10 percent but less than 20 percent can occur during each steel production cycle.

D. How Did We Select the Initial Compliance Requirements?

The proposed rule requires a performance test for each control device to demonstrate initial compliance with the applicable PM limit, and the reference method for PM is EPA Method 5 or 5D in 40 CFR part 60, appendix A (or ASTM 4536–96). The proposed rule also requires that a certified observer conduct a performance test by EPA Method 9 in 40 CFR part 60, appendix A, to determine the opacity of fugitive emissions. Consistent with Method 9 and the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A), we are requiring that opacity observations be made for at least 3 hours. We are also requiring that compliance testing for PM and opacity be performed during the production period with the greatest emissions, which is during tapping for the blast furnace; during the steel production cycle for open hood BOPF; and during the oxygen blow for closed hood BOPF.

For the measurement of oil content, we chose EPA Method 9071B, ''n-Hexane Extractable Material for Sludge, Sediment, and Solid Samples.'' This method is used to quantify low concentrations of oil in solid materials by extracting the sample with hexane to dissolve the oil, evaporating the hexane, and weighing the residue (oil). This is consistent with the method specified in Indiana's regulation for the oil content of sinter feed. Three samples of the sinter feed must be taken at 8-hour intervals each day. The three samples are composited and analyzed for oil content to provide a measure of the percent oil in the sinter feed for that day. The daily results are averaged over a 30-day period on a rolling basis to determine the 30-day rolling average. We chose a format of a 30-day rolling average for the standard because it is consistent with the data on which the limit is based, which were long term averages of historical measurements, and provides for dampening of possible short-term intermittent spikes in oil content.

We also require that certain operating limits be determined during the initial compliance test to ensure that capture and control devices operate properly on a continuing basis. All operating limits must be established during a performance test that demonstrates compliance with the applicable emission limit. During performance tests for PM, operating limits must be established for pressure drop and scrubber water flow rate for venturi scrubbers, and opacity (using a COMS) for ESP. During opacity observations of roof monitors, operating limits must be established for capture systems used on the sinter plant discharge end, blast furnace casthouse, and BOPF secondary emissions. Two options are available for the operating limits for these capture systems: (1) Establish a minimum volumetric flow rate for each individual duct, or (2) establish a minimum volumetric flow rate for the total flow to the control device along with settings for damper positions.

E. How Did We Select the Continuous Compliance Requirements?

For continuous compliance, we chose periodic performance testing for PM and opacity, which is consistent with current permit requirements. We consulted with several States on how they were implementing title V permitting requirements for performance tests. In general, performance tests are repeated every 2.5 to 5 years, depending on the magnitude of the source. Consequently, we decided that performance tests should be repeated no less frequently than twice per permit term of a source's title V operating permit (at mid-term and renewal).

Continuous compliance provisions were also established for capture equipment used on the discharge end, blast furnace casthouse, and BOPF secondary emissions to ensure the emissions are captured. There are two options: (1) Monitor the volumetric flow rate in each individual duct, or (2) monitor the total volumetric flow rate to the control device in combination with damper positions. These parameters must be in the range established during the EPA Method 9 performance test. We believe this monitoring will be sufficient to assure that ventilation adequate for the capture of fugitive emissions consistent with that demonstrated during the initial performance test will be maintained.

We also developed procedures to ensure that control equipment is operating properly on a continuous basis. When baghouses are used, the alarm for the bag leak detection system must not sound for more than 5 percent of the time in any semiannual reporting period. Venturi scrubbers must be monitored for pressure drop and scrubber water flow rate, and they must not fall below the limits established during the performance test. Electrostatic precipitators must be monitored for opacity using COMS. The opacity must not exceed the operating limit established during the performance test. If a facility uses equipment other than a baghouse, venturi scrubber, or ESP to control emissions from an affected source, the owner or operator would be required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

For demonstrating continuous compliance with the oil content standard on sinter plant feed, we chose daily sampling and analysis of sinter

plant feed with daily compliance determined against a 30-day rolling average.

F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are needed by EPA to know what facilities are subject to the standard, if a facility has complied with the rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from the rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information would be required. Consistent with the General Provisions, we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes to the plan need to be made. Records would be required of information needed to document compliance with the rule requirements. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

IV. Summary of Environmental, Energy, and Economic Impacts

Generally, we do not expect the impacts of the proposed rule to be very serious or significant. Most plants have and continue to operate air pollution control equipment sufficient to meet all or most of the emission limitations contained in the proposed rule. Our best projection is that four plants will have to upgrade or install new control equipment on one or more of the affected sources. One plant does not have controls for fugitive emissions from their blast furnace casthouse and may have to install a capture and control system. One plant is expected to install new venturi scrubbers for their primary emission control system in the BOPF shop, and another plant will need to upgrade their venturi scrubbers. One of these plants may also need to install a capture and control system for fugitive emissions from the BOPF because they operate a closed hood BOPF without a capture system. Two plants use venturi scrubbers as the control devices for fugitive emissions from the BOPF; these plants may need to replace the scrubbers with baghouses.

A. What Are the Air Emission Impacts?

The installation of new controls and upgrades discussed in the preceding paragraph will result in reductions in emissions of metal HAP and PM. We estimate that the new capture and control system for the blast furnace casthouse will reduce these emissions by 90 percent, a reduction of 2 tons per year (tpy) of HAP and 324 tpy of PM. The new BOPF scrubbers at one plant and upgrade at another will result in a 50 percent reduction in emissions, 2.8 tpy of HAP and 315 tpy of PM. The new capture and control system for fugitive emissions from the BOPF would result in a 90 percent reduction in emissions, 6 tpy of HAP and 600 tpy of PM. We expect that the upgrade or replacement of the two scrubbers used as controls for BOPF fugitive emissions would result in a 50 percent reduction in emissions, 2.7 tpy of HAP and 270 tpy of PM. Overall, the proposed standard is expected to reduce metal HAP emissions by 13 tpy and PM emissions by about 1,500 tpy.

B. What Are the Cost Impacts?

The nationwide capital and annual costs of new and upgraded capture and control systems are estimated at $34 million and $5.9 million/yr, respectively. The total nationwide annual costs (including monitoring and recordkeeping) are about $6.2 million/yr. These costs are based on a new primary control system for one BOPF shop, upgraded controls at another, two new capture and control systems for secondary BOPF emissions, and one new capture and control system for a blast furnace casthouse. In addition, the estimate includes the cost of bag leak detection systems for baghouses.

C. What Are the Economic Impacts?

We conducted a detailed economic impact analysis to determine the impacts of the proposed rule on both the industry and the U.S. market for steel mill products. We estimate the economic impacts in both areas to be negligible. We project the price of steel mill products, in aggregate, to increase by less than 0.1 percent with domestic production from integrated mills declining by only 3,100 short tons. This slight decline in production at affected integrated mills is somewhat offset by increases at nonintegrated domestic steel producers (600 short tons) and foreign imports (600 short tons). In terms of industry impacts, the integrated steel producers are projected to experience a slight decrease in operating profits of $5.2 million annually, which reflects increased costs of compliance and associated reductions in revenues from producing final steel mill products. In addition, we don't foresee any individual integrated facility being in jeopardy of closure because of the proposed standards.

Based on the market analysis, the annual costs to society of the proposed rule are projected to be $5.9 million. As a result of slightly higher prices for steel mill products, the final consumers of these products will incur an additional $1.7 million annually. Integrated steel mills are expected to decline $5.2 million annually in profits related to directly incurred control costs and reduced product revenues. Non-integrated steel mills that directly compete with integrated mills in these markets and are unaffected by today's proposed rule will experience a slight increase in profits of $0.6 million. Similarly, foreign steel producers will also experience a slight increase in profits of $0.4 million due to the slightly higher prices and increases in imports to the U.S. market. For more information, consult the economic impact analysis supporting this proposed rule.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Implementation of the rule as proposed would be expected to result in a small increase in solid waste: 3,200 tpy of sludge and 1,200 tpy of dust. The energy increase could be expected to be 24,000 megawatt-hours per year, primarily due to the energy requirements of new venturi scrubbers.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this proposal from all interested parties. You need to submit full supporting data and detailed analysis with your comments to allow use to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. A–2000–44 (see **ADDRESSEES**).

We are requesting comments on two specific issues. The first is whether the emission limit for the windbox exhaust at sinter plants should be expressed in terms of lb/ton of sinter (0.3 lb/ton), concentration (0.01 gr/dscf for baghouses and 0.03 gr/dscf for scrubbers), or a combination. The second issue is whether MACT standards are warranted for the discharge end and sinter cooler at sinter plants and for ladle metallurgy operations in the BOPF shop. The

discharge end contributes only 1 percent of the HAP emissions from sinter plants, and the cooler contributes less than 10 percent. Ladle metallurgy contributes less than 1 percent of the HAP emissions from BOPF shops.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this regulatory action is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule does not have federalism implications. None of the affected facilities are owned or operated by State governments, and the proposed rule would not preempt any State laws that are more stringent. Therefore, it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. In addition, the proposed rule is required by statute and, if implemented, will not impose any substantial direct compliance costs. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Development of the final rule will address tribal considerations under Executive Order 13175. Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to 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 the 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. No tribal governments own or operate integrated iron and steel manufacturing facilities. The proposed rule is required by statute and will not impose any substantial direct compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant,'' as defined under Executive Order 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 EPA 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to

influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, this proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of this proposed rule for any year has been estimated to be less than $6 million. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business according to Small Business Administration (SBA) size standards for NAICS code 331111 (*i.e.,* Iron and Steel Mills) of 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the above definition of small entities, the Agency has determined that there are no small businesses within this source category that would be subject to this proposed rule. Therefore, because this proposed rule will not impose any requirements on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2003.01), and a copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The rule would require applicable one-time notifications required by the General Provisions for each affected source. As required by the NESHAP General Provisions, all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan. Plants also would be required to prepare an operation and maintenance plan for capture systems and control devices subject to operating limits. Records would be required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for capture systems, control devices, and monitoring systems. Semiannual compliance reports also are required. These reports would describe any deviation from the standards, any period a continuous monitoring system was ''out-of-control,'' or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report would be required. Consistent with the General Provisions, if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 5,512 labor

hours per year at a total annual cost of $352,302, including labor, capital, and operation and maintenance.

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 purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after July 13, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by August 13, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. The EPA proposes to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 9, and 17 in 40 CFR part 60, appendix A; Performance Specification 1 (PS–1) in 40 CFR part 60, appendix B; and OSW 846 Method 9071B. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, 9, and OSW 846 Method 9071B. The search and review results have been documented and placed in Docket A–2000–44.

One voluntary consensus standard was identified as applicable to PS–1. The standard ASTM D6216 (1998), Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, has been incorporated by reference into PS–1 (65 FR 48920, August 10, 2000).

Another voluntary consensus standard, ASTM D4536–96, Particulate (Matter) Modified High Volume, is being proposed as an alternative to the sampling equipment and procedures in Method 5 or 17 in conducting emissions testing of positive pressure baghouses. The ASTM D4536–96 equipment and procedures would be used in conjunction with the sample traverse and calculations as described in Method 5D for the application. We invite comments on whether including this ASTM standard method is appropriate for this or other applications.

In addition to the voluntary consensus standards we propose to use in this rule, our search for emissions monitoring procedures identified 15 other voluntary consensus standards. We determined that 12 of these 15 standards were impractical alternatives to EPA test methods for the purposes of this proposed rule. Therefore, we do not propose to include these 12 voluntary consensus standards in this proposed rule. Our detailed review comments for these 12 standards are in Docket A–2000–44.

Three of the 15 voluntary consensus standards identified in this search were unavailable at the time the review was conducted for the purposes of this proposed rule because they are under development by the voluntary consensus body. Our review comments for these three standards are in Docket A–2000–44.

The EPA invites comment on the compliance demonstration requirements proposed in this rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why this regulation should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

The EPA test methods and performance specifications that would be required for integrated iron and steel manufacturing facilities are included in §§ 63.7822, 63.7823, and 63.7831 of the proposed rule. Under § 63.8 of the NESHAP General Provisions in 40 CFR part 63, subpart A, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Iron and steel, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 19, 2001.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.14 is amended by adding paragraph (b)(20) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(20) ASTM D4536–96, Standard Test Method for High-Volume Sampling for Solid Particulate Matter and Determination of Particulate Emissions,

IBR approved [EFFECTIVE DATE OF FINAL RULE] for § 63.7822.

* * * * *

3. Part 63 is amended by adding subpart FFFFF to read as follows:

Sec.

Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

What This Subpart Covers

63.7780 What is the purpose of this subpart?
63.7781 Am I subject to this subpart?
63.7782 What parts of my plant does this subpart cover?
63.7783 When do I have to comply with this subpart?
63.7784–63.7789 [Reserved]

Emission Limitations

63.7790 What emission limitations must I meet?
63.7791–63.7799 [Reserved]

Operation and Maintenance Requirements

63.7800 What are my operation and maintenance requirements?
63.7801–63.7809 [Reserved]

General Compliance Requirements

63.7810 What are my general requirements for complying with this subpart?
63.7811–63.7819 [Reserved]

Initial Compliance Requirements

63.7820 By what date must I conduct performance tests or other initial compliance demonstrations?
63.7821 When must I conduct subsequent performance tests?
63.7822 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?
63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?
63.7824 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?
63.7825 How do I demonstrate initial compliance with the emission limitations that apply to me?
63.7826 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?
63.7827–63.7829 [Reserved]

Continuous Compliance Requirements

63.7830 What are my monitoring requirements?
63.7831 What are the installation, operation, and maintenance requirements for my monitors?
63.7832 How do I monitor and collect data to demonstrate continuous compliance?
63.7833 How do I demonstrate continuous compliance with the emission limitations that apply to me?
63.7834 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?
63.7835 What other requirements must I meet to demonstrate continuous compliance?
63.7836–63.7839 [Reserved]

Notifications, Reports, and Records

63.7840 What notifications must I submit and when?
63.7841 What reports must I submit and when?
63.7842 What records must I keep?
63.7843 In what form and how long must I keep my records?
63.7844–63.7849 [Reserved]

Other Requirements and Information

63.7850 What parts of the General Provisions apply to me?
63.7851 Who implements and enforces this subpart?
63.7852 What definitions apply to this subpart?
63.7853–63.7879 [Reserved]

Tables to Subpart FFFFF of Part 63

Table 1 to Subpart FFFFF of Part 63—Emission and Opacity Limits
Table 2 to Subpart FFFFF of Part 63—Initial Compliance with Emission and Opacity Limits
Table 3 to Subpart FFFFF of Part 63—Continuous Compliance with Emission and Opacity Limits
Table 4 to Subpart FFFFF of Part 63—Applicability of General Provisions to Subpart FFFFF

Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

What This Subpart Covers

§ 63.7780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and operation and maintenance requirements in this subpart.

§ 63.7781 Am I subject to this subpart?

You are subject to this subpart if you own or operate an integrated iron and steel manufacturing facility that is (or is part of) a major source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your integrated iron and steel manufacturing facility is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.7782 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your integrated iron and steel manufacturing facility.

(b) The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at your integrated iron and steel manufacturing facility.

(c) This subpart covers emissions from the sinter plant windbox exhaust, discharge end, and sinter cooler; the blast furnace casthouse; and the BOPF shop including each individual BOPF and shop ancillary operations (hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy).

(d) A sinter plant, blast furnace, or BOPF shop at your integrated iron and steel manufacturing facility is existing if you commenced construction or reconstruction of the affected source before July 13, 2001.

(e) A sinter plant, blast furnace, or BOPF shop at your integrated iron and steel manufacturing facility is new if you commence construction or reconstruction of the affected source on or after July 23, 2001. An affected source is reconstructed if it meets the definition of ''reconstruction'' in § 63.2.

§ 63.7783 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you no later than [2 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new affected source and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have a new affected source and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your integrated iron and steel manufacturing facility is an area source that becomes a major source of HAP, the following compliance dates apply to you:

(1) Any portion of the existing integrated iron and steel manufacturing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the integrated iron and steel manufacturing facility must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.7840. Several of these notifications must be submitted before the compliance date for your affected source.

§§ 63.7784–63.7789 [Reserved]

Emission Limitations

§ 63.7790 What emission limitations must I meet?

(a) You must meet each emission limit and opacity limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit for capture and control devices in paragraphs (b)(1) through (5) of this section that applies to you.

(1) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse, you must:

(i) Maintain the hourly average volumetric flow rate through each separately ducted hood in the capture system at or above the minimum level established during the initial performance test; or

(ii) Maintain the total hourly average volumetric flow rate at the control device inlet at or above the minimum level established during the initial performance test and all capture system dampers in the same position as during the initial performance test.

(2) For each capture system applied to secondary emissions from a BOPF, you must:

(i) Maintain the average volumetric flow rate through each separately ducted hood in the capture system for each steel production cycle at or above the minimum level established during the initial performance test; or

(ii) Maintain the total average volumetric flow rate at the control device inlet for each steel production cycle at or above the minimum level established during the initial performance test and all capture system dampers in the same position as during the initial performance test.

(3) For each baghouse applied to meet any particulate emission limit in Table 1, you must operate the baghouse such that the bag leak detection system does not alarm for more than 5 percent of the total operating time in any semiannual reporting period.

(4) For each venturi scrubber applied to meet any particulate emission limit in Table 1, you must maintain the hourly average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(5) For each electrostatic precipitator applied to emissions from a BOPF, you must maintain the hourly average opacity of emissions exiting the control device stack at or below the level established during the initial performance test.

(6) An owner or operator who uses an air pollution control device other than a baghouse, venturi scrubber, or electrostatic precipitator must submit a description of the device; test results collected in accordance with § 63.7822 verifying the performance of the device for reducing emissions of particulate matter to the atmosphere to the levels required by this subpart; a copy of the operation and maintenance plan required in § 63.7800(b); and appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emission limitation(s). The monitoring plan identifying the operating parameters to be monitored is subject to approval by the Administrator.

(c) For each sinter plant, you must maintain the 30-day rolling average oil content of the sinter plant feedstock at or below 0.025 percent.

§§ 63.7791–63.7799 [Reserved]

Operation and Maintenance Requirements

§ 63.7800 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each capture system and control device subject to an operating limit in § 63.7790(b). Each plan must address the elements in paragraphs (b)(1) through (3) of this section.

(1) Monthly inspections of the equipment that is important to the performance of the total capture system (i.e., pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (e.g., presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in ductwork, and fan erosion). The operation and maintenance plan also must include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection.

(2) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(3) In the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Actions may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repair the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

§§ 63.7801–63.7809 [Reserved]

General Compliance Requirements

§ 63.7810 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.7783 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

§§ 63.7811–63.7819 [Reserved]

Initial Compliance Requirements

§ 63.7820 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.7783 for your affected source to demonstrate initial compliance with each emission and opacity limit in Table 1 to this subpart that applies to you, and the 30-day rolling average oil content limit for the sinter plant feedstock in § 63.7790(c).

(b) For each operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test or opacity observation, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.7783.

(c) If you commenced construction or reconstruction between July 13, 2001 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than [180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between [INSERT DATE OF PUBLICATION OF THIS PROPOSED RULE IN THE **Federal Register**] and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [3 YEARS AND 180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.7821 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate compliance with all applicable emission and opacity limits in Table 1 to this subpart no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

§ 63.7822 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (b) through (h) of this section.

(b) To determine compliance with the applicable emission limit for particulate matter in Table 1 to this subpart, follow the test methods and procedures in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D, or 17, as applicable, to determine the concentration of particulate matter. You can also use ASTM D4536–96 (incorporated by reference—see § 63.14) as an alternative to the sampling equipment and operating procedures in Method 5 or 17 when testing a positive pressure baghouse, but you must use the sample traverse location and number of sampling points described in Method 5D.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter test run. Three valid test runs are needed to comprise a performance test.

(c) For each sinter plant windbox exhaust stream, you must complete the requirements of paragraph (c)(1) and (2) of this section:

(1) Include procedures in your source test plan for measuring and recording the sinter production rate for each test run in tons per hour; and

(2) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process-weighted mass emissions of particulate matter, lb/ton;

C = Concentration of particulate matter, gr/dscf;

Q = Volumetric flow rate of stack gas, dscf/hr;

P = Production rate of sinter during the test run, tons/hr; and

K = Conversion factor, 7,000 gr/lb.

(d) If you apply two or more control devices in parallel to emissions from a sinter plant discharge end, compute the average flow-weighted concentration for each test run using Equation 2 of this section as follows:

$$C_w = \frac{\sum_{i=1}^{n} C_i Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 2)}$$

Where:

C_w = Flow-weighted concentration, gr/dscf;

C_i = Concentration of particulate matter from exhaust stream ''i'', gr/dscf; and

Q_i = Volumetric flow rate of effluent gas from exhaust stream ''i'', dscfm.

(e) For a control device applied to emissions from a blast furnace casthouse, sample for an integral number of furnace tapping operations sufficient to obtain at least 1 hour of sampling for each test run.

(f) For a primary emission control device applied to emissions from a BOPF with a closed hood system, sample only during the primary oxygen blow and do not sample during any subsequent reblows. Continue sampling for each run for an integral number of primary oxygen blows.

(g) For a primary emission control system applied to emissions from a BOPF with an open hood system and for a control device applied solely to secondary emissions from a BOPF, you must complete the requirements of paragraphs (g)(1) and (2) of this section:

(1) Sample only during the steel production cycle. Discontinue sampling during periods of abnormal operation. Record the start and end time of each steel production cycle and each period of abnormal operation; and

(2) Sample for an integral number of steel production cycles. The steel production cycle begins when the scrap or hot metal is charged to the furnace (whichever operation occurs first) and ends 3 minutes after the slag is emptied from the vessel into the slag pot. Consecutive cycles are not required for determining compliance.

(h) For a control device applied to emissions from BOPF shop ancillary operations (hot metal transfer, skimming, desulfurization, or ladle metallurgy), sample only when the operation(s) is being conducted.

§ 63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(h)(5) and the conditions detailed in paragraphs (b) through (d) of this section.

(b) You must conduct each visible emissions performance test such that the opacity observations overlap with the performance test for particulate matter.

(c) To determine compliance with the applicable opacity limit in Table 1 to this subpart for a sinter plant discharge end or a blast furnace casthouse:

(1) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(2) Obtain a minimum of 30 6-minute averages. For a blast furnace casthouse, make observations during tapping of the furnace. Tapping begins when the furnace is opened, usually by creating a hole near the bottom of the furnace, and ends when the hole is plugged.

(d) To determine compliance with the applicable opacity limit in Table 1 to this subpart for BOPF shops:

(1) For an existing BOPF shop:

(i) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter except as specified in paragraphs (d)(1)(ii) and (iii) of this section.

(ii) Instead of procedures in section 2.4 of Method 9 in appendix A to part 60 of this chapter, record observations to the nearest 5 percent at 15-second intervals for at least three steel production cycles.

(iii) Instead of procedures in section 2.5 of Method 9 in appendix A to part 60 of this chapter, determine the 3-minute average opacity from the average of 12 consecutive observations recorded at 15-second intervals.

(2) For a new BOPF shop housing a bottom-blown BOPF:

(i) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(ii) Select the highest and second highest sets of 6-minute average opacities for each steel production cycle.

(3) For a new BOPF shop housing a top-blown BOPF:

(i) Determine the opacity of emissions according to the requirements for an existing BOPF shop in paragraphs (d)(1)(i) through (iii) of this section.

(ii) Select the highest and second highest sets of 3-minute average opacities for each steel production cycle.

(4) Opacity observations must cover the entire steel production cycle and must be made for at least three cycles. The steel production cycle begins when the scrap or hot metal is charged to the furnace (whichever operation occurs first) and ends 3 minutes after the slag is emptied from the vessel into the slag pot. Consecutive cycles are not required for determining compliance.

(5) Determine and record the starting and stopping times of the steel production cycle.

§ 63.7824 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?

(a) For a capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and subject to an operating limit in § 63.7790(b)(1) for flow rate, you must establish a site-specific operating limit(s) according to the procedures in paragraph (a)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7790(b)(1)(i) for the volumetric flow rate through each separately ducted hood:

(i) Using the continuous parameter monitoring system (CPMS) required in § 63.7830(a)(1), measure and record the actual volumetric flow rate through each separately ducted hood in the capture system during each visible emissions performance test.

(ii) Compute and record the hourly average volumetric flow rate for the performance test. Your operating limit is the lowest hourly flow rate value in a test that meets the opacity limit.

(2) If you elect the operating limit in § 63.7790(b)(1)(ii) for total flow rate and damper position:

(i) Using the CPMS required in § 63.7830(a)(2), measure and record the total volumetric flow rate at the control device inlet during each visible emissions performance test.

(ii) Compute and record the hourly average flow rate for the performance test. Your operating limit is the lowest hourly flow rate value in a test that meets the opacity limit.

(iii) Record the position of each damper for the capture system damper position during the visible emissions performance test. Your operating limit is the position of each damper.

(b) For each capture system applied to secondary emissions from a BOPF and subject to an operating limit in § 63.7790(b)(2) for flow rate, you must establish a site-specific operating limit(s) according to the procedures in paragraph (b)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7790(b)(2)(i) for the volumetric flow rate through each separately ducted hood:

(i) Using the CPMS required in § 63.7830(b)(1), measure and record the actual volumetric flow rate through each separately ducted hood in the capture system for each steel production cycle during the visible emissions performance test.

(ii) Compute and record the average volumetric flow rate for each steel production cycle during the performance test. Your operating limit is the lowest average flow rate value in a test that meets the opacity limit.

(2) If you elect the operating limit in § 63.7790(b)(2)(ii) for total flow rate and damper position:

(i) Using the CPMS required in § 63.7830(b)(2), measure and record the total volumetric flow rate at the control device inlet for each steel production cycle during the visible emissions performance test.

(ii) Compute and record the average flow rate for the performance test. Your operating limit is the lowest average flow rate value in a test that meets the opacity limit.

(iii) Record the position of each damper for the capture system damper position during the visible emissions performance test. Your operating limit is the position of each damper.

(c) For a venturi scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(4), you must establish site-specific operating limits according to the procedures in paragraphs (c)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7830(d), measure and record the pressure drop and scrubber water flow rate during each run of the particulate matter performance test.

(2) Compute and record the hourly average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate value in any of the three runs that meet the applicable emission limit.

(d) For an electrostatic precipitator subject to the operating limit in § 63.7790(b)(5) for opacity, you must establish a site-specific operating limit according to the procedures in paragraphs (d)(1) and (2) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.7830(e), measure and record the opacity of emissions from each control device stack during each run of the particulate matter performance test.

(2) Compute and record the hourly average opacity for each individual test run. Your operating limit is the highest hourly opacity in any of the three runs that meet the emission limit.

(e) You may change the operating limits for a capture system, venturi scrubber, or electrostatic precipitator if you meet the requirements in paragraphs (e)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emission limitation in Table 1 to this subpart.

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (d) of this section.

(f) To determine compliance with the operating limit for the oil content of the sinter plant feedstock in § 63.7790(c), follow the test methods and procedures in paragraphs (f)(1) through (3) of this section.

(1) Sample the feedstock three times a day (once every 8 hours), composite the three samples each day, and analyze the composited samples using Method 9071B ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 (Revision 2, April 1998) (Incorporated by reference).

(2) Continue the sampling and analysis procedure for 30 consecutive days.

(3) Compute and record the 30-day rolling average using that day's value and the 29 previous daily values.

§ 63.7825 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission or opacity limit in Table 1 to this subpart, you have demonstrated initial compliance if:

(1) You meet the conditions in Table 2 to this subpart; and

(2) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and subject to the operating limit in § 63.7790(b)(1), you have established appropriate site-specific operating limit(s) and:

(i) If you elect the operating limit in § 63.7790(b)(1)(i) for flow rate, you have a record of the actual volumetric flow rate through each separately ducted hood measured during the performance test in accordance with § 63.7824(a)(1); or

(ii) If you elect the operating limits in § 63.7790(b)(1)(ii) for total flow rate and damper position, you have a record of the total volumetric flow rate at the inlet to the control device measured during the performance test and the position of each damper during the test in accordance with § 63.7824(a)(2); and

(3) For each capture system applied to secondary emissions from a BOPF and subject to the operating limit in § 63.7790(b)(2), you have established appropriate site-specific operating limit(s) and:

(i) If you elect the operating limit in § 63.7790(b)(2)(i) for flow rate, you have a record of the actual volumetric flow rate through each separately ducted hood measured during each steel production cycle in the performance test in accordance with § 63.7824(b)(1); or

(ii) If you elect the operating limits in § 63.7790(b)(2)(ii) for total flow rate and damper position, you have a record of the total volumetric flow rate at the inlet to the control device measured during each steel production cycle in the performance test and the position of each damper during the test in accordance with § 63.7824(b)(2); and

(4) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(4), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7824(c); and

(5) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(5), you have established an appropriate site-specific operating limit and have a record of the opacity measurements made during the performance test in accordance with § 63.7824(d).

(b) For each existing or new sinter plant subject to the operating limit for the oil content of the feedstock in § 63.7790(c), you have demonstrated initial compliance if the 30-day rolling average of the oil content of the feedstock, measured during the initial performance test in accordance with § 63.7824(f), is no more than 0.025 percent.

(c) For each emission limitation that applies to you, you must submit a notification of compliance status according to § 63.7840(e).

§ 63.7826 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) You have demonstrated initial compliance if you certify in your notification of compliance status that:

(1) You have prepared the operation and maintenance plan according to the requirements in § 63.7800(b); and

(2) You will operate each capture system and control device according to the procedures in the plan; and

(3) You submit a notification of compliance status according to the requirements in § 63.7840(e).

(b) [Reserved]

§§ 63.7827–63.7829 [Reserved]

Continuous Compliance Requirements

§ 63.7830 What are my monitoring requirements?

(a) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and subject to an operating limit in § 63.7790(b)(1), you must meet the requirements in paragraph (a)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7790(b)(1)(i) for flow rate, you must at all times monitor the hourly average actual volumetric flow rate through each separately ducted hood using a CPMS according to the requirements in § 63.7831(a).

(2) If you elect the operating limits for flow rate and damper position in § 63.7790(b)(1)(ii), you must at all times monitor the average hourly total volumetric flow rate at the inlet to the control device using a CPMS according to the requirements in § 63.7831(a) and make a visual check at least once every 24 hours to verify that each damper for the capture system is in the same position as during the initial performance test.

(b) For each capture system applied to secondary emissions from a BOPF and subject to an operating limit in § 63.7790(b)(2), you must meet the requirements in paragraph (b)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7790(b)(2)(i) for flow rate, you must at all times monitor the average actual volumetric flow rate through each separately ducted hood for each steel production cycle using a CPMS according to the requirements in § 63.7831(a).

(2) If you elect the operating limits for flow rate and damper position in § 63.7790(b)(2)(ii), you must at all times monitor the average total volumetric flow rate at the inlet to the control device for each steel production cycle using a CPMS according to the requirements in § 63.7831(a) and make a visual check at least once every 24 hours to verify that each damper for the capture system is in the same position as during the initial performance test.

(c) For each baghouse subject to the operating limit in § 63.7790(b)(3) for the bag leak detection system alarm, you must at all times monitor the relative

change in particulate matter loadings using a bag leak detection system according to the requirements in § 63.7831(b) and conduct inspections at their specified frequencies according to the requirements in paragraphs (c)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(d) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(4), you must at all times monitor the hourly average pressure drop and water flow rate using a CPMS according to the requirements in § 63.7831(c).

(e) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(5), you must at all times monitor the hourly average opacity of emissions exiting each control device stack using a continuous opacity monitoring system (COMS) according to the requirements in § 63.7831(f).

§ 63.7831 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse that is subject to operating limits in § 63.7790(b)(1) for flow rate and for each capture system applied to secondary emissions from a BOPF that is subject to operating limits in § 63.7790(b)(2) for flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(3) Conduct a flow sensor calibration check at least semiannually.

(4) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(b) For each baghouse subject to the operating limit in § 63.7790(b)(3) for the bag leak detection system alarm, you must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (b)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The system must provide output of relative changes in particulate matter loadings.

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel.

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, ''Fabric Filter Bag Leak Detection Guidance,'' EPA–454/R–98–015, September 1997. You may obtain a copy of this guidance document by contacting the National Technical Information Service (NTIS) at 800–553–6847. You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time.

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) For each venturi scrubber subject to the operating limits in § 63.7790(b)(4) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (c)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must:

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) You must install, operate, and maintain each CPMS for a capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and each CPMS for a venturi scrubber according to the

requirements in paragraphs (d)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of three of the required four data points to constitute a valid hour of data.

(2) Each CPMS must have valid hourly data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the hourly average of all recorded readings.

(e) You must install, operate, and maintain each CPMS for a capture system applied to secondary emissions from a BOPF according to the requirements in paragraphs (e)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period during a steel production cycle.

(2) Each CPMS must have valid data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the average of all recorded readings for a steel production cycle.

(f) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(5), you must install, operate, and maintain each COMS according to the requirements in paragraphs (f)(1) through (4) of this section.

(1) You must install each COMS and conduct a performance evaluation of each COMS according to § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60.

(2) You must develop and implement a quality control program for operating and maintaining each COMS according to § 63.8. At a minimum, the quality control program must include a daily calibration drift assessment, quarterly performance audit, and annual zero alignment of each COMS.

(3) You must operate and maintain each COMS according to § 63.8(e) and your quality control program. Identify periods the COMS is out of control, including any periods that the COMS fails to pass a daily calibration drift assessment, quarterly performance audit, or annual zero alignment audit.

(4) You must determine and record the hourly average opacity using all the 6-minute averages collected for periods during which the COMS is not out of control.

§ 63.7832 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.7833 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission or opacity limit in § 63.7790(a), you must demonstrate continuous compliance according to the requirements in Table 3 to this subpart.

(b) For each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse and subject to an operating limit in § 63.7790(b)(1), you must demonstrate continuous compliance by completing the requirements in paragraphs (b)(1) and (2) of this section:

(1) If you elect the operating limit for flow rate in § 63.7790(b)(1)(i):

(i) Maintaining the hourly average volumetric flow rate through each separately ducted hood at or above the level established during the initial or subsequent performance test;

(ii) Inspecting and maintaining each capture system CPMS according to § 63.7831(a) and recording all information needed to document conformance with these requirements; and

(iii) Collecting and reducing monitoring data for the actual volumetric flow rate through each separately ducted hood according to § 63.7831(d).

(2) If you elect the operating limits for flow rate and damper position in § 63.7790(b)(1)(ii):

(i) Maintaining the hourly average total volumetric flow rate at the control device inlet at or above the level established during the initial or subsequent performance test and all capture system damper positions in the same positions as during the initial or subsequent performance test;

(ii) Inspecting and maintaining each capture system CPMS according to § 63.7831(a) and recording all information needed to document conformance with these requirements;

(iii) Collecting and reducing monitoring data for the total volumetric flow rate at the control device inlet according to § 63.7831(d); and

(iv) Checking all capture system dampers at least once each day (24 hours) to verify each damper is in the same position as during the initial or subsequent performance test and recording all information needed to document conformance with these requirements.

(c) For each capture system applied to secondary emissions from a BOPF and subject to an operating limit in § 63.7790(b)(2), you must demonstrate continuous compliance by completing the requirements in paragraphs (c)(1) and (2) of this section:

(1) If you elect the operating limit for flow rate in § 63.7790(b)(2)(i):

(i) Maintaining the average volumetric flow rate through each separately ducted hood for each steel production cycle at or above the level established during the initial or subsequent performance test;

(ii) Inspecting and maintaining each capture system CPMS according to § 63.7831(a) and recording all information needed to document conformance with these requirements; and

(iii) Collecting and reducing monitoring data for the actual volumetric flow rate through each separately ducted hood according to § 63.7831(e).

(2) If you elect the operating limits for flow rate and damper position in § 63.7790(b)(2)(ii):

(i) Maintaining the average total volumetric flow rate at the control device inlet for each steel production cycle at or above the level established during the initial or subsequent performance test and all capture system damper positions in the same positions as during the initial or subsequent performance test;

(ii) Inspecting and maintaining each capture system CPMS according to § 63.7831(a) and recording all information needed to document conformance with these requirements;

(iii) Collecting and reducing monitoring data for the total volumetric flow rate at the control device inlet according to § 63.7831(e); and

(iv) Checking all capture system dampers at least once each day (24 hours) to verify each damper is in the

same position as during the initial or subsequent performance test and recording all information needed to document conformance with these requirements.

(d) For each baghouse subject to the operating limit for the bag leak detection system alarm in § 63.7790(b)(3), you must demonstrate continuous compliance by completing the requirements in paragraphs (d)(1) through (3) of this section:

(1) Maintaining each baghouse such that the bag leak detection system alarm does not sound for more than 5 percent of the operating time during any semiannual reporting period. To determine the percent of time the alarm sounded:

(i) Alarms that occur due solely to a malfunction of the bag leak detection system are not included in the calculation.

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and all the actions you took during the startup, shutdown, or malfunction were consistent with the procedures in the startup, shutdown, and malfunction plan.

(iii) Count 1 hour of alarm time for each alarm when you initiated procedures to determine the cause of the alarm within 1 hour.

(iv) Count the actual amount of time you took to initiate procedures to determine the cause of the alarm if you did not initiate procedures to determine the cause of the alarm within 1 hour of the alarm.

(v) Calculate the percentage of time the alarm on the bag leak detection system sounds as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(2) Maintaining records of the times the bag leak detection system alarm sounded, and for each valid alarm, the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action was completed.

(3) Inspecting and maintaining each baghouse according to the requirements in § 63.7830(c)(1) through (8) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7831(b)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(e) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(4), you must demonstrate continuous compliance by completing the requirements of paragraphs (e)(1) through (3) of this section:

(1) Maintaining the hourly average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test;

(2) Inspecting and maintaining each venturi scrubber CPMS according to § 63.7831(c) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.7831(d) and recording all information needed to document conformance with these requirements.

(f) For each electrostatic precipitator subject to the site-specific opacity operating limit in § 63.7790(b)(5), you must demonstrate continuous compliance by completing the requirements of paragraphs (f)(1) and (2) of this section:

(1) Maintaining the hourly average opacity of emissions no higher than the site-specific limit established during the initial or subsequent performance test;

(2) Operating and maintaining each COMS and reducing the COMS data according to § 63.7831(f).

(g) For each new or existing sinter plant subject to the operating limit for the feedstock oil content in § 63.7790(c), you must demonstrate continuous compliance by completing the requirements of paragraphs (g)(1) through (3) of this section:

(1) Sampling and recording the oil content of the sinter plant feedstock every 24 hours according to the performance test procedures in § 63.7824(f);

(2) Computing and recording the 30-day rolling average oil content for each operating day; and

(3) Maintaining the oil content of the feedstock no higher than 0.025 percent at all times.

§ 63.7834 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each capture system and control device subject to an operating limit in § 63.7790(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7800(b) by completing the requirements of paragraphs (a)(1) through (3) of this section:

(1) Making monthly inspections of capture systems according to § 63.7800(b)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance for each control device according to § 63.7800(b)(2) and recording all information needed to document conformance with these requirements; and

(3) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.7800(b)(3) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.7800(b) onsite and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.7835 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in § 63.7790 that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet each operation and maintenance requirement in § 63.7800 that applies to you. These instances are deviations from the emission limitations and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.7841.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

§§ 63.7836–63.7839 [Reserved]

Notifications, Reports, and Records

§ 63.7840 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(f)(4), and 63.9(b)

through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [120 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, opacity observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.7841 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7783 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.7783.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(3)(iii)(A) or 40 CFR 71.6(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.7833 and 63.7834 that apply to you, a statement that there were no deviations from the emission limitations or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or COMS) was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in § 63.7790 that occurs at an affected source where you are not using a continuous monitoring system (including a CPMS or COMS) to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including a CPMS or COMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.7842 What records must I keep?

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each COMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in § 63.6(h)(6) for visual observations.

(d) You must keep the records required in §§ 63.7833 and 63.7834 to show continuous compliance with each emission limitation and operation and maintenance requirement that applies to you.

§ 63.7843 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

§§ 63.7844–63.7849 [Reserved]

Other Requirements and Information

§ 63.7850 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7851 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternative opacity emission limits in Table 1 to this subpart under § 63.6(h)(9).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7852 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on tribroelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Basic oxygen process furnace means any refractory-lined vessel in which high-purity oxygen is blown under pressure through a bath of molten iron, scrap metal, and fluxes to produce steel. This definition includes both top and bottom blown furnaces, but does not include argon oxygen decarburization furnaces.

Basic oxygen process furnace shop means the place where steelmaking operations that begin with the transfer of molten iron (hot metal) from the torpedo car and end prior to casting the molten steel, including hot metal transfer, desulfurization, slag skimming, refining in a basic oxygen process furnace, and ladle metallurgy occur.

Basic oxygen process furnace shop ancillary operations means the processes where hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy occur.

Blast furnace means a furnace used for the production of molten iron from iron ore and other iron bearing materials.

Bottom-blown furnace means any basic oxygen process furnace in which oxygen and other combustion gases are introduced into the bath of molten iron through tuyeres in the bottom of the vessel or through tuyeres in the bottom and sides of the vessel.

Casthouse means the building or structure that encloses the bottom portion of a blast furnace where the hot metal and slag are tapped from the furnace.

Certified observer means a visible emission observer certified to perform EPA Method 9 opacity observations.

Desulfurization means the process in which reagents such as magnesium, soda ash, and lime are injected into the hot metal, usually with dry air or nitrogen, to remove sulfur.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Discharge end means the place where those operations conducted within the sinter plant starting at the discharge of the sintering machine's traveling grate including (but not limited to) hot sinter crushing, screening, and transfer operations occur.

Emission limitation means any emission limit, opacity limit, or operating limit.

Hot metal transfer station means the location in a basic oxygen process furnace shop where molten iron (hot metal) is transferred from a torpedo car or hot metal car used to transport hot metal from the blast furnace casthouse to a holding vessel or ladle in the basic oxygen process furnace shop. This location also is known as the reladling station or ladle transfer station.

Integrated iron and steel manufacturing facility means an establishment engaged in the production of steel from iron ore.

Ladle metallurgy means a secondary steelmaking process that is performed typically in a ladle after initial refining in a basic oxygen process furnace to adjust or amend the chemical and/or mechanical properties of steel.

Primary emission control system means the combination of equipment used for the capture and collection of primary emissions (e.g., an open hood capture system used in conjunction with an electrostatic precipitator or a closed hood system used in conjunction with a scrubber).

Primary emissions means particulate matter emissions from the basic oxygen process furnace generated during the steel production cycle which are captured and treated in the furnace's primary emission control system.

Primary oxygen blow means the period in the steel production cycle of a basic oxygen process furnace during which oxygen is blown through the molten iron bath by means of a lance inserted from the top of the vessel (top-blown) or through tuyeres in the bottom and/or sides of the vessel (bottom-blown).

Responsible official means responsible official as defined in § 63.2.

Secondary emission control system means the combination of equipment used for the capture and collection of secondary emissions from a basic oxygen process furnace.

Secondary emissions means particulate matter emissions that are not controlled by a primary emission control system, including emissions that escape from open and closed hoods, lance hole openings, and gaps or tears in ductwork to the primary emission control system.

Sinter cooler means the apparatus used to cool the hot sinter product that is transferred from the discharge end through contact with large volumes of induced or forced draft air.

Sinter plant means the machine used to produce a fused clinker-like aggregate or sinter of fine iron-bearing materials suited for use in a blast furnace. The machine is composed of a continuous traveling grate that conveys a bed of ore fines and other finely divided iron-bearing material and fuel (typically coke breeze), a burner at the feed end of the grate for ignition, and a series of downdraft windboxes along the length of the strand to support downdraft combustion and heat sufficient to produce a fused sinter product.

Skimming station means the locations inside a basic oxygen process furnace shop where slag is removed from the top of the molten metal bath.

Steel production cycle means the operations conducted within the basic oxygen process furnace shop that are required to produce each batch of steel. The following operations are included: scrap charging, preheating (when done), hot metal charging, primary oxygen blowing, sampling, (vessel turndown and turnup), additional oxygen blowing (when done), tapping, and deslagging. The steel production cycle begins when the scrap or hot metal is charged to the furnace (whichever operation occurs first) and ends after the slag is emptied from the vessel into the slag pot.

Top-blown furnace means any basic oxygen process furnace in which oxygen is introduced into the bath of molten iron by means of an oxygen lance inserted from the top of the vessel.

Windboxes means the compartments that provide for a controlled distribution of downdraft combustion air as it is drawn through the sinter bed of a sinter plant to make the fused sinter product.

§§ 63.7853–63.7879 [Reserved]

Tables to Subpart FFFFF of Part 63

Table 1 to Subpart FFFFF of Part 63 Emission and Opacity Limits

As required in § 63.7790(a), you must comply with each applicable emission and opacity limit in the following table:

For . . .	You must comply with each of the following . . .
1. Each windbox exhaust stream at a new or existing sinter plant..	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.3 lb/ton of product sinter.
2. Each discharge end at an existing sinter plant.	a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain particulate matter in excess of 0.02 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 20 percent (6-minute average).

For . . .	You must comply with each of the following . . .
3. Each discharge end at a new sinter plant	a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain, on a flow weighted basis, particulate matter in excess of 0.01 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 10 percent (6-minute average).
4. Each sinter cooler stack at an existing sinter plant.	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.03 gr/dscf.
5. Each sinter cooler stack at a new sinter plant.	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.01 gr/dscf.
6. Each casthouse at an existing blast furnace	a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.009 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 20 percent (6-minute average).
7. Each casthouse at a new blast furnace	a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.009 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 15 percent (6-minute average).
8. Each basic oxygen process furnace (BOPF) at a new or existing BOPF shop.	a. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with a closed hood system that contain particulate matter in excess of 0.024 gr/dscf during the primary oxygen blow; and b. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with an open hood system that contain particulate matter in excess of 0.019 gr/dscf during the steel production cycle; and c. You must not cause to be discharged to the atmosphere any gases that exit from a control device used solely for the collection of secondary emissions from the BOPF that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop.
9. Each hot metal transfer, skimming, desulfurizaiton, and ladle metallurgy operation at a new or existing BOPF shop.	You must not cause to be discharged to the atmosphere any gases that exist from a control device that contain particulate matter in excess of 0.007 gr/dscf.
10. Each roof monitor at an existing BOPF shop.	You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or any other building housing the BOPF or BOPF shop operation that exhibit opacity greater than 20 percent (3-minute average).
11. Each roof monitor at a new BOPF shop	a. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or other building housing a bottom-blown BOPF or BOPF shop operations that exhibit opacity (for any set of 6-minute averages) greater than 10 percent, except that one 6-minute period not to exceed 20 percent may occur once per steel production cycle. b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or BOPF shop operations that exhibit opacity (for any set of 3-minute averages) greater than 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle.

Table 2 of Subpart FFFFF to Part 63.—Initial Compliance With Emission and Opacity Limits

As required in § 63.7825(a)(1), you must demonstrate initial compliance with the emission and opacity limits according to the following table:

For . . .	You have demonstrated initial compliance if . . .
1. Each windbox exhaust stream at an existing or new sinter plant.	The process-weighted mass rate of particulate matter from a windbox exhaust stream at a new or existing sinter plant, measured according to the performance test procedures in § 63.7822(c), did not exceed 0.3 lb/ton of product sinter.
2. Each discharge end at an existing sinter plant.	a. The flow-weighted average concentration of particulate matter from one or more control devices applied to emissions from a discharge end, measured according to the performance test procedures in § 63.7822(d), did not exceed 0.02 gr/dscf; and b. The opacity of secondary emissions from each discharge end, determined according to the performance test procedures in § 63.7823(c), did not exceed 20 percent (6-minute average).

For . . .	You have demonstrated initial compliance if . . .
3. Each discharge end at a new sinter plant	a. The flow-weighted average concentration of particulate matter from one or more control devices applied to emissions from a discharge end, measured according to the performance test procedures in § 63.7822(d), did not exceed 0.01 gr/dscf; and b. The opacity of secondary emissions from each discharge end, determined according to the performance test procedures in § 63.7823(c), did not exceed 10 percent (6-minute average).
4. Each sinter cooler stack at an existing sinter plant.	The average concentration of particulate matter from a sinter cooler stack, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.03 gr/dscf.
5. Each sinter cooler stack at a new sinter plant.	The average concentration of particulate matter from a sinter cooler stack, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.01 gr/dscf.
6. Each casthouse at an existing blast furnace	a. The average concentration of particulate matter from a control device applied to emissions from a casthouse, measured according to the performance test procedures in § 63.7822(e), did not exceed 0.009 gr/dscf; and b. The opacity of secondary emissions from each casthouse, determined according to the performance test procedures in § 63.7823(c), did not exceed 20 percent (6-minute average).
7. Each casthouse at a new blast furnace	a. The average concentration of particulate matter from a control device applied to emissions from a casthouse, measured according to the performance test procedures in § 63.7822(e), did not exceed 0.009 gr/dscf; and b. The opacity of secondary emissions from each casthouse, determined according to the performance test procedures in § 63.7823(c), did not exceed 15 percent (6-minute average).
8. Each basic oxygen process furnace (BOPF) at a new or existing BOPF shop.	a. The average concentration of particulate matter from a primary emission control system applied to emissions from a BOPF with a closed hood system, measured according to the performance test procedures in § 63.7822(f), did not exceed 0.024 gr/dscf; and b. The average concentration of particulate matter from a primary emission control system applied to emissions from a BOPF with an open hood system, measured according to the performance test procedures in § 63.7822(g), did not exceed 0.019 gr/dscf; and c. The average concentration of particulate matter from a control device applied solely to secondary emissions from a BOPF, measured according to the performance test procedures in § 63.7822(g), did not exceed 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop.
9. Each hot metal transfer, skimming, desulfurization, or ladle metallurgy operation at a new or existing BOPF shop.	The average concentration of particulate matter from a control device applied to emissions from hot metal transfer, skimming, desulfurization, or ladle metallurgy, measured according to the performance test procedures in § 63.7822(h), did not exceed 0.007 gr/dscf.
10. Each roof monitor at an existing BOPF shop.	The opacity of secondary emissions from each BOPF shop, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent (3-minute average).
11. Each roof monitor at a new BOPF shop	a. The opacity of the highest set of 6-minute averages from each BOPF shop housing a bottom-blown BOPF, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent and the second highest set of 6-minute averages did not exceed 10 percent. b. The opacity of the highest set of 3-minute averages from each BOPF shop housing a top-blown BOPF, determined according to the performance test procedures in § 63.7823(d), was less than 20 percent and the second highest set of 3-minute averages did not exceed 10 percent.

Table 3 to Subpart FFFFF of Part 63.—Continuous Compliance With Emission and Opacity Limits

As required in § 63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table:

For . . .	You must demonstrate continuous compliance by . . .
1. Each windbox exhaust stream at an existing or new sinter plant.	a. Maintaining emissions of particulate matter at or below 0.3 lb/ton of product sinter, and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
2. Each discharge end at an existing sinter plant.	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.02 gr/dscf, and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 20 percent (6-minute average), and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).

For . . .	You must demonstrate continuous compliance by . . .
3. Each discharge end at a new sinter plant	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.01 gr/dscf, and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 10 percent (6-minute average), and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
4. Each sinter cooler stack at an existing sinter plant.	a. Maintaining emissions of particulate matter at or below 0.03 gr/dscf, and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
5. Each sinter cooler stack at a new sinter plant.	a. Maintaining emissions of particulate matter at or below 0.01 gr/dscf, and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
6. Each casthouse at an existing blast furnace	a. Maintaining emissions of particulate matter from a control device at or below 0.009 gr/dscf, and b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or structure housing the blast furnace at or below 20 percent (6-minute average), and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
7. Each casthouse at a new blast furnace	a. Maintaining emissions of particulate matter from a control device at or below 0.009 gr/dscf, and b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or building housing the casthouse at or below 15 percent (6-minute average), and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
8. Each basic oxygen process furnace (BOPF) at a new or existing BOPF shop.	a. Maintaining emissions of particulate matter from the primary emission control system for a BOPF with a closed hood system at or below 0.024 gr/dscf, and b. Maintaining emissions of particulate matter from the primary emission control system for a BOPF with an open hood system at or below 0.019 gr/dscf, and c. Maintaining emissions of particulate matter from a control device applied solely to secondary emissions from a BOPF at or below 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop, and d. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
9. Each hot metal transfer, skimming, desulfurization, and ladle metallurgy operation at a new or existing BOPF shop.	a. Maintaining emissions of particulate matter from a control device at or below 0.007 gr/dscf. and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
10. Each roof monitor at an existing BOPF shop.	a. Maintaining the opacity of secondary emissions that exit any opening in the BOPF shop or other building housing the BOPF or shop operation at or below 20 percent (3-minute average), and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
11. Each roof monitor at a new BOPF shop	a. Maintaining the opacity (for any set of 6-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building shop housing a bottom-blown BOPF or shop operation at or below 10 percent, except that one 6-minute period greater than 10 percent but no more than 20 percent may occur once per steel production cycle, b. Maintaining the opacity (for any set of 3-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or shop operation at or below 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle, and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).

Table 4 to Subpart FFFFF of Part 63.—Applicability of General Provisions to Subpart FFFFF

As required in § 63.7850, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

Citation	Subject	Applies to Subpart FFFFF	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	

Citation	Subject	Applies to Subpart FFFFF	Explanation
§ 63.6(a), (b), (c), (d), (e), (f), (g), (h)(2)(ii)–(h)(9).	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(h)(2)(i)	Determining Compliance with Opacity and VE Standards.	No	Subpart FFFFF specifies Method 9 in appendix A to part 60 of this chapter to comply with roof monitor opacity limits
§ 63.7(a)(1)–(2)	Applicability and Performance Test Dates.	No	Subpart FFFFF specifies performance test applicability and dates.
§ 63.7(a)(3), (b), (c)–(h)	Performance Testing Requirements	Yes.	
§ 63.8(a)(1)–(a)(3), (b), (c)(1)–(3), (c)(4)(i)–(e), (c)(7)–(8), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	CMS requirements in § 63.8(c)(4)(i)–(ii), (c)(5) and (6), (d), and (e) apply only to COMS for electrostatic precipitators.
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart FFFFF does not require flares.
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart FFFFF specifies requirements for operation of CMS.
§ 63.8(f)(6)	RATA Alternative	No	Subpart FFFFF does not require continuous emission monitoring systems.
§ 63.9	Notification Requirements	Yes	Additional notifications for CMS in § 63.9(g) apply to COMS for electrostatic precipitator.
§ 63.9(g)(5)	DATA Reduction	No	Subpart FFFFF specifies data reduction requirements.
§ 63.10(a), (b)(1)–(2)(xii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d), (e)(1)–(2), (e)(4), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply only to COMS for electrostatic precipitators.
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative	No	Subpart FFFFF doesn't require continuous emission monitoring systems.
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart FFFFF specifies record requirements.
§ 63.11	Control Device Requirements	No	Subpart FFFFF does not require flares.
§ 63.12	State Authority and Delegations	Yes.	
§§ 63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1219

Proposed Hass Avocado Promotion, Research, and Consumer Information Order; Proposed Rule,

Hass Avocado Promotion, Research, and Information Order; Subpart B—Referendum Procedures; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[FV–01–705–PR#1]

RIN 0581–AB92

Proposed Hass Avocado Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Department of Agriculture (Department or USDA) is seeking comments on an industry-funded research, promotion, industry information, and consumer information program for Hass avocados. A proposed program—the Hass Avocado Research, Promotion, and Consumer Information Order (Order)—was submitted to the Department by the California Avocado Commission (Commission). In addition, Mexican, Chilean, and New Zealand producers and associations submitted partial proposals.

Under the proposed Order, producers and importers would pay an initial assessment of 2.5 cents per pound of Hass domestic and imported avocados to the Hass Avocado Board (Board). The Board would be appointed by the Secretary of Agriculture (Secretary) to conduct research, promotion, industry information, and consumer information needed for the maintenance, expansion, and development of domestic markets for Hass avocados.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Division (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this proposed rule may be found at: http://www.ams.usda.gov/rpdocketlist.htm.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Julie Morin, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–6930 or (1)(888) 720–9917, fax (202) 205–2800, e-mail julie.morin@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed Order is issued under the Hass Avocado Research, Promotion, and Consumer Information Act (Act) [Pub. L. 104–127], enacted on October 23, 2000.

Question and Answer Overview

Why Is USDA Proposing a Program for Hass Avocados?

The Department received a proposal from the California Avocado Commission and partial proposals from Hass avocado interests in Chile, Mexico, and New Zealand. The Department is issuing this rule to obtain comments on the proposals and the potential impact of the proposed program on the Hass avocado industry before developing a final proposed program and conducting a referendum on it.

What Is the Purpose of the Hass Avocado Program?

The purpose of the program is to increase consumption of Hass avocados in the United States.

Who Will Be Covered by the Program?

Producers and importers of Hass avocados will pay assessments under the program, and first handlers will be involved in the assessment collection process.

Who Will Sit on the Board?

The Act provides that there will be a 12-member Board consisting of seven domestic Hass avocado producers, two importers, and three additional members who can either be importers or domestic producers. The three ''swing'' seats will be allocated to producers and importers so as to assure as nearly as possible that the composition of the Board reflects the proportion of domestic production and imports supplying the United States market. The proportion shall be based on the average volume of domestic production and imports in the United States over the previous three years. Each member will have an alternate.

How Will Members of the Board Be Selected?

The Order will provide for a nomination and election process to identify industry members who are interested and willing to serve on the Board. The Commission will conduct an election to determine who will be nominated for each domestic producer seat. USDA will conduct an election among importers or importer associations will nominate persons to fill the importer seats. Two names must be submitted for each member and alternate position. From the names submitted, the Secretary will appoint the members and alternates of the Board.

How Can I Express My Views on the Proposals?

You have 45 days to submit written comments to USDA on the proposals and also to OMB on the paperwork burden associated with the proposed order. You may submit your comments by mail, fax, or e-mail as indicated above. In addition, if you are a producer or importer of Hass avocados, you will have the opportunity to vote either ''yes'' or ''no'' in a referendum to determine if the program will be implemented.

If the Hass Avocado Program Is Implemented and There Are Concerns About How It Is Operating, What Can the Secretary Do?

Three years after the program is implemented, the Secretary could conduct a referendum to determine whether the Hass avocado industry supports continuation of the program: (1) at any time; (2) at the request of 30 percent or more of the producers and importers required to pay assessments; or (3) at the request of the Board.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by OMB.

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1212 of the Act states that the Act may not be construed to preempt or supersede any other program relating to Hass avocado promotion, research, industry information, and

consumer information organized and operated under the laws of the United States or of a state.

Under Section 1207 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The California avocado industry initiated this program by asking the U.S. Congress (Congress) to pass legislation to authorize the Secretary to create a generic program of promotion and research for Hass avocados. Congress found that this program is vital to the welfare of Hass avocado producers and other persons concerned with producing, marketing, and processing Hass avocados.

This program is intended to: develop and finance an effective and coordinated program of research, promotion, industry information, and consumer information regarding Hass avocados; strengthen the position of the Hass avocado industry in U.S. markets; maintain, develop, and expand domestic markets for Hass avocados; and treat persons producing, handling, and importing avocados fairly.

Hass avocado producers and importers must approve the program in a referendum in advance of its implementation and would serve on the Board that would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision of the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, handlers would be required to collect assessments from producers, file reports, and submit assessments to the Board. Importers would be required to remit to the Board assessments not collected by the U.S. Customs Service (Customs) and to file reports with the Board. Exports of U.S. Hass avocados would be exempt from assessment. While the proposed Order would impose certain recordkeeping requirements on producers, handlers, and importers, information required under the proposed Order could be compiled from records currently maintained and would involve clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. The estimated cost in providing information to the Board by the 6,310 respondents (6,000 producers, 100 handlers, 200 importers, and 10 exempt handlers) would be $40,020 for all producers or $6.67 per producer, $6,500 for all handlers or $65 per handler, $50 for all importers or $0.25 per importer, and $25 for exempt handlers or $2.50 per exempt handler. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The Department would oversee the operation of the program. Three years after the program is implemented, the Secretary could conduct a referendum to determine whether the Hass avocado industry supports continuation of the program at any time, at the request of 30 percent or more of the producers and importers required to pay assessments, or at the request of the Board.

There are approximately 6,000 producers, 200 importers, and 100 first handlers of Hass avocados that would be covered by the program. The program would also affect 10 exempt handlers, a state association (the Commission), which consists of avocado producers, and several importer associations.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $500,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. Importers and first handlers would be considered agricultural service firms. Using these criteria, most producers and importers to be covered by the proposed program would be considered small businesses, and most handlers would not. On August 6, 2001, the threshold for small agricultural producers will be increased to $750,000. This increase has little import on the determination of whether those covered by the proposed program would be considered small businesses.

According to the USDA's National Agricultural Statistics Service (NASS), total U.S. production of all varieties of avocados during the 1999–2000 season was 181,300 tons, most of which was utilized fresh except for a small processed quantity that NASS included in fresh utilization to protect the confidentiality of individual operations. The value of the 1999–2000 crop was $392 million. Production in 1999–2000 was up 14 percent from the previous year's total of 159,250 tons, which had a value of $344 million.

California is the source for practically all of the Hass avocados handled in the United States. In turn, according to industry sources, Hass avocados account for about 85 percent of the total California avocado crop. The California Hass avocado industry consists of approximately 6,000 producers.

The majority of imported fresh avocados come from Chile, with the remaining coming from Mexico, the Dominican Republic, and New Zealand. Data on imports is not collected by variety, but it is believed to be mostly Hass. Hass avocados are imported both in fresh and processed form. According to U.S. Census Bureau data, fresh avocado imports during the 1999–2000 season (November/October) accounted for about 75 percent of the total tonnage of fresh and processed avocados imported. In 1999–2000, imported fresh avocados totaled 66,237 tons, up from 55,515 tons during the 1998–1999 season.

The total import value for fresh and processed avocados was $137 million in 1999–2000, up from $95 million in 1998–99. Almost all prepared or preserved avocado imports come from Mexico. The trend in imports is up, and imports have more than doubled since 1995.

The value of exports in 1999–2000 was $4.9 million, down from $7 million.

The proposed Hass avocado Order would authorize assessments on producers (to be collected by first handlers) and on importers (collected by Customs) of Hass avocados at an initial rate of 2.5 cents a pound. Exports of

domestic Hass avocados are exempt from assessment. At the initial rate of assessment, about $10 million will be collected to administer the program: about 65 percent from domestic production and 35 percent from imports. The Act authorizes assessments on fresh, frozen, and processed Hass avocados. However, initially only fresh Hass avocados will be assessed.

An exempt handler is a person who would otherwise be considered a first handler, except that all Hass avocados purchased by the person have already been subject to assessments under the Order. Others affected by the program would be the Commission, which would receive 85 percent of the assessments paid by domestic producers, and importer associations which would receive 85 percent of the assessments paid by their members. The Association could use the assessment funds to promote California Hass avocados in the United States, and the importer associations could use the assessments to promote Hass avocados on a country-of-origin basis in the United States. The funds remaining with the Board would be used to promote Hass avocados in the United States. The Board would also enter into contracts with the Association as provided for in the Act.

Associations and related industry media would receive news releases and other information regarding the implementation and referendum process. Furthermore, all the information would be available electronically.

If the program is implemented, the Hass avocado industry would nominate individuals to serve as members and alternates of the Board. USDA would ensure that the nominees represent the Hass avocado industry as specified in the Act.

The Board would develop guidelines for compliance with the program. The Board would recommend changes in the assessment rate; programs, plans, and projects; a budget; and any rules and regulations that might be necessary for the administration of the program. Among the rules and regulations that might be necessary for the administration of the program would be provisions to assess other types of avocados that are so similar to the Hass variety that they are indistinguishable to consumers in fresh form. The Board could also recommend the assessment of imported frozen and processed Hass avocados. The Board also has the authority to recommend the exemption of certain processed avocado products for sale to a retailer if the avocado portion of the products does not constitute a substantial value of the product. The administrative expenses of the Board are limited by the Act to no more than 10 percent of its assessment income.

There is a federal marketing order program for avocados grown in south Florida [7 CFR part 915]. According to NASS, in Florida, there is little or no production of Hass avocados. Under the program, Hass avocados are covered by the grade regulations, but not by the maturity regulations. Since California is the source for over 95 percent of avocados produced in the United States and Florida does not produce Hass avocados, there is little duplication between this Order and the federal marketing order.

There is also a state avocado program in California, which is administered by the Commission. The Commission's chief objective is to increase consumer awareness of and demand for avocados on behalf of the state's 6,000 growers. The Commission assesses growers a percentage-of-revenue fee allowed under the California Marketing Act to fund a variety of market-development programs. In 1998–1999, California producers paid $13,165,544 in assessments at a rate of 4 cents of the gross dollar value. In 1999–2000, the assessment rate was 3.5 percent of the gross dollar value. The Commission's assessment may not exceed 6.5 percent of the gross dollar value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of growers. It also provides that expenditures for administrative purposes within the maximum assessment shall not exceed 2.5 percent of the gross dollar value of sales. Handlers collect the assessments and remit the money to the Commission.

Paragraph (b)(1) of section 1212 of the Act states that nothing in the Act may be construed to provide for the control of production or otherwise limit the right of any Hass avocado grower, handler, and importer to produce, handle, or import Hass avocados. Paragraph (b)(2) of section 1212 of the Act states that the Order must treat all persons producing, handling, and importing Hass avocados fairly and that the Order must be implemented in an equitable manner. Further, paragraph (c) of section 1212 states that nothing in the Act may be construed to preempt or supersede any other program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a state.

Alternatives to the proposed Hass avocado program are limited by the Act. The Act requires the Secretary to publish proposals submitted by the Commission and others for a Hass avocado program. In addition, the Act is very specific on many provisions which must be included in the programs. However, the Act does include a few alternatives which USDA has included as permissive terms—rather than requirement—in this proposed rule. These alternatives include the identification and assessment of avocado varieties that are so similar to Hass avocados that they are indistinguishable to consumers in fresh form, the exemption of certain processed Hass avocado products for sale to a retailer if the Hass avocado portion of the products does not constitute a substantial value of the product, and the identification and assessment of imported frozen and processed Hass avocado products.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval. Those requirements will not become effective prior to OMB review.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: NA.

Type of Request: New information collection for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on producers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures that is published separately in this issue of **Federal Register**.

Under the proposed program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on producers, handlers, and importers, information required under the proposed Order could be compiled from records currently maintained.

The estimated annual cost in providing information to the Board by the estimated 6,310 respondents (6,000 producers, 100 handlers, 200 importers, and 10 exempt handlers) would be $40,020 for all producers or $6.67 per producer; $6,500 for all handlers or $65 per handler, $50 for all importers or $0.25 per importer, and $25 for all exempt handlers or $2.50 per exempt handler. These totals have been estimated by multiplying total burden hours requested by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already maintained by handlers for the Commission.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information. Collecting information monthly coincides with normal business practices.

Collecting information less frequently would hinder the Board from effectively carrying out the provisions of the program. Requiring reports less frequently than monthly would impose additional recordkeeping requirements by requiring information from several months to be consolidated prior to filling out the form rather than just copying end-of-month figures already available onto the forms. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) *A monthly report by each handler who handles Hass avocados.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.50 hours per each respondent reporting on Hass avocados handled.

Respondents: Handlers.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 600 hours.

(2) *A periodic report by each importer who imports Hass avocados.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per each importer respondent reporting on Hass avocados imported.

Respondents: Importers.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 1 every ten years (0.10).

Estimated Total Annual Burden on Respondents: 5 hours.

(3) *An exemption application for handlers who will be exempt from assessments.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each exempt producer and importer.

Respondents: Exempt handlers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.5 hours.

(4) *Voting in the nomination process.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Producers and importers.

Estimated Number of Respondents: 6,200.

Estimated Number of Responses per Respondent: 1 every 3 years (0.33).

Estimated Total Annual Burden on Respondents: 1,023 hours.

(5) *A background questionnaire for nominees.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each producer and importer nominated to the Board.

Respondents: Producers and importers.

Estimated Number of Respondents: 24 for the initial nominations to the Board and approximately 12 respondents annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12 hours for the initial nominations to the Board and 6 hours annually thereafter.

(6) *A requirement to maintain records sufficient to verify reports submitted under the Order for two years.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: Producers, handlers and importers.

Estimated Number of Recordkeepers: 6,300.

Estimated Total Recordkeeping Hours: 3,150 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the AMS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the Docket Clerk and the OMB Desk Officer for Agriculture at the address listed above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The Hass Avocado Research, Promotion, and Consumer Information Act (Act) authorizes the Secretary of Agriculture (Secretary) to establish a Hass avocado research, promotion, and information program. The program would be funded by an assessment levied on producers and importers of 2.5 cents per pound of Hass avocados. The rate could be raised up to a

maximum rate of 5 cents per pound. Exports of U.S. Hass avocados would be exempt from assessment. The Act authorizes assessments on domestic Hass avocados and on imports of fresh, frozen, and processed Hass avocados. Initially, only fresh domestic and imported Hass avocados will be assessed.

The Hass Avocado Board (Board) would use the funds to pay for research, promotion, industry information, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

The Board would be composed of 12 voting members: 7 producers, 2 importers, and 3 producers and importers (swing seats). The three ''swing'' seats will be allocated to producers and importers so as to assure as nearly possible that the composition of the Board reflects the proportion of domestic production and imports supplying the United States market, based on the three-year average of domestic production and imports.

First handlers would be responsible for the collection of assessments from the producer and payment to the Board. First handlers would be required to maintain records for each producer for whom Hass avocados is handled, including Hass avocados produced by the handler. In addition, first handlers would be required to file reports regarding the collection, payment, or remittance of the assessments and the disposition of exported Hass avocados, which are exempt from assessment. All information obtained through handler reports would be kept confidential.

An exempt handler is a person who would otherwise be considered a first handler, except that all Hass avocados purchased by the person have already been subject to assessments under the Order. Others affected by the program would be the Commission, which would receive 85 percent of the assessments paid by domestic producers, and importer associations which would receive 85 percent of the assessments paid by their members. The Association could use the assessment funds to promote California Hass avocados in the United States, and the importer associations could use the assessments to promote Hass avocados on a country-of-origin basis in the United States. The funds remaining with the Board would be used to promote Hass avocados in the United States. The Board would also enter into contracts with the Association as provided for in the Act.

The U.S. Customs Service (Customs) would collect assessments on imported Hass avocados and would remit those assessments to the Board for a fee.

The Act requires the Department to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Hass avocado producers and importers would vote in the referendum to determine whether they favor the Order's implementation. The proposed Order must be approved by a majority of eligible producers and importers voting in the referendum. After the program has been in operation for three years, referenda could be conducted at any time, when requested by 30 percent of Hass avocado producers and importers covered by the Order, or when requested by the Board.

The Act provides for the submission of proposals for a Hass avocado research, promotion, and information Order by industry organizations or any other interested person affected by the Act.

The Department issued a news release on January 8, 2001, requesting proposals for an initial Order or portions of an initial Order by February 7, 2001. A second news release, extending the deadline for submission of proposals to March 9, 2001, was issued on February 2, 2001.

An entire proposed Order was submitted by the Commission (Proposal 1). In addition, partial proposals were submitted by the Asociacion de Productores y Empacadores Exportadores de Aguacate de Michoacan (APEAM) (Proposal 2); the Chilean Exporters Association (ASOEX), Chilean Fruit Growers Federation (FEDEFRUTA), and Comite de Paltas de Chile (Proposal 3); and the New Zealand Avocado Growers Association (NZAGA) and the New Zealand Avocado Industry Council (NZAIC) (Proposal 4). The Chilean and New Zealand proposals have been considered jointly because they are identical in every respect except for the provision on the importer definition, which is included in the Chilean comments, but not in the New Zealand comment. Proposals 2, 3, and 4 contain alternatives to provisions in Proposal 1 as well as provisions not included in Proposal 1.

Proposal 1

The proposed Order submitted by the Commission is summarized as follows:

Sections 1219.1 through 1219.26 of the proposed Order define certain terms, such as Hass avocado, handler, producer, and importer, which are used in the proposed Order.

Sections 1219.30 through 1219.42 include provisions relating to the establishment, adjustment, and membership; nominations; appointment; terms of office; vacancies; reimbursement; powers; and duties of the Board.

The Board would be the body organized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about Hass avocados, under the supervision of the Secretary. Further, the Board would be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund.

Sections 1219.50 through 1219.57 authorize the collection of assessments, specify who pays them and how, and specifies persons who would be exempt from paying the assessment. The assessment rate may not exceed 5 cents per pound of Hass avocados. The assessment sections also outline the procedures to be followed by handlers and importers for remitting assessments; and establish interest charges for unpaid or late assessments.

Sections 1219.60 through 1219.64 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports and the maintenance of a list of handlers required by the Act.

Sections 1219.70 through 1214.77 describe the rights of the Secretary, the authority for the Secretary to suspend or terminate the Order, proceedings after termination, the effect of termination or amendment, personal liability of Board members and staff, separability, amendments, and OMB control number.

The Department has modified the Commission's proposal to make it consistent with the Act, as necessary as well as provide clarity, consistency, and correctness with respect to word usage and terminology. For example, the Department alphabetized definitions in §§ 1219.1 through 1219.26; organized sections of the Order to be more consistent with current programs and renumbered them accordingly; deleted redundant provisions; deleted referendum procedures and drafted a separate rule on referendum procedures; and changed the proposal to make it consistent with the Act and USDA policy.

In the definitions section, the definitions of ''crop year'' and ''Association'' were added to provide clarity, and the definition of ''retailer'' was removed because a specific definition was not warranted.

In the apportionment of three swing positions in § 1219.30(b)(3), USDA specified that Customs or USDA may

provide import data in order to ensure accuracy. Section 1219.31(a)(3) was changed to indicate that two nominees must be submitted for each producer vacancy and two nominees must be submitted for each alternate vacancy because this is the standard practice for similar national programs. In § 1219.36(d), USDA specified that nominations and replacement shall not be required if the unexpired term is less than six months, and, in § 1219.35, a term of office for alternates was added to enhance administration of the program. In § 1219.36, authority for the Board to select alternates to fill vacant alternate positions by majority vote was revised to state that the Board may select, by majority vote, nominees to submit to the Secretary for appointment. The Commission's proposal provided for the Board to appoint the replacement members, but only the Secretary may appoint persons to serve on the Board as members or alternates. A paragraph on bylaws was added to § 1219.38 as paragraph (b) to ensure that the activities of the Board are consistent with the Order. In § 1219.38(k), the citation for the act which requires periodic evaluations was corrected so that it complies with provisions of the Federal Agricultural Improvement and Reform Act of 1996 [7 U.S.C. 7401 *et seq.*]

Under § 1219.52, the Department revised the Commission's proposed limitation on administrative expenses of Board to 10 percent of the funds available for generic promotion and research to reflect the fact that as much as 85 percent of the assessments collected under the program could be remitted to the Association and importer associations. The Act limits the administrative expenses of the Board in carrying out its generic programs, plans, and projects. In addition, the provision for the Board to make payments of assessments to the Association and importer associations within 30 days following the month in which the assessments were received because this language was inconsistent with other provisions which require payments to the Association and importer associations within 30 days of receipt of the assessments by the Board. USDA modified § 1219.56 to specify that the Board will apply overpayments of assessments against the amount due in succeeding months unless the person requests a refund.

A requirement for producers and exempt handlers to maintain records and file reports with the Board or the Secretary was added to § 1219.60(a) in order to facilitate enforcement of the Order and to make the Order consistent with current practice for similar national programs. In § 1219.61, authority for the Board to use agents to conduct audits—not just Board and USDA employees—was added to increase flexibility. Since agents were added in § 1219.61 for audits, they were also added to § 1219.63(a) on confidentiality to ensure that information obtained in audits is protected.

Lastly, a section on the rights of the Secretary was added so that the program would be consistent with other national programs and specify the rights of the Secretary.

Proposal 2

A partial proposal was submitted by APEAM. APEAM is an association of persons who export avocados produced in Mexico to the United States.

We are publishing several of the provisions submitted by APEAM. Other provisions are not being published either because they are covered by Proposal 1 or because they are not authorized by the Act.

The provisions that are being published for comment are as follows: (1) A definition of first handler; (2) a definition of fiscal period; (3) a provision requiring the Department to use data from import associations, Customs, and the Bureau of the Census for determining the level of imports in making its determination of the composition of the initial Board; (4) a provision defining ''substantial activity'' as it pertains to eligibility requirements for importer members; (5) a provision authorizing importer associations in general or by country of origin; (6) a provision authorizing the Secretary to certify only one importer association per country of origin; (7) authority for importer associations to include representatives of foreign avocado exporting industries; (8) a provision authorizing importer associations to invest funds received from the Board and conduct promotion and research on a country of origin basis. (9) a provision requiring final payments for a crop year to be received no later than May 31; and (10) a provision requiring the administrative staff of the Board to periodically review the list of Hass avocado producers and requiring the Association to provide a list of producers to the Secretary or to the administrative staff of the Board.

The following provisions are not being published because they are covered by Proposal 1: (1) A provision requiring the Board to remit funds to importer associations no later than 30 days after such funds are received by the Board; (2) a requirement to allocate producer and importer members in the three swing positions in such a manner that, to the extent possible, importers will have proportional representation on the Board as a whole; (3) a requirement to reallocate the three swing positions to producers and importers in such a manner that, to the extent possible, there will be proportional representation on the Board as a whole.

The following provisions are not being published because they are not authorized by the Act: (1) Authority for the Secretary to appoint a board to govern importer associations; (2) authority for Customs to send import assessments directly to importer associations; (3) a requirement for the Board to remit 85 percent of all import assessments to importer associations; (4) authority for importers to pay assessments 30 days after the end of the month in which the imported Hass avocados are sold in the United States; and (5) authority for the Board to enter into a contract or agreement with an importer association.

Proposals 3 and 4

Proposal 3 was submitted by ASOEX and FEDEFRUTA and the Chilean Avocado Committee. ASOEX and FEDFRUTA are the principal trade associations representing fruit exporters and producers in Chile. Proposal 4 was submitted by NZAGA and NZAIC. NZAGA is a voluntary association of avocado growers representing avocado production in New Zealand.

We are publishing several of the provisions submitted by ASOEX, FEDEFRUTA, NZAGA, and NZAIC. Other provisions are not being published either because they are covered by Proposals 1 and 2 or because they are not authorized by the Act.

The provisions that are being published are: (1) An eligibility requirement for importer members on the Board; (2) a requirement for the Board's generic programs to be conducted throughout the year; (3) a requirement for the Board to consult with the Commission and country-of-origin importer associations when developing generic programs; (4) a provision limiting the Board's administrative expenses for generic programs to 1.5 percent of total assessments; (5) a requirement for importer associations to be formed as soon as possible after the effective date of the Order; (6) a requirement for importer associations to establish bylaws; (7) authority for importer associations to use existing organizations for establishing their associations and their promotional and

research programs; and (8) certification requirements for importer associations.

Provisions that will not be published because they are covered by Proposals 1 or 2 are: (1) A requirement for overall representation of importers on the Board to be based on the proportion of domestic and import assessments; (2) a requirement for the Secretary to notify all importer associations on nominations for the initial Board within 30 days of the effective date of the Order; (3) a requirement for the Secretary to develop nomination procedures for importer members; and (4) a requirement for the Secretary to prepare a ballot containing the names of all persons nominated by all importer associations.

The provisions which are not being published because they are not authorized by the Act are: (1) A requirement for USDA to serve as an advisor to importer associations; (2) a requirement for all importers and country-of-origin producers and exporters to participate in importer associations; (3) authorization for the assessment of all varieties of avocados; (4) a requirement for the Board to contract with importer associations; (5) authority for importers to pay import assessments 60 days after the sale of avocados in the United States; (6) a requirement for importer associations to receive 85 percent of all import assessments, prorated by each country of origin; (7) authority for producers and importers to receive credit towards their assessments under the proposed program for contributions to generic state or country of origin promotion programs at a regional, state, or local level; (8) authority for importer associations to use import assessments for reasonable administrative expenses; and (9) a requirement to include a vote by volume in referenda.

A 30-day comment period is provided on this proposed rule. This period is deemed appropriate to better effect the implementation time frames provided for in the Act.

USDA seeks comments on the provisions included in this proposed rule, the initial regulatory flexibility analysis, and the information collection burden that would be imposed by this rule. In addition, USDA requests information on how and when first handlers would collect the assessments due on domestic Hass avocados and remit the assessments to the Board and how long after importation occurs does Customs bill importers and how long Customs allows importers to remit the payment.

On June 25, 2001, the United States Supreme Court issued a decision in the case of *United States* v. *United Foods, Inc.* (*United Foods*), that held that the imposition of mandatory assessments to fund generic mushroom advertising violated the First Amendment insofar as it required the mushroom industry to subsidize commercial speech with which they disagreed. The Court expressly declined to reach the question whether the generic advertising conducted under the mushroom program constitutes government speech.

The Department will analyze all written views received to date as well as written comments on the three proposals published below before issuing a final Order.

List of Subjects in 7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Hass avocados, Promotion, Reporting and recordkeeping requirements.

Proposal I

1. Part 1219 is added to read as follows:

PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Hass Avocado Promotion, Research, and Information Order

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The Hass Avocado Board

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1219.39 Board procedure.
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Budgets, Expenses, and Assessments

1219.50 Budgets, programs, plans, and projects.
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1219.60 Reports.
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1219.70 Right of the Secretary.
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1219.73 Effect of termination or amendment.
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Subpart B—[Reserved]

Authority: 7 U.S.C. 7801–7813.

Subpart A—Hass Avocado Promotion, Research, and Information Act of 2000

Definitions

§ 1219.1 Act.

Act means the Hass Avocado Promotion, Research, and Information Act of 2000, Pub. L. 106–387, 7 U.S.C. 7801–7813, and any amendments thereto.

§ 1219.2 Association.

Association means an avocado organization established by State statute in a State with the majority of Hass avocado production in the United States.

§ 1219.3 Conflict of interest.

Conflict of interest means a situation in which a Board member or employee has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1219.4 Consumer information.

Consumer information means any action or program that disseminates or otherwise provides information to consumers and other persons, on the use, nutritional attributes, and other information that will assist consumers and other persons in the United States in making evaluations and decisions regarding the purchase, preparation, and use of Hass avocados.

§ 1219.5 Crop year.

Crop year means the period from November 1 of one year through October 31 of the following year, or such other one-year period recommended by the Board and approved by the Secretary.

§ 1219.6 Customs.

Customs means the United States Customs Service.

§ 1219.7 Department.

Department means the United States Department of Agriculture.

§ 1219.8 Exempt handler.

Exempt handler means a person who would otherwise be considered a first handler, except that all Hass avocados purchased by the person have already been subject to assessments under the Order. A person who handles both Hass avocados that have already been subject to assessments under the Order and Hass avocados that have not been subject to assessments under the Order is a first handler.

§ 1219.9 First handler.

First handler means a person operating in the Hass avocado marketing system that sells domestic or imported Hass avocados for consumption in the United States and who is responsible for remitting assessments to the Board. For the purposes of the Order, the term means the first person who handles Hass avocados for sale (except a common or contract carrier of Hass avocados owned by another person), including a producer who handles Hass avocados for sale of the producer's own production.

§ 1219.10 Fiscal period or marketing year.

Fiscal period or *marketing year* means the period beginning on November 1 of any year and extending through the last day of October of the following year, or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1219.11 Handle.

Handle means to pack, process, transport, purchase, or in any other way to place or cause Hass avocados to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of Hass avocados by the producer thereof to a handler.

§ 1219.12 Hass avocado.

Hass avocado means the fruit grown in or imported into the United States of the species *Persea americana* Mill., or other type of avocados that, in the determination of the Board, with approval of the Secretary, is so similar to the Hass variety avocado as to be indistinguishable to consumers in fresh form. For the purposes of this subpart, the term shall include all fruit in fresh, frozen, or any other processed form.

§ 1219.13 Hass Avocado Board.

Hass Avocado Board or the *Board* means the administrative body established pursuant to § 1219.40.

§ 1219.14 Importer.

Importer means any person who imports Hass avocados into the United States. The term includes a person who holds title to Hass avocados produced outside of the United States immediately upon release by Customs, as well as any person who acts on behalf of others, as an agent, broker, or consignee, to secure the release of Hass avocados from Customs and the introduction of the released Hass avocados into the current of commerce and who is listed in the import records of Customs as the importer of record for such Hass avocados.

§ 1219.15 Industry information.

Industry information means information, programs, and activities that are designed to increase efficiency in processing, enhance the development of new markets and marketing strategies, increase marketing efficiency, and enhance the image of Hass avocados and the Hass avocado industry in the United States.

§ 1219.16 Marketing.

Marketing means any activity related to the sale or other disposition of Hass avocados in any channel of commerce.

§ 1219.17 Order.

Order means this subpart.

§ 1219.18 Part and subpart.

Part means the Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order itself shall be a subpart of such part.

§ 1219.19 Person.

Person means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, cooperative, or any other legal entity.

§ 1219.20 Producer.

Producer means any person who is engaged in the business of producing Hass avocados in the United States for commercial use, who owns, or shares the ownership and risk of loss, of such Hass avocados.

§ 1219.21 Programs, plans, and projects.

Programs, plans, and projects means those research, promotion, and information programs, plans, studies, or projects established pursuant to § 1219.50.

§ 1219.22 Promotion.

Promotion means any action to advance the image, desirability, or marketability of Hass avocados in the United States, including paid advertising, sales promotion, and publicity. Promotion activities are designed to improve the competitive position and stimulate sales of Hass avocados in the domestic marketplace.

§ 1219.23 Research.

Research means any type of test, study, or analysis relating to market research, market development, and market efforts, or relating to the use, quality, or nutritional value of Hass avocados, other related food science research, or research designed to advance the knowledge, image, desirability, usage, or marketability of Hass avocados in the United States.

§ 1219.24 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1219.25 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 1219.26 United States.

United States means collectively the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the

Republic of the Marshall Islands, and the Federated States of Micronesia.

Hass Avocado Board

§ 1219.30 Establishment and membership.

(a) A Hass Avocado Board, hereinafter called the Board, is hereby established to administer the terms and provisions of this subpart. The Board shall consist of 12 members nominated by the Hass avocado industry and appointed by the Secretary as provided in this subpart, each of whom shall have an alternate nominated and appointed in the same manner as members of the Board are nominated and appointed. Board members and alternates shall be domiciled in the United States.

(b) The membership of the Board shall be divided as follows:

(1) Seven members and their alternates shall be producers of Hass avocados that are subject to assessments under this subpart;

(2) Two members and their alternates shall be importers of Hass avocados that are subject to assessments under this subpart; and

(3) Three members shall be producers of Hass avocados that are subject to assessments under this subpart or importers of Hass avocados that are subject to assessments under this subpart. Producers and importers shall be allocated to these positions so as to assure as nearly as possible that the composition of the 12-member Board reflects the proportion of domestic production and imports supplying the United States market. Such proportion shall be based on the Secretary's determination of the average volume of domestic production and the average volume of imports into the United States market over the previous three years. For determining proportional representation on the initial Board, the Secretary shall determine the domestic level of production and the level of imports by using data provided by the California Avocado Commission, the Department of Agriculture, the Department of Commerce, and Customs.

(c) Three years after the assessment of funds commences pursuant to this subpart, and at the end of each three-year period thereafter, the Board shall review the production of domestic Hass avocados in the United States and the volume of imported Hass avocados on the basis of the amount of assessments collected from producers and importers over the immediately preceding three-year period and, if warranted, recommend to the Secretary the reapportionment of the positions authorized in paragraph (b)(3) of this section to reflect changes in the proportion of domestic Hass avocado production to the volume of imported Hass avocados, to the extent possible in the Act. Any adjustment under this paragraph shall be subject to the review and approval of the Secretary.

(d) For purposes of this section, *importer* means a person who is involved in, as a substantial activity, the importation of Hass avocados for sale or marketing in the United States (either directly or as an agent, broker, or consignee of any person that produces Hass avocados outside of the United States for sale in the United States), who is subject to assessments under the Order, and who is listed by Customs as the importer of record for such Hass avocados.

§ 1219.31 Initial nomination and appointment of producer members and alternates.

(a) The Association will nominate producer members and alternates to serve on the Board in accordance with the following procedures.

(1) Within 30 days of implementation of this subpart, the Association shall establish a list of producers in the United States who are eligible to serve on the Board and notify all producers that they may nominate persons to serve as members and alternates on the Board.

(2) After names are received from the producers, the Association shall prepare a ballot with the names of all persons nominated and mail it to all producers to allow them the opportunity to vote for the persons who will represent their interests on the Board.

(3) After tabulating the vote, the Association shall announce the results and submit two names for each producer member and two names for each alternate producer member to the Secretary from the persons receiving the highest number of votes.

(b) The Secretary shall select the producer members and alternates of the Board from the names submitted by the Association.

§ 1219.32 Initial nomination and appointment of importer members and alternates.

(a) The Department will conduct the nomination process for the initial importer members and alternates on the Board in accordance with the following procedures.

(1) Within 30 days of implementation of this subpart, the Department shall notify all known importers and importer organizations that they may nominate persons to serve as importer members and alternates on the Board.

(2) After names are received from the importers and importer organizations, the Department shall prepare a ballot with the names of all persons nominated and mail it to all known importers and importer organizations to allow them the opportunity to vote for the persons who will represent their interests on the Board.

(3) After tabulating the vote, the Department shall announce the results and submit two names for each importer member and two names for each alternate importer member to the Secretary from the persons receiving the highest number of votes.

(b) The Secretary shall select the importer members and alternates of the Board from the nominees submitted.

§ 1219.33 Subsequent nomination and appointment of Board members and alternates.

The Board's staff shall announce at least 150 days in advance of the expiration of members' and alternates' terms that such terms are expiring and shall solicit nominations in accordance with procedures recommended by the Board and approved by the Secretary. Nominations for such positions should be submitted to the Secretary no less than 90 days prior to the expiration of the terms.

§ 1219.34 Failure to nominate.

In any case in which producers or importers fail to nominate individuals for appointment to the Board, the Secretary may appoint individuals to fill vacancies from the appropriate segments of the industry.

§ 1219.35 Term of office.

The members and alternate members of the Board shall serve for terms of three years, except the members of the initial Board shall serve terms as follows: Four members and four alternates shall serve for two-year terms; four members and four alternates shall serve for three-year terms; and four members and four alternates shall serve for four-year terms. No member shall serve more than two consecutive three-year terms. Members and alternates serving initial two-year or four-year terms may serve for one additional three-year term. A Board member may serve as an alternate during the years the member is ineligible for a member position. Each term of office will end on October 31, with new terms of office beginning on November 1.

§ 1219.36 Vacancies.

(a) In the event any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such member or alternate shall be disqualified from serving on the

Board and the position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Board shows adequate cause, the member shall be removed from office.

(c) Should any Board member position become vacant in the event of the death, removal, resignation, or disqualification, the alternate of that member shall automatically assume the position of said member. The alternate shall serve until the end of the member's normal term. If there is no alternate member to assume the position of member, the successor member and alternate shall be nominated and selected in the manner specified in §§ 1219.31, 1219.32, or 1219.33.

(d) Should any alternate member become vacant in the event of death, removal, resignation, or disqualification, the Board may nominate persons to serve for the unexpired term of such alternate member. The nomination shall be conducted at a regularly scheduled Board meeting as soon as practicable after the vacancy occurs. The Board may solicit the names of nominees from producers and importers prior to the meeting and from the floor of the meeting. All nominees must meet the qualifications for nomination. The Board shall submit two nominees for each vacancy to the Secretary. A vacancy will not be required to be filled if the unexpired term is less than six months.

§ 1219.37 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of the death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for the meeting.

§ 1219.38 Powers and duties.

The Board shall have the following powers and duties in addition to the responsibilities and authorities specified in other sections of this subpart:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, at the start of each fiscal period, and at such other times as the Board determines to be appropriate;

(d) To recommend to the Secretary rules and regulations to effectuate the terms and conditions of this subpart;

(e) To employ such persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(f) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board and approved by the Secretary;

(g) To develop budgets for the implementation of this subpart and submit the budgets to the Secretary for approval and to propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research;

(h) To develop and implement after the approval by the Secretary programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research, to contract or enter into agreements with appropriate persons to implement the programs, plans, and projects, and to pay the costs of the implementation of contracts and agreements with funds collected under this subpart.

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(j) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the Hass avocado industry's position in the domestic marketplace; to maintain and expand existing domestic markets and uses for Hass avocados; to create new domestic markets; and to carry out programs, plans, and projects designed to provide maximum benefits to the Hass avocado industry;

(k) To evaluate on-going and completed programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research and to comply with the independent evaluation provisions of the Federal Agricultural Improvement and Reform Act of 1996 [7 U.S.C. 7401 *et seq.*];

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary amendments to this Order;

(n) To invest, pending disbursement under a program, plan, or project, funds collected through assessments authorized under this Act only in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal and interest by the United States, except that income from any such invested funds may be used only for a purpose for which the invested funds may be used;

(o) To borrow funds necessary for the startup expenses of the Order;

(p) To cause the books of the Board to be audited by a qualified independent auditor at the end of each fiscal period and to submit a report of the audit directly to the Secretary;

(q) To give the Secretary the same notice of meetings and teleconferences of the Board and its committees as is given to members in order that the Secretary's representative(s) may attend or participate in the meetings;

(r) To act as intermediary between the Secretary and any producer, first handler, or importer;

(s) To periodically prepare and make public reports of its activities carried out, and at least once each fiscal period, to make public an accounting of funds received and expended; and

(t) To notify Hass avocado producers, first handlers, and importers of all Board meetings through news releases or other means.

§ 1219.39 Board procedure.

(a) At a properly convened meeting of the Board, seven (7) members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* that such alternates shall serve only when the member is absent from a meeting. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or other means of communication. Such alternative means for the Board taking action may be undertaken for various reasons. These reasons include the need to address matters of an emergency nature when there is not enough time to call an assembled meeting of the Board. All telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided an opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in the Board minutes.

(c) All Board members and alternates and the Secretary will be notified at least 10 days in advance of all Board meetings, except the chairperson of the Board can waive the 10-day notice requirement in matters of an emergency nature.

(d) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) There shall be no voting by proxy.

(f) The chairperson shall be a voting member of the Board.

§ 1219.40 Committee procedure.

(a) The Board may establish committees as deemed necessary to carry out the purposes and objectives of the Order.

(b) The chairperson of the Board shall appoint all committee chairpersons and shall appoint all members of each committee after consultation with the committee chairperson affected. Appointments are subject to approval by the Board and may be changed from time to time as determined by the chairperson of the Board with the concurrence of the Board.

(c) The chairperson of the Board may appoint committee members from among the Board members and alternates and from the industry in general.

(d) The rules and procedures under which committees conduct their activities shall be prescribed in the Board's bylaws.

(e) Committee members and the Secretary will be notified at least 10 days in advance of all committee meetings.

(f) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present.

(g) There shall be no voting by proxy on committees.

(h) The chairperson of the Board shall be an ex-officio member of all committees.

§ 1219.41 Compensation and expenses.

(a) The members and alternates of the Board and committee members shall serve without compensation but shall be reimbursed for reasonable out-of-pocket expenses, as approved by the Board, incurred by them in the performance of their duties.

(b) The Board shall have in place sufficient internal controls to prevent reimbursements or expenditures for unreasonable or otherwise controversial travel and meeting expenses.

§ 1219.42 Prohibited activities.

The Board may not engage in and shall prohibit its employees and agents from engaging in:

(a) Any action that would be a conflict of interest. For the purposes of this subpart, Board members and employees thereof must disclose any relationship with any organization or company that has a contract with the Board or operates a State promotion program. No member may vote on any matter in which the member or member's business entity has a financial interest.

(b) Using funds collected under this subpart for the purpose of influencing legislation or governmental action or policy, by local, national, and foreign governments, except to develop and make recommendations to the Secretary as provided for in this subpart.

(c) In a program, plan, or project conducted under this subpart:

(1) Making any reference to private brand names or making false, misleading, disparaging, or unwarranted claims on behalf of Hass avocados or

(2) Making any false, misleading, or disparaging statements with respect to the attributes or use of any agricultural product. This subsection shall not preclude the Board from offering its programs, plans, and projects for use by commercial parties under such terms and conditions as the Board may prescribe as approved by the Secretary.

(d) For the purposes of this section, a reference to State of origin or country of origin does not constitute a reference to a private brand name with regard to any funds credited to or disbursed by the Board to the Association or to any importer association established in accordance with § 1219.54(l).

Budgets, Expenses, and Assessments

§ 1219.50 Budgets, programs, plans, and projects.

(a) The Board shall submit to the Secretary, on a fiscal period basis, annual budgets of its anticipated expenses and disbursements of the Board in the administration of this subpart, including the projected costs of Hass avocado promotion, industry information, consumer information, and related research programs, plans, and projects. The first budget, which shall be submitted promptly after the effective date of this subpart, shall cover such period as may remain before the beginning of the next fiscal period. If such fiscal period is 90 days or less, the first budget shall cover such period, as well as the next fiscal period. Thereafter, the Board shall submit budgets for each succeeding fiscal period not less than 60 days before the beginning of such fiscal period.

(b) The Board shall receive and evaluate, or on its own initiative develop programs, plans and projects for Hass avocado promotion, industry information, consumer information as well as related research. The Board shall submit to the Secretary for approval any program, plan, or project authorized in this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, implementation, issuance, effectuation, administration, and evaluation of appropriate programs, plans, or projects for advertising, sales promotion, other promotion, and consumer information with respect to Hass avocados directed toward increasing the general demand for Hass avocados in the United States. Funds shall be available as necessary to carry out this section;

(2) The establishment, implementation, issuance, effectuation, administration, and evaluation of appropriate programs, plans, and projects designed to strengthen the position of the Hass avocado industry in the domestic marketplace; to maintain, develop, and expand markets for Hass avocados in the United States; to lead to the development of new marketing

strategies; to advance the image and desirability of, increase the efficiency of, and encourage further development of the Hass avocado industry; and to provide for the disbursement of necessary funds for the purposes described in this section;

(3) The establishment, implementation, issuance, effectuation, administration, and evaluation of programs, plans and projects for marketing development research; research on the sale, distribution, marketing, use, quality, and nutritional value of Hass avocados; and other research with respect to Hass avocado marketing, promotion, industry information, or consumer information, including the creation of new products thereof. Information acquired from such plans and projects shall be disseminated as appropriate. Funds shall be available as necessary to carry out this subsection; and

(4) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and information, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1219.54.

(c) A budget, program, plan, or project for Hass avocados promotion, industry information, consumer information, or related research may not be implemented prior to approval of the budget, program, plan, or project by the Secretary. If the Secretary fails to provide notice to the Board or approval or disapproval of a budget, program, plan, or project within 45 days after receipt, such budget, program, plan, or project shall be deemed approved by the Secretary and may be implemented by the Board.

(d) The Board, from time to time, may seek advice and consult with experts from the production, import, wholesale, and retail segments of the Hass avocado industry to assist in the development of promotion, industry information, consumer information, and related research programs, plans, and projects. For these purposes, the Board may appoint special committees composed of persons other than Board members. A committee so appointed shall consult directly with the Board.

§ 1219.51 Contracts and agreements.

(a) The Board shall enter into a contract or an agreement with the Association for the implementation of programs, plans, or projects for promotion, industry information, consumer information, or related research with respect to Hass avocados and for the payment of the cost of the contract or agreement with funds received by the Board under this subpart. The Board may disburse such funds as necessary for these purposes after such programs, plans, or projects have been submitted to and approved by the Secretary.

(b) Any contract or agreement entered into shall provide that the contracting or agreeing party shall develop and submit to the Board a program, plan or project, together with a budget that includes the estimated costs to be incurred for the program, plan or project, and such program, plan or project shall become effective on the approval of the Secretary. For such contract or agreement, the contracting or agreeing party shall:

(1) Keep accurate records of all transactions of the party;

(2) Account for funds received and expended;

(3) Make periodic reports to the Board of activities conducted; and

(4) Make such other reports as the Board or the Secretary shall require.

(c) The Secretary may audit the records of the contracting or agreeing party periodically.

(d) Contractors and subcontractors are subject to the provisions of § 1219.42.

(e) The Board may enter into contracts or agreements for administrative services, including contracts for employment, as may be required to conduct its business. To the extent appropriate to the contract involved, contracts or agreements entered into by the Board under the authority of this section shall conform to the provisions described in § 1219.51(b).

§ 1219.52 Control of administrative costs.

(a) As soon as practicable after this subpart becomes effective and after consultation with the Secretary and other appropriate persons, the Board shall implement a system of cost controls based on normally accepted business practices to:

(1) Ensure that the costs incurred by the Board in administering this subpart in any fiscal period shall not exceed 10 percent of the projected level of assessments and other income received by the Board for generic promotion and research programs for that fiscal period; and

(2) Cover the minimum administrative activities and personnel needed to properly administer and enforce this subpart, and conduct, supervise, and evaluate programs, plans, and projects under this subpart.

(b) Reimbursements to the Secretary required under § 1219.53(b) are excluded from the limitation on spending.

(c) To the extent possible, the Board shall use the resources, staffs, and facilities of existing avocado organizations as provided in § 1219.54(a).

§ 1219.53 Budget and expenses.

(a) The Board is authorized to incur such expenses, including provision for a reasonable reserve for operating contingencies, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board, including assessments, contributions from any person not subject to assessments under this subpart, and other funds available to the Board.

(b) The Board shall reimburse the Department:

(1) For expenses not to exceed $25,000 incurred by the Secretary in connection with any referendum conducted under the Act;

(2) For administrative costs incurred by the Secretary for supervisory work of up to two employee years annually after the Order or amendment to the Order has been issued and made effective; and

(3) For costs incurred by the Secretary in implementation of the Order, for enforcement of the Act and the order, for subsequent referenda conducted the Act, and in defending the Board in litigation arising out of action taken by the Board or otherwise in defense of the Order.

(c) The Board shall establish and maintain the minimum level of annual administrative expenses necessary to efficiently and effectively carry out the programs authorized by the Act. The Board shall include its annual administrative expenses as a separate item in its annual report. The Board shall adhere to its fiduciary responsibilities and ensure that all monies are spent in accordance with the Act, and the Order.

(d) With the approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first period of operation of the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. The contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

§ 1219.54 Assessments.

(a) Except as provided in § 1219.55, the initial rate of assessment shall be 2.5 cents per pound on fresh Hass avocados produced and handled in the United States and on fresh Hass avocados imported into the United States. An equivalent rate shall be assessed on processed and frozen Hass avocados on which an assessment has not been paid. Such equivalent rate will be assessed on processed or frozen Hass avocados upon the recommendation of the Board with the approval of the Secretary. The rate of assessment may be increased or decreased as recommended by the Board and approved by the Secretary. Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be announced by the Board at least 30 days prior to going into effect and shall not be subject to a vote in a referendum. The maximum assessment rate authorized is 5 cents per pound. No more than one assessment shall be made on any Hass avocados.

(b) *Domestic assessments.* The collection of assessments on domestic Hass avocados will be the responsibility of the first handler.

(1) In the case of a producer acting as the producer's own first handler, the producer will be required to collect and remit the assessments due to the Board.

(2) Each first handler shall collect from the producer and pay to the Board an assessment of 2.5 cents per pound in accordance with this subpart. Assessments shall be remitted by each first handler to the Board or its agent within 30 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place.

(3) The first handler shall maintain a separate record of the domestic Hass avocados of each producer whose domestic Hass avocados are handled, including the domestic Hass avocados owned by the handler and domestic Hass avocados that are exported. For the purposes of this section, a producer who is also a handler shall be considered the first handler of domestic Hass avocados produced by such producer, and the first handler shall be the first person who packs the domestic Hass avocados for sale at the wholesale or retail level.

(4) Assessment of other types of fresh avocados may be added at the recommendation of the Board with the approval of the Secretary.

(c) *Import assessments.* Each importer of fresh Hass avocados shall pay an assessment to the Board through Customs on fresh Hass avocados imported for marketing in the United States.

(1) The assessment rate for imported fresh Hass avocados shall be the same or equivalent to the rate for fresh Hass avocados produced and handled in the United States.

(2) The import assessment shall be uniformly applied to imported fresh Hass avocados that are identified by the number 08–04.00.00.10 in the Harmonized Tariff Schedule of the United States or any other numbers to identify fresh Hass avocados. Assessments on other types of imported fresh avocados or on processed Hass avocados, such as prepared, preserved, or frozen Hass avocados or Hass avocado paste, puree, and oil will be added at the recommendation of the Board with the approval of the Secretary.

(3) The assessments due on imported Hass avocados shall be paid when they are released from custody by Customs and introduced into the stream of commerce in the United States.

(d) All assessment payments and reports will be submitted to the Board's office. All final payments for a crop year are to be received no later than November 30 of that year, unless the Board determines that assessments due from the first handler shall be paid to the Board at a different time and manner, with approval of the Secretary.

(e) A late payment charge prescribed by the Secretary shall be imposed on any first handler who fails to remit to the Board the total amount for which any such handler is liable on or before the due date. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed by the Secretary. The timeliness of a payment to the Board shall be based on the date the payment is actually received by the Board.

(f) Regulations issued by the Secretary may provide for different first handler payment schedules of assessments on domestic Hass avocados, so as to recognize differences in marketing or purchasing practices and procedures.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with approval of the Secretary.

(i) The collection of assessments shall commence on or after a date established by the Secretary and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments in an interest-bearing account until the Board is constituted and the funds are transferred to the Board.

(j) To facilitate the payment of assessments under this section, the Board shall publish lists of first handlers required to remit assessments under this subpart and exempt handlers.

(k) The Association shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados produced in such State. Such funds shall be remitted to such State organization no later than 30 days after such funds are received by the Board. In addition, such funds and any proceeds from the investment of such funds shall be used by the Association to finance promotion, research, consumer information, and industry information programs, plans, and projects in the United States. However, no such funds shall be used for any administrative expenses incurred by the Association.

(l) An association of Hass avocado importers established pursuant to State law or certified by the Secretary shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados imported by its members. Such funds shall be remitted to such importer association no later than 30 days after such funds are received by the Board. In addition, such funds and any proceeds from the investment of such funds shall be used by the importer association to finance promotion, research, consumer information, and industry information programs, plans, and projects in the United States. However, no such funds shall be used for any administrative expenses incurred by the importer association.

(m) An association of avocado importers is eligible to receive assessment funds and any proceeds from the investment of such funds only if such importer association is:

(1) Established pursuant to State law that requires detailed State regulation comparable to that applicable to the State organization of domestic avocado producers, as determined by the Secretary; or

(2) Certified by the Secretary as meeting the requirements applicable to the Board as to its operations and obligations, including budgets, programs, plans, projects, audits, conflicts of interest, and reimbursements for administrative costs incurred by the Secretary.

(n) In general, assessment funds received by the Board shall be used:

(1) For payment of costs incurred in implementing and administering this subpart;

(2) To provide for a reasonable reserve to be maintained from assessments to be available for contingencies; and

(3) To cover the administrative costs incurred by the Secretary in implementing and administering this Act, except for the limits on expenses of the Secretary set forth in § 1219.53(b).

(o) The Board may establish an operating monetary reserve which may carry over to subsequent fiscal periods: *Provided, That* the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, reserve funds may be used to defray any expenses authorized under this part.

§ 1219.55 Exemption from assessment.

(a) Any sale of Hass avocados for export from the United States is exempt from assessment.

(b) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt Hass avocados.

§ 1219.56 Adjustments of accounts.

Whenever the Board or the Secretary determines through an audit of a person's reports, records, books, or accounts or by some other means that additional money is due to the Board, the person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against any amounts due in succeeding months unless the person requests a refund of the overpayment.

§ 1219.57 Patents, copyrights, trademarks, publications, and product formulations.

(a) Any patents, copyrights, trademarks, inventions, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval of the Secretary. Section 1219.72 describes the procedures for termination.

(b) Should patents, copyrights, trademarks, inventions, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, trademarks, inventions, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, trademark, invention, publication, or product formulation in a manner consistent with paragraph (a) of this section.

Reports, Books, and Records

§ 1219.60 Reports.

(a) Each first handler of domestic Hass avocados, producer, and importer subject to this subpart shall report to the administrative staff of the Board, at such times and in such manner as the Board may prescribe, such information as may be necessary for the Board to perform its duties.

(b) First handler reports shall include, but shall not be limited to, the following:

(1) Number of pounds of domestic Hass avocados received during the reporting period;

(2) Number of pounds on which assessments were collected;

(3) Assessments collected during the reporting period;

(4) Name and address of person(s) from whom the first handler collected the assessments on each pound handled;

(5) Date collection was made on each pound handled;

(6) Record of assessments paid, including a statement from the handler that assessments have been paid on all domestic Hass avocados handled during the reporting period; and

(7) Number of pounds exported.

(c) Each importer subject to this subpart may be required to report the following:

(1) Number of pounds of Hass avocados imported during the reporting period;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the importer;

(4) Date collection was made on each pound imported and to whom payment was made; and

(5) Record of each importation of Hass avocados during such period, giving quantity, variety, date, and port of entry.

§ 1219.61 Books and records.

Each producer, first handler, and importer subject to this subpart shall maintain and make available for inspection by the employees and agents of the Board and the Secretary, such books and records as are necessary to carry out the provisions of this subpart, and the regulations issued thereunder, including such records as are necessary to verify any reports required. Books and records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1219.62 Books and records of the Board.

(a) The Board shall maintain such books and records as the Secretary may require. Such books and records shall be made available upon request by the Secretary for inspection and audit.

(b) The Board shall prepare and submit to the Secretary, from time to time, such reports as the Secretary may require.

(c) The Board shall account for the receipt and disbursement of all the funds entrusted to the Board.

(d) The Board shall cause the books and records of the Board to be audited by an independent auditor at the end of each fiscal period. A report of each audit shall be submitted to the Secretary.

§ 1219.63 Confidential treatment.

(a) All information obtained from the books, records, or reports under this Act, this subpart, and the regulations issued thereunder shall be kept confidential and shall not be disclosed to the public by any person, including all current and former employees and agents of the Department, the Board, and contracting and subcontracting agencies or agreeing parties having access to such information. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed, and then only in a judicial proceeding or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected from such reports, if such statements do not identify the information furnished by any person; or

(2) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

(b) Any disclosure of any confidential information by any employee or agent of the Board shall be considered willful misconduct.

(c) No information on how a person voted in a referendum conducted under the Act shall be made public.

§ 1219.64 List of importers.

The administrative staff of the Board shall periodically review the list of importers of Hass avocados to determine whether persons on the list are subject to this subpart. On the request of the Secretary, Customs shall provide to the Secretary or the administrative staff of the Board a list of importers of Hass avocados.

Miscellaneous

§ 1219.70 Right of the Secretary.

All fiscal matters, programs, plans, and projects, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1219.71 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Order or the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers and importers voting who, during a representative period determined by the Secretary, have been engaged in the production or importation of Hass avocados.

(c) If, as a result of a referendum, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Suspend or terminate, as appropriate, the collection of assessments not later than 180 days after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

§ 1219.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property owned, in possession of or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and (4) Upon the request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or, if not practicable, shall be turned over to the Secretary to be distributed to authorized Hass avocado producer and importer organizations in the interest of continuing Hass avocado promotion, research, and information programs.

§ 1219.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder; or (b) Release or extinguish any violation of this subpart or of any rule or regulation issued thereunder; or (c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any person, with respect to any such violation.

§ 1219.74 Personal liability.

No member, alternate member, employee, or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of Association or omission, as such member, alternate, employee, or agent, except for acts of dishonesty or willful misconduct.

§ 1219.75 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1219.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary. Except for changes in the assessment rate, the provisions of the Act applicable to the Order are applicable to any amendment of the Order.

§ 1219.77 OMB control number.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number _____.[1]

Proposal 2

3. Part 1219 is added as set forth in Proposal 1 with the following changes:

* * * * *

Definitions

* * * * *

§ 1219.9 First handler.

First handler means the first person operating in the Hass avocado marketing system that sells domestic or imported Hass avocados in the United States for domestic consumption, and who is responsible for remitting assessments to the Board. The term includes an importer or producer who sells directly to consumers of Hass avocados that the importer has imported into the United States or the producer has produced in the United States.

§ 1219.10 Fiscal period or marketing year.

Fiscal period or marketing year means the period beginning on April 1 of any year and extending through the last day of March of the following year.

* * * * *

[1] OMB will assign a control number after it has approved the information collection requirements of this subpart.

Hass Avocado Board

§ 1219.30 Establishment and membership.

(a) * * *

(b) * * *

(3) Three members shall be producers of Hass avocados that are subject to assessments under this subpart or importers of Hass avocados that are subject to assessments under this subpart. Producers and importers shall be allocated to these positions so as to assure as nearly as possible that the composition of the 12-member Board reflects the proportion of domestic production and imports supplying the United States market. Such proportion shall be based on the Secretary's determine of the average volume of domestic production and the average volume of imports into the United States market over the previous three years. For determining proportional representation on the initial Board, the Secretary shall determine the domestic level of production using data provided by the Association and the Department and shall determine the level of imports by using data provided by importer associations, the U.S. Customs Service, and the Bureau of the Census.

* * * * *

(d) For purposes of this section, *importer* means a person who is involved in, as a substantial activity, the importation of Has avocados into the United States and who is subject to assessments under the Order. To be deemed to have a substantial activity in the importation and marketing of Hass avocados, the person must have imported 75 percent or more of the total annual volume of all Hass avocados produced, handled, or imported by such person.

Hass Avocado Importer Associations

§ 1219.___ Establishment and membership.

(a) Hass avocado importer associations may be established pursuant to the terms and provisions of this section. An importer association may represent all importers of Hass avocados or importers of Hass avocados from a particular foreign country. An importer association which meets the requirements applicable to the Board with respect to budgets, plans, projects, audits, conflicts of interest, and reimbursements for administrative costs incurred by the Secretary shall be certified by the Secretary. The Secretary may not certify more than one importer association per country of origin.

(b) An importer association may be composed of importers as well as representatives of the foreign avocado exporting industries.

* * * * *

Budgets, Expenses, and Assessments

§ 1219.54 Assessments.

* * * * *

(d) All final assessment payments and reports will be submitted to the office of the Board. All final payments for a crop year are to be received no later than May 31 of that year, unless the Board determines that assessments due from the first handler shall be paid to the Board at a different time and manner, with the approval of the Secretary.

* * * * *

(l) An association of Hass avocado importers shall receive an amount of assessment funds equal to the product obtained by multiplying the aggregate amount of assessments attributable to the pounds of Hass avocados imported by its member importers by 85 percent. Such funds shall be remitted to such importer association no later than 30 days after such funds are received by the Board. Such funds shall be used by the importer association for the financing of promotion, research, consumer information, and industry information programs, plans, and projects in the United States. An importer association representing importers of Hass avocados from a single foreign country may finance the promotion and research on a country of origin basis rather than a generic basis. However, no such funds shall be used for any administrative expenses of such importer association.

* * * * *

Books, Records, and Reports

§ 1219.65 List of producers.

The administrative staff of the Board shall periodically review the list of producers of Hass avocados to determine whether persons on the list are subject to this subpart. On the request of the Secretary or the Board, the Association shall provide to the Secretary or the administrative staff of the Board the list of producers of Hass avocados.

Proposals 3 and 4

4. Part 1219 is added as set forth in Proposal 1 with the following changes:

* * * * *

Hass Avocado Board

§ 1219.30 Establishment and membership.

* * * * *

(d) In order for a person to be eligible to serve on the Board as an importer representative, Hass avocado imports must constitute 75 percent or more of such person's combined total annual volume of Hass avocados produced, handled, or imported by that person.

* * * * *

Budget, Expenses, and Assessments

§ 1219.50 Budgets, programs, plans, and projects.

* * * * *

(e) Programs must be conducted throughout the year to reflect the periods when imported and domestic Hass avocados are in the U.S. marketplace.

(f) The Board shall consult with both the Association and country of origin importer associations on programs, plans, and projects for generic promotions.

* * * * *

§ 1219.52 Control of administrative costs.

(a) * * *

(1) Ensure that the costs incurred by the Board in administering this subpart in any fiscal year shall not exceed 1.5 percent of total assessments; and * * *

* * * * *

§ 1219.54 Assessments.

* * * * *

(u) Importer associations shall be established by importers and country of origin producers and exporters within a reasonable amount of time after the effective date of this subpart. The country of origin importer associations should establish their own bylaws and may use existing organizations for establishment of their associations and coordination of their promotional and research efforts.

(v) For the purposes of the Order, the information required for certification of the country of origin importer associations by the Secretary may include, but is not limited to, the following:

(1) Evidence of incorporation under any state law with all appropriate legal requirements;

(2) Evidence that the association is composed of importers that are located in any state and subject to assessments under the Order, no matter where the association has been incorporated or in which state the importers reside;

(3) Certification of the association's ability and willingness to further the aims and objectives of the Order;

(4) Evidence of stability and permanency; and

(5) A description of the functions of the association.

* * * * *

Dated: July 5, 2001.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 01–17429 Filed 7–10–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[FV–01–706–PR]

Hass Avocado Promotion, Research, and Information Order; Subpart B—Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Hass Avocado Promotion, Research, and Information Order (Order) is favored by the producers and importers of Hass avocados. The Order will be implemented if it is approved by a simple majority of the producers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published in a separate document. This proposed program would be implemented under the Hass Avocado Promotion, Research, and Information Act of 2000.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Julie A. Morin, RP, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244; telephone (202) 720–6930 or fax (202) 205–2800, or julie.morin@usda.gov.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible producers and importers of Hass avocados to determine whether they favor issuance of the proposed Hass Avocado Promotion, Research, and Information Order (Order) [7 CFR Part 1218]. The program will be implemented if it is approved by a simple majority of the producers and importers voting in the referendum. The Order is authorized under the Hass Avocado Promotion, Research, and Information Act of 2000 (Act) [Pub. L. 106–387, 7 U.S.C. 7801–7813]. It would cover domestic and imported Hass avocados. A proposed Order is being published separately in the **Federal Register**.

Question and Answer Overview

Why Are These Referendum Procedures Being Proposed?

USDA will conduct rulemaking and a national referendum on the Order. In order to conduct the referendum, procedures need to be established. Publishing this proposed rule provides the opportunity for public input on the procedures before they are finalized.

How Long Do I Have To Comment on the Proposed Rule?

You have 45 days to submit written comments to USDA on the proposed procedures or to OMB on the paperwork burden associated with the procedures. You may submit your comments by mail, fax, or e-mail as indicated above.

Who Is Eligible To Vote in the Referendum?

Each eligible producer, handler, and importer will be allowed one vote in the referendum. In order to be implemented, the amendment must be approved by a majority of the producers and importers voting in the referendum.

When Will the Referendum Be Held?

After we have analyzed the comments on this proposed rule, we will issue final referendum procedures. The voting period will last 30 days and be announced 30 days in advance.

How Can I Vote in the Referendum?

Voting will take place by mail. All known eligible producers and importers will receive a ballot and voting instructions in the mail from USDA. Producers and importers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by the close of business on the last day of the voting period.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1212 of the Act states that the Act may not be construed to preempt or supersede any other program relating to Hass avocado promotion, research, industry information, and consumer information organized under the laws of the United States or of a state.

Under Section 1207 of the Act, a person subject to the order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Secretary's final ruling.

Executive Order 12866

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to implement a research and promotion program covering domestic and imported Hass avocados, became effective on October 23, 2000.

This proposed rule would establish the procedures under which producers and importers may vote on whether they want a national promotion, research, and information program to be implemented for Hass avocados. Producers and importers of Hass avocados who have produced or imported Hass avocados for at least one year prior to the referendum would be eligible to vote. This proposal would add a new subpart which establishes procedures to conduct the initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

According to industry sources, there are approximately 6,000 producers and 200 importers who will vote in the referendum.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $500,000 or less annually and small agricultural service firms as those having annual receipts of $5 million or less. Importers would be considered agricultural service firms. Using these criteria, most producers and importers would be considered small businesses. On August 6, 2001, the threshold for small agricultural producers will be increased to $750,000. This increase has little import on the determination of whether those covered by the program would be considered small businesses.

The Act authorizes assessments on fresh, frozen, and processed Hass avocados. However, initially only fresh Hass avocados will be assessed. Therefore, only producers and importers of fresh Hass avocados are covered by this proposed rule.

California is the source for over 95 percent of the Hass avocados produced in the United States. According to the Commission, seven avocado varieties are grown in California. Hass, the most popular variety, accounts for 85 percent of the volume of California avocado production. Hass avocados are available 12 months a year.

According to USDA's National Agricultural Statistics Service (NASS), total U.S. production of avocados during the 1999–2000 season was 181,300 tons, most of which was utilized fresh except for a small processed quantity that NASS included in fresh utilization to protect the confidentiality of individual operations. The value of the 1999–2000 crops was $392 million. Production in 1999–2000 was up 14 percent from the previous year's total of 159,250 tons, which had a value of $344 million. According to an industry report, the U.S. avocado category is expected to grow to more than 600 million pounds this year (2000–2001)—up 53% from 1997–1998.

In the 1999–2000 season, the major countries exporting to the U.S. were Chile (59 percent), Mexico (20 percent), and the Dominican Republic (15 percent). Data on imports is not collected by variety, but it is believed to be mostly Hass. Avocados are imported both in fresh and processed form. According to U.S. Census Bureau data, fresh avocado imports during the 1999–2000 season (November/October) accounted for about 75 percent of the total tonnage of fresh and processed avocados imported. In 1999–2000, imported fresh avocados totaled 66,237 tons, up from 55,515 tons during the 1998–99 season.

The total import value for fresh and processed avocados was $137 million in 1999–2000, up from $95 million in 1998–99. Almost all prepared or preserved avocado imports come from Mexico. The trend in imports is up, and imports have more than doubled since 1995.

This proposed rule provides the procedures under which producers and importers of Hass avocados vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that these proposed procedures would apply.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers and importers. This rule provides for a ballot to be used by eligible producers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 6,000 producers would be $3,000 or $0.50 per producer and for an estimated 200 importers would be $100 or $0.50 per importer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in obtaining more information on the number of small entities that may incur benefits or costs from the implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: To be assigned by OMB.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 6,200.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 310 hours.

The estimated annual cost of providing the information by an estimated 6,000 producers would be $3,000.00 or $0.50 per producer and for an estimated 200 importers would be $100.00 or $0.50 per importer.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The Act, which became effective on October 23, 2000, authorizes the Secretary to establish a national research and promotion program covering domestic and imported Hass avocados. The Commission submitted an entire proposed Order on December 29, 2000. Subsequently, on March 9, 2001, partial proposals were received from Hass avocado interests in Chile, Mexico, and New Zealand. These proposals are being published for public comment in this issue of the **Federal Register**.

The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for Hass avocados in the United States. The program would be funded by an assessment levied on producers (to be collected by handlers) and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at an initial rate of 2.5 cents per pound. The Act authorizes assessments on fresh, frozen, and processed Hass avocados. However, initially, only fresh domestic and imported Hass avocados will be covered by the program.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the Hass Avocado Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 1206 of the Act requires that a referendum be conducted among eligible producers and importers of Hass avocados to determine whether they favor implementation of the Order. That section also requires the Order to be approved by a simple majority of the producers and importers voting. In order to be eligible to vote, producers and importers must have been engaged in producing or importing Hass avocados for at least one year prior to the referendum.

This proposed rule establishes the procedures under which producers and importers of Hass avocados may vote on whether they want the Hass avocado promotion, research, and information program to be implemented. There are approximately 6,200 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda.

The subpart covers definitions, registration, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

A 30-day comment period is provided on this proposed rule. This period is deemed appropriate to better reflect the implementation time frames provided in the Act.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the Hass avocado industry.

List of Subjects in 7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer Information, Hass avocados, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended by amending part 1219 proposed elsewhere in this issue as follows:

1. The authority citation for part 1219 continues to read as follows:

Authority: 7 U.S.C. 7801–7813.

2. Subpart B is added to proposed Part 1219 to read as follows:

PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

* * * * *

Subpart B—Referendum Procedures

Sec.

1219.100 General.
1219.101 Definitions.
1219.102 Registration.
1219.103 Voting.
1219.104 Instructions.
1219.105 Subagents.
1219.106 Ballots.
1219.107 Referendum report.
1219.108 Confidential information.

Subpart B—Referendum Procedures

§ 1219.100 General.

Referenda to determine whether eligible producers and importers of Hass avocados favor the issuance, amendment, suspension, or termination of the Hass Avocado Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1219.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Eligible importer* means any person who imported Hass avocados, that are identified in the Harmonized Tariff Schedule of the United States,[1]

[1] The Department of Agriculture has applied to the International Trade Commission for an

for at least one year prior to the referendum. Importation occurs when Hass avocados originating outside the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced Hass avocados immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of Hass avocados from the U.S. Customs Service when such Hass avocados are entered or withdrawn for consumption in the United States.

(c) *Eligible producer* means any person who produced Hass avocados in the United States for at least one year prior to the referendum who:

(1) Owns, or shares the ownership and risk of loss of, the crop;

(2) Rents Hass avocado production facilities and equipment resulting in the ownership of all or a portion of the Hass avocados produced;

(3) Owns Hass avocado production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the Hass avocados produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados who share the risk of loss and receive a share of the Hass avocados produced. No other acquisition of legal title to Hass avocados shall be deemed to result in persons becoming eligible producers.

(d) *Hass avocados* means the fruit grown in or imported into the United States of the species *Persea americana* Mill. For the purposes of the initial referendum, the term shall include fresh fruit only.

(e) *Order* means the Hass Avocado Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a Hass avocado farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(h) *Representative period* means the period designated by the Secretary.

(i) *United States.*—The term ''United States'' means collectively of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia.

§ 1219.102 Registration.

An eligible producer or importer of Hass avocados, as defined in this subpart, at the time of the referendum and during a representative period, who chooses to vote in any referendum conducted under this subpart, shall register with the Secretary prior to the voting period, after receiving notice from the Secretary concerning the referendum under § 1219.103.

§ 1219.103 Voting.

(a) Each eligible producer and eligible importer who registers to vote in the referendum shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Secretary.

§ 1219.104 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast (voting period).

(b) Notify producers and importers of the voting period for the referendum and the requirement to register to vote in the referendum at least 30 days in advance by utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio.

(c) Develop the ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(d) Develop a list of producers and importers who register to vote.

(e) Mail to registered voters the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(g) Prepare a report on the referendum.

(h) Announce the results to the public.

§ 1219.105 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1219.106 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect

Harmonized Tariff Code number for Hass avocados. The number will be available prior to the finalization of this rule.

thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1219.107 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1219.108 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be strictly confidential and shall not be disclosed.

Dated: July 5, 2001.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 01–17428 Filed 7–10–01; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Friday,
July 13, 2001

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319

Mexican Hass Avocado Import Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 00–003–2]

RIN 0579–AB27

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also proposing to increase the length of the shipping season during which the Mexican Hass avocados may be imported into the United States. We are proposing this action in response to a request from the Government of Mexico and after determining that expanding the current Mexican avocado import program would present a negligible risk of introducing plant pests into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 11, 2001. We will also consider comments made at public hearings in Escondido, CA; Austin, TX; Denver, CO; and Homestead, FL. The exact dates and times for the hearings and the specific locations of all four hearings will be announced in a notice to be published in a future issue of the **Federal Register**.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–003–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–003–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Public hearings regarding this proposed rule will be held at the following locations: (1) Escondido, CA; (2) Austin, TX; (3) Denver, CO; and (4) Homestead, FL.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Public Hearings

Hearings on this proposed rule will be held in Escondido, CA; Austin, TX; Denver, CO; and Homestead, FL. The exact dates and times for the hearings and the specific locations of all four hearings will be announced in a notice published in a future issue of the **Federal Register**.

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Under the regulations in 7 CFR 319.56–2ff (referred to below as the regulations), fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be imported into specified areas of the United States, subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (November through February) that shipments may enter the United States, are designed to reduce the risk of pest introduction to a negligible level. Further, the regulations limit the distribution of the avocados to 19 northeastern States (Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin) and the District of Colombia, where climatic conditions preclude the establishment in the United States of any of the exotic plant pests that may attack avocados in Michoacan, Mexico.

In January 2000, we amended the regulations to require handlers and distributors of Mexican Hass avocados to enter into compliance agreements with APHIS. We also added requirements regarding the repackaging of avocados after their entry into the United States. These amendments were necessary to ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and to ensure that any boxes used to repackage the avocados in the United States bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico.

In September 1999, the Government of Mexico requested that APHIS amend the regulations to (1) increase the number of States into which the avocados may be imported and (2) to allow the shipping season to begin 1 month earlier (October rather than November) and end 1 month later (March rather than February).

On May 11, 2000, we published a notice in the **Federal Register** (65 FR 30365–30366, Docket No. 00–003–1) in which we solicited comments on Mexico's request. In particular, we asked the public for comments and recommendations regarding the scope of our review of Mexico's request and requested interested persons to submit any data or information that may have a bearing on our review of the Mexican Government's request. We requested that comments focus on scientific, technical, or other issues that commenters believed should be considered during our review of the Mexican Government's request.

We solicited comments on our request for 90 days, ending August 9, 2000. By that date, we received 265 comments. The comments were submitted by avocado growers, processors, packers and importers, grocers, Members of Congress, Mexican Government officials, researchers, and State and local departments of agriculture. In general, the majority of commenters supported expanding the area of distribution of Hass avocados and increasing by the length of the shipping season during which Hass avocados may be imported into the United States. Two commenters provided data that were considered in the development of a study titled ''Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected Pathways'' (Sequeira, *et al.,* 2001). This study, along with several previous risk documents, provides the basis for this proposed rule. Several commenters had specific concerns about Mexico's

request and the current Hass avocado import program. These comments are discussed later in this document.

We have completed our review of the Mexican Government's request and have evaluated the information submitted by commenters in response to our request for comments. Based on our review of the public comments (discussed later in this document) and the findings of various risk analysis documents prepared by APHIS, which are discussed in detail below beginning with the section titled *Risk Assessment Documentation Supporting the Proposed Rule,* we are proposing to amend § 319.56–2ff(a)(2) of the regulations to extend by 2 months the shipping season during which Hass avocados from approved orchards in approved municipalities in Michoacan, Mexico, may be imported into approved areas of the United States. With this proposed change, the shipping season would run from November through April.

We are also proposing to expand the area to which the Mexican Hass avocados may be distributed by adding Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming to the list of approved States in § 319.56–2ff(a)(3). These 12 additional States, like the currently approved States, do not contain host material for any of the avocado-specific pests of concern and have phenological conditions that do not support the establishment of fruit flies, especially during the proposed shipping season.

Note: Since the publication of the May 2000 request for comments on this subject, the Government of Mexico has requested that APHIS amend the regulations to allow Hass avocados to be imported year round into all 50 States. We are not proposing to allow avocados to be imported year round to all U.S. States per Mexico's request because we do not currently have documentation available to support Mexico's position that such importations would not present a risk of introducing plant pests into certain States.

In addition to the proposed changes to § 319.56–2ff(a)(2) and (a)(3) discussed above, our proposed expansion of the shipping season and the number of States in which Mexican Hass avocados may be distributed would necessitate several other changes in the regulations. First, we would amend the limited distribution statement required by § 319.56–2ff(c)(3)(vii) to reflect the addition of the 12 new States. Specifically, the statement that must be placed on boxes used to ship imported Hass avocados from Mexico would be changed to read ''Distribution limited to the following States: CT, CO, DC, DE, ID, IL, IA, IN, KS, KY, ME, MD, MA, MI, MN, MO, MT, NE, NH, NJ, NY, ND, OH, PA, RI, SD, UT, VA, VT, WV, WI, and WY.''

Paragraphs (e)(2) and (e)(3) of § 319.56–2ff each refer to the ''entire shipping season of November through February.'' We are proposing to amend those paragraphs so that they refer to the shipping season as running from November through April.

We would also amend the existing regulations to allow the imported avocados to transit additional States. Currently, the regulations in § 319.56–2ff(g) do not allow avocados to be moved west of a line extending from El Paso, TX, to Denver, CO, and due north from Denver. Given that, under our proposal, avocados would be eligible for importation into several States west of this line, we are proposing to revise the description of the area through which Mexican Hass avocados may be moved by truck or rail car. Under our proposal, avocados would not be allowed to transit the area to the west of the following line: Following Interstate 10 north from El Paso, TX, to Las Cruces, NM, and then north following Interstate 25 to the Colorado border. Once in Colorado, trucks and rail cars carrying avocados would be free to move to any State located within the approved distribution area described in § 319.56–2ff(a)(3). The current eastern shipping boundary would not change.

Finally, we would amend several paragraphs in the regulations to remove references to ''northeastern States,'' as that geographic limitation would no longer apply.

Risk Assessment Documentation Supporting the Proposed Rule

The final rule that established the current Mexican Hass avocado import program was published in the **Federal Register** on February 5, 1997, and became effective on March 7, 1997 (62 FR 5293–5315, Docket No. 94–116–6). In the final rule, we stated, in response to a comment about expanding the approved avocado distribution area to include additional States, that new States could be added to the list of approved States in the future if APHIS received a request to do so and the Agency determined that avocados could be imported into other States without presenting a significant pest risk.

After considering the comments received in response to our May 2000 request for information and reviewing our existing data, we have determined that there is sufficient information to support the Mexican Government's request to expand the list of approved States and the avocado shipping season. The information on which this determination is based is primarily derived from the following documents:

- A risk management analysis, ''A Systems Approach for Mexican Avocado'' (USDA, May 1995), prepared for the July 1995 proposed rule.
- A supplemental pest risk assessment, ''Importation of Avocado Fruit (*Persea americana*) from Mexico'' (USDA, May 1995) and an addendum to it, ''Estimates for the Likelihood of Pest Outbreaks Based on the Draft Final Rule'' (USDA, July 1996).
- A document, ''Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected Pathways'' (Sequeira, *et al.*, 2001), which was completed in 2001 as the U.S. portion of a project by a subcommittee of the Pest Risk Assessment Panel of the North American Plant Protection Organization (NAPPO).
- Four shipping seasons (1997–2001) worth of shipping and inspection data collected either by APHIS or jointly by APHIS and its Mexican counterpart, the Secretariat of Agriculture, Livestock and Rural Development, Fisheries and Food (SAGARPA).
- Two avocado program review reports, prepared in June 1999 and May 2001, which include evaluations of the program based on site visits to production areas in Mexico.
- Four years worth of fruit fly trapping data for the approved orchards in approved municipalities in Mexico.

The content of these documents, and our analysis of their applicability to this proposed rule, are summarized below. This summary is an excerpt from an APHIS document entitled ''Information Memo for the Record'' (April 30, 2001). Copies of all of the documents referenced above, including the information memo, are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT,** or via the Internet at http://www.aphis.usda.gov/ppq/avocados/.

1995 Risk Management Analysis

The risk management analysis describes the degree to which the various elements of the systems approach employed for the importation of Mexican Hass avocados are expected to mitigate the pest risk associated with such importations. The risk management analysis evaluates the following pests:

- Small avocado seed weevils (*Conotrachelus perseae* and *C. aguacatae*),

- Large avocado seed weevil (*Heilipus lauri*),
- Avocado stem weevil (*Copturus aguacatae*),
- Avocado seed moth (*Stenoma catenifer*),
- Fruit flies (*Anastrepha ludens, A. striata* and *A. serpentina*),[1] and
- Hitchhikers and miscellaneous other pests.

The risk mitigation elements of the systems approach evaluated in the document include the following measures:

- Field surveys,
- Trapping and field treatments,
- Field sanitation,
- Host resistance,
- Post harvest safeguards,
- Winter shipping only (November through February),
- Packinghouse inspection and fruit cutting,
- Port-of-arrival inspection, and
- Limited U.S. distribution (northeastern States only).

The risk management analysis concluded that the cumulative effects of the systems approach lower the risk of all target pests to an insignificant level and that even if one of the mitigation measures should completely fail, the risk reduction effect of the other measures would maintain risk at a low level. The risk management analysis further concluded that the risk from hitchhikers and other pests would be lower than the comparative risk posed by hundreds of other products that are imported into the United States with port-of-entry inspection as the primary clearance requirement.

1995 Supplemental Pest Risk Assessment and 1996 Addendum

The primary components of the supplemental pest risk assessment are:

- A listing of avocado pests known to occur in Mexico;
- A qualitative assessment of the consequences of introducing specific quarantine pests expected to follow the pathway of avocado fruit imported in accordance with the systems approach;
- Biological information on those quarantine pests;
- A scenario analysis considering the likelihood that infested fruit transported to suitable habitat would result in the establishment of those quarantine pests in the United States;
- Quantitative estimates of the likelihood that infested fruit transported to suitable habitat would result in the establishment of those quarantine pests in the United States; and
- Brief recommendations regarding measures to manage plant pest risk.

The document estimates the probability of pest establishment by comparing two scenarios for imported Mexican Hass avocados: (1) That there were no specific risk mitigation measures in place (i.e., the baseline scenario), and (2) that the mitigation measures described in the July 3, 1995, proposed rule were in place (the mitigated scenario).

The supplementary pest risk assessment identifies 91 pests of avocado in Mexico (26 pathogens and 65 arthropods). Of the 91 pests identified, 32 (2 pathogens and 30 arthropods) satisfy the geographic and regulatory criteria for designation as a quarantine pest. Of these 32 quarantine pests, only 9 arthropods are expected, based on their biology, to follow the pathway of imported Mexican Hass avocado fruit. Those nine arthropods (which were identified for consideration in the risk management analysis) are:

- *Anastrepha fraterculus*—fruit fly.
- *Anastrepha ludens*—fruit fly.
- *Anastrepha serpentina*—fruit fly.
- *Anastrepha striata*—fruit fly.
- *Conotrachelus aguacatae*—seed weevil.
- *Conotrachelus perseae*—seed weevil.
- *Heilipus lauri*—seed weevil.
- *Copturus aguacatae*—stem weevil.
- *Stenoma catenifer*—seed moth.

The nine pests are categorized for the purposes of the extended assessment as follows:

- Fruit flies: *Anastrepha fraterculus, A. ludens, A. serpentina*, and *A. striata*.
- Seed weevils: *Conotrachelus aguacatae, C. perseae, Heilipus lauri*.
- Stem weevil: *Copturus aguacatae*.
- Seed moth: *Stenoma catenifer*.

The supplemental pest risk assessment then rates pest groups qualitatively for their ''Pest Risk Potential'' (PRP). The ratings are based on a series of risk elements that are used to estimate the consequences of a pest's introduction. The PRP is considered to be a biological indicator of the potential destructiveness of the pest. The seed weevils, stem weevil, and seed moth have PRP values considered to be medium. The supplemental pest risk assessment's ratings are based on our findings that, although these pests could potentially have a significant economic impact on domestic avocado production, their host range is extremely narrow (the weevils are only known to attack avocado, and the seed moth attacks only avocado and one other plant species), they have a narrow climatic tolerance, and their dispersal potential is limited. The fruit flies' PRP is considered high. The difference in the ratings for the fruit flies as compared to the weevils and the seed moth can be attributed to the broader range of hosts attacked by the fruit flies, their greater motility, and higher potential economic impact.

The supplemental pest risk assessment estimates the likelihood that particular pests would be introduced into the United States as a result of importation of Mexican Hass avocado fruit. First, the events that would have to occur before pest outbreaks could occur were conceptualized using the method of scenario analysis. The results of the scenario analysis were then used to run a series of Monte Carlo simulations to estimate the frequency of pest outbreaks. The chosen endpoint for the simulations was the frequency of pest outbreaks. Two scenarios (i.e., program alternatives) were considered:

- Importation of Mexican avocado fruit with no specific measures to mitigate plant pest risks, and
- Importation of only Hass avocado fruit and only under the systems approach proposed in the July 3, 1995, proposed rule.

A single risk model was employed for both the unmitigated (baseline) scenario and the mitigated (program) scenario. It is a linear, multiplicative model comprised of seven ''nodes'' with the endpoint of frequency of outbreaks (establishment) per year based on an estimated number of shipments. It is assumed that all of the events (nodes) in the model are independent and all must occur before a pest establishment can take place. The risk model is as follows:

F1: Frequency of shipments (number of boxes imported per year) ×
P1: Probability pest infests fruit: pre-or postharvest ×
P2: Probability pest not detected during harvest or packing ×
P3: Probability pest survives shipment ×
P4: Probability pest not detected at port of entry inspection ×
P5: Probability fruit is transported to area with suitable hosts and climate ×
P6: Probability infested fruit in suitable habitat leads to outbreak =
F2: Frequency of pest outbreaks in the United States

Because the actual probabilities of the independent events comprising the risk model were not known, they were estimated. Although the probabilities were estimated, pertinent data were available for each independent event. The estimates were based to a large extent on expert judgment. A core team

[1] In Attachment 1 of the risk management analysis, APHIS discusses its consideration of *Anastrepha fraterculus* as a pest of avocados. *A. fraterculus* is not considered in the body of the risk management analysis because no research suggests the population of *A. fraterculus* found in Mexico is a pest of avocados.

of four entomologists estimated probabilities, and numerous technical specialists (e.g., scientists specializing in particular taxonomic groups, port inspectors, specialists in international trade, etc.) were consulted throughout the process. The estimates were specified as probability distribution functions that described a range of values between specified maximums and minimums. The frequency of pest outbreaks was calculated using Monte Carlo simulation.

The results of quantitative estimates of the ''Likelihood of Introduction'' section of the 1995 supplemental pest risk assessment are summarized in the following table:

TABLE 1.—PEST OUTBREAK FREQUENCY: MEXICAN AVOCADO PESTS, BY PROGRAM ALTERNATIVE, AS CALCULATED IN THE 1995 SUPPLEMENTAL PEST RISK ASSESSMENT

Program alternative	Pest	Outbreak frequency (per year)	
		Mode	Mean
A—No specific mitigation program	Fruit flies	0.0139 or 1 chance in 72	0.0518 or 1 chance in 19
	Seed weevils	0.0105 or 1 chance in 95	0.0419 or 1 chance in 24
	Stem weevil	1.389 or 1 chance in 0.7	5.183 or 1 chance in 0.2
	Seed moth	0.00282 or 1 chance in 355	0.0120 or 1 chance in 83
B—Systems approach for risk mitigation	Fruit flies	8.64×10^{-8} or 1 chance in 12 million	3.57×10^{-7} or 1 chance in 3 million
	Seed weevils	6.66×10^{-7} or 1 chance in 1.5 million	3.13×10^{-6} or 1 chance in 320,000
	Stem weevil	8.77×10^{-5} or 1 chance in 11,042	0.000387 or 1 chance in 2600
	Seed moth	1.87×10^{-7} or one chance in 5 million	8.98×10^{-7} or one chance in 1.1 million

Following our review of the comments received from the public regarding the July 3, 1995, proposed rule, APHIS made modifications to the systems approach that had not been considered in the 1995 supplemental pest risk assessment. The changes that appeared in the February 5, 1997, final rule are:

1. Fallen fruit must be removed from the orchard no less frequently than every 7 days during harvest.

This change affected the estimates for node P1 (Probability pest infests fruit: pre- or postharvest).

2. The number of fruit inspected from each lot was increased from 250 to 300.

This change affected estimates for node P2 (Probability pest not detected during harvest or packing).

3. A sticker identifying the packinghouse must be placed on each individual fruit imported under the program.

This change affected both the probability that the pests would evade detection at the ports of entry (P4) and the probability that fruit will be transported to a habitat with suitable hosts and climate (P5).

As a consequence of these changes, APHIS revised the calculations presented in the 1995 supplemental pest risk assessment for the likelihood of introduction under the mitigation program. The revised calculations were reported in the 1996 addendum to the supplemental pest risk assessment. The revised calculations were intended to estimate how much further risk reduction would be achieved by the additional measures. Since the risk, prior to these modifications, was already deemed insignificant, the revised calculations of the addendum (shown in the table below) were not considered necessary for publication of the final rule.

TABLE 2.—PEST OUTBREAK FREQUENCY: MEXICAN AVOCADO PESTS, BY PROGRAM ALTERNATIVE—INPUT VALUES BASED ON THE 1997 DRAFT FINAL RULE

Program alternative	Pest	Outbreak frequency (per year)	
		Mode	Mean
B—Systems approach for risk mitigation	Fruit flies	8.89×10^{-11} or 1 chance in 11 billion	4.85×10^{-8} or 1 chance in 21 million
	Seed weevils	5.76×10^{-9} or 1 chance in 173 million	4.01×10^{-7} or 1 chance in 2.5 million
	Stem weevil	3.08×10^{-6} or 1 chance in 325,000	1.03×10^{-4} or 1 change in 9708
	Seed moth	3.60×10^{-9} or 1 chance in 278,000	1.19×10^{-7} or 1 chance in 8 million

Identification of Susceptible Areas for the Establishment of Anastrepha spp. Fruit Flies in the United States and Analysis of Selected Pathways

This document reviews the risk associated with *Anastrepha* spp., especially in relation to these pests as they occur in U.S. fruit imports from Mexico. It focuses on the likelihood that *Anastrepha ludens* (Mexfly), *A. serpentina, A. striata* and *A. fraterculus* could become established in the United States via the Mexican avocado pathway. The study described in the document was motivated by U.S. grower concerns that existing and proposed changes in import patterns will pose increased risks to American agricultural productivity and profitability. This document represents the U.S. portion of a project by a subcommittee of the NAPPO Pest Risk Assessment Panel, and is intended to be published as part of a larger NAPPO document when Mexico and Canada's portions of the document are complete.

Paraphrasing from the document, the approach used was to first examine the resource at risk (commercial fruit production), then characterize host susceptibility (timing and location of susceptible fruit) and characterize climatology so as to study pest reproduction potential as a function of the previous factors. This approach can be characterized as an epidemiological analysis. The avocado pathway was used as a case study for the risks associated with fruit imports. The study used fruit cutting, pest survey, and

trapping data that have been recorded since the initiation of the avocado import program to determine the probability that fruit flies are passing undetected along this pathway.

Epidemiologically, the study concludes that a combination of factors, primarily the Hass avocado's status as a poor to inadequate fruit fly host and the marginal conditions for fruit fly development in the growing areas, leads to low fruit fly densities in production areas. They note that *Anastrepha* spp. favor peaches, citrus, and other species of fruit over avocados. Statistically, the study demonstrates that the probability is near zero that fruit fly infestations (even very low-level infestations) are going undetected in inspections under the current avocado import program. That is, the statistical evidence suggests that if infestations were even as low as 1 *Anastrepha* spp. larva per 100,000 fruit, they would be detected with likelihood greater than 95 percent. The study concludes that the existing *Anastrepha* populations in Mexico, given the cropping and pest management practices currently in use there, are too low to be a threat to agriculture in the States currently approved to receive imported Mexican avocados or in the States that we are proposing to allow to receive imported Mexican avocados.

The study concludes that the highest likelihood for the potential spread of Mexfly in the United States is concentrated in portions of the States of Arizona, California, Florida, Georgia, Louisiana, South Carolina, and Texas. The State of Hawaii showed the highest risk for the establishment of *Anastrepha* spp. A combination of limited host availability, a short period of climate conducive to *Anastrepha* spp. development, and lethal low temperatures for prolonged periods causes most of the continental United States outside of those States to be at low risk from these fruit fly species.

Program Reviews, Shipping and Inspection Data, and Trapping Data

In May 2001, APHIS completed a review of the Mexican Hass avocado import program. The review was triggered by a request from a representative of the California Avocado Commission. As part of the review, a team of several APHIS officials conducted a site visit to avocado production areas in Michoacan, Mexico, in September 2000. The site visit team observed trapping and orchard sanitation practices in Michoacan and concluded that the program was being operated in compliance with the regulations.

The current regulations in § 319.56–2ff require that Mexican avocado-producing municipalities and orchards that wish to participate in the U.S. import program must fulfill certain obligations regarding pest surveys. The municipality must be surveyed at least annually and found to be free of the large avocado seed weevil (*Heilipus lauri*), the avocado seed moth (*Stenoma catenifer*), and the small avocado seed weevils (*Conotrachelus aguacatae* and *C. perseae*). Trapping must be conducted in the municipality for Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) at the rate of 1 trap per 1 to 4 square miles. The orchard and all contiguous orchards and properties must be surveyed annually and found to be free from the avocado stem weevil (Copturus aguacatae). Trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens, A. serpentina,* and *A. striata* at the rate of 1 trap for each 10 hectares.

Data from these various trapping and survey programs, as well data on the number of fruit shipped, the number of fruit intercepted outside of the approved States, and the number of fruit cut and inspected are now available for the four shipping seasons that the import program has been in place (1997–1998 through 2000–2001). These data are summarized in the tables below.

TABLE 3.—NUMBER OF MEXICAN HASS AVOCADO FRUIT ENTERING THE UNITED STATES

Season	Shipments	Boxes	Fruit
1997–1998	347	537,850	25,816,800
1998–1999	560	868,000	41,664,000
1999–2000	669	1,036,950	49,773,600
2000–2001	576	895,900	42,854,400
Total	2,152	3,338,700	160,108,800
Average	538	834,675	40,027,200

TABLE 4.—NUMBER OF MEXICAN HASS AVOCADO FRUIT INTERCEPTED OUTSIDE APPROVED STATES

Season	Boxes	Fruit
1997–1998	668	32,064
1998–1999	3,114	149,472
1999–2000	45	2,160
2000–2001	54	2,592
Total	3,881	186,288
Average	970	46,572

TABLE 5.—NUMBER OF MEXICAN HASS AVOCADO FRUIT CUT AND INSPECTED

[All fruit cut and inspected were negative for target pests. Orchard and packinghouse inspections were joint Mexican (SAGARPA) / United States (APHIS) inspections. Border inspections were conducted by U.S. inspectors.]

Season	Orchard (SAGARPA/ APHIS)	Packinghouse (SAGARPA / APHIS)	At Border (APHIS)	Total
1997–1998	1,155,305	417,900	10,410	1,583,615
1998–1999	1,121,471	203,250	16,800	1,341,521

TABLE 5.—NUMBER OF MEXICAN HASS AVOCADO FRUIT CUT AND INSPECTED—Continued

[All fruit cut and inspected were negative for target pests. Orchard and packinghouse inspections were joint Mexican (SAGARPA) / United States (APHIS) inspections. Border inspections were conducted by U.S. inspectors.]

Season	Orchard (SAGARPA/ APHIS)	Packinghouse (SAGARPA / APHIS)	At Border (APHIS)	Total
1999–2000	952,423	166,650	20,070	1,139,143
2000–2001	1,209,814	172,800	17,280	1,399,894
Total	4,439,013	960,600	64,560	5,464,173
Average	1,109,753	240,150	16,140	1,366,043

TABLE 6.—MEXICAN FRUIT FLY TRAPPING DATA

Year	Number of fruit flies trapped during current and proposed shipping seasons by municipality			
	Periban	Salvador Escalante	Tancitaro	Uruapan
1997	0	0	0	0
1998	0	0	3 (Nov)	0
999	0	0	0	0
2000	0	4 (Jan) 4 (Feb) 3 (Mar) 2 (Apr)	0	0

The May 2001 program review document, as well as complete import, inspection, fruit cutting, and survey data sets are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** and via the Internet at http://www.aphis.usda.gov/ppq/avocados/.

Evaluation of the Applicability of Existing Risk Analyses to Proposed Changes to the Mexican Hass Avocado Import Program

The changes proposed in this document would directly affect the estimates of risk in the 1995 risk management analysis, the 1995 supplemental pest risk assessment, and the 1996 addendum that relate to ''limited distribution'' of Hass avocados in the United States (19 Northeastern States and District of Columbia) and ''winter shipping only'' (November through February).

The 1995 risk management analysis concluded that ''winter shipping only'' reduces the pest risk presented by fruit flies. In the risk management analysis, we estimated a risk reduction between 60 and 90 percent for fruit flies, given the ''winter shipping only'' restriction. According to the risk management analysis, the majority of reduction in pest risk from this mitigation measure can be attributed to limited adult fruit fly activity under colder temperatures in the growing areas in Mexico. Given this assumption, the question arises: Would extending the shipping season for 2 additional months to include March and April result in fruit being shipped from orchards with high rates of adult fruit fly activity? Trapping data collected as required by the current program would indicate this is not the case. In 4 years of trapping, only five fruit flies have been captured during the months of March and April. All five of those captures (three in March and two in April) occurred in a single season (2000) and in a single municipality (Salvador Escalante.) Climatological data presented in the document entitled ''Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected Pathways'' (referred to below as Sequeira, *et al.*) indicate that even in the very unlikely event fruit flies were shipped with Mexican Hass avocados, escaped detection, and arrived during the months of March or April, temperatures in the approved and proposed States would still fall below the optima for fruit fly activity.

Furthermore, Sequeira, et al., concluded that sampling evidence and statistical analysis showed that the likelihood of introducing a mating pair in shipments of up to a million avocados is low.

The risk management analysis estimated that limiting U.S. distribution would significantly reduce the risk of all nine analyzed pests. The reduction was estimated to range from 95 to 99 percent for all of the pests except the avocado stem weevil (90 to 99 percent) and hitchhikers (75 to 95 percent). The authors attributed this reduction to the low prevalence of host material and the reduced likelihood of survival of these generally tropical or subtropical pests in northern U.S. States. The same is true for the 12 States proposed for addition to the list of approved States. According to Sequeira, *et al.*, none of the additional States supports the growth of avocado, the sole host of avocado seed and stem weevils and the preferred host of the seed moth. Although the weather conditions appropriate for *Anastrepha* spp. include a wider range of temperatures, prolonged low winter temperatures inhibit fruit fly establishment. According to Sequeira, *et al.*, winter temperatures are low enough to prevent establishment in all of the States that we are proposing to add to the list of approved States.

The pest risk assessment qualitatively estimated the PRP for the avocado seed weevils, stem weevil, seed moth, and fruit flies based on the pests' climatic needs, host range, dispersal potential, economic impact, and environmental impact. The addition of the 12 proposed States to the list of approved States and the extension of the shipping season do not alter host availability, nor would they be expected to appreciably impact the other risk elements that comprise the PRP. Consequently, the PRP ratings would be expected to remain at medium for seed weevils, stem weevil, and seed moth and high for fruit flies.

The 1995 supplemental pest risk assessment used scenario analysis and Monte Carlo simulation to probabilistically estimate the likelihood of introducing the above-named pests into the United States via imports of Mexican Hass avocados. The risk model for the analysis was comprised of seven nodes corresponding to specific independent events that must occur in order for a pest to be introduced. The impact of the proposed changes in the avocado program and the body of data collected under the current program are summarized below.

F1: Frequency of Shipments (Number of Boxes Imported Per Year)

The 1995 supplemental pest risk assessment (as well as the 1996 addendum) estimated that between 1 and 2 million boxes of fruit would be imported under the systems approach program. The actual number of boxes imported fell short of the minimum in all but 1 of the 4 years the program has been in place. As indicated in Table 3 above, the program averaged only 834,675 boxes per year. Because of this, we believe that the 1995–1996 assessments actually overestimated the risk. It also means that even if the addition of 12 States to the program doubled the number of imported Hass avocados, the actual number of imported boxes would still fall within the range of values in the 1995–1996 estimate, and the existing results would remain valid. Given that, as a whole, the population of the 12 additional States is less than the 19 States currently approved, it seems likely that the number of imported boxes would not actually double, and the number of boxes would continue to fall within the range predicted by the existing estimate for F1.

P1: Probability Pest Infests Fruit: Pre- or Postharvest

The 1996 addendum to the supplemental pest risk assessment estimated that the value for P1 would range between 5×10^{-8} and 5×10^{-6} for the fruit flies, between 5×10^{-6} and 5×10^{-5} for the seed weevils, between 1×10^{-3} and 1×10^{-2} for the stem weevil, and between 5×10^{-6} and 5×10^{-5} for the seed moth. One might suspect that the risk of Mexican Hass avocados being infested with fruit flies (if one accepts that Hass avocado is a host for fruit flies) would increase as the shipping season was extended into March and April based on the assumption that as temperatures warmed, fruit flies would become more active. However, as described above, fruit fly trapping data do not support the assumption that there is significant adult fruit fly activity in Michoacan avocado orchards in March and April. Likewise, fruit cutting in the orchards has produced no finds of any of the pests of concern, even after sampling nearly 4.5 million fruit over the course of 4 growing seasons. Similarly, no pest detections have been made after cutting nearly 1 million fruit in packinghouse inspections. To date, nearly 3.4 million boxes of Mexican Hass avocados have been shipped to the United States under the import program with no target pest finds. These data suggest that, even with an increase in the volume of imports, the original risk assessment numbers still represent a reasonable estimate and may even overestimate the likelihood that pests will infest program fruit.

P2: Probability Pest Not Detected During Harvest or Packing

The proposed changes to the import program would not impact the estimates for this node. It is worth noting, however, that in the four shipping seasons under the current program, no target pests have been detected after nearly 1 million fruit have been inspected by cutting at the packinghouse (see Table 5).

P3: Probability Pest Survives Shipment

The proposed changes to the import program would not impact the estimates for this node.

P4: Probability Pest Not Detected at Port of Entry Inspection

The proposed changes to the import program would not impact the estimates for this node. It is worth noting, however, that in the four shipping seasons under the current program, no target pests have been detected after nearly 65,000 fruit have been inspected by cutting at the port of entry (see Table 5).

P5: Probability Fruit Is Transported to Area With Suitable Hosts and Climate

As stated above, according to Sequeira, et al., none of the States proposed for addition to the list of approved States supports the growth of avocado, the sole host of avocado seed and stem weevils and the preferred host of the seed moth. Likewise, all of the States we are proposing to add to the list of approved distribution areas pose a low risk for the establishment of *Anastrepha* spp. fruit flies even in the very unlikely event any would be imported on Mexican Hass avocados. For similar reasons, the proposed change in the western transit boundary for Mexican Hass avocados would not affect any existing risk estimates.

The 1995 supplemental pest risk assessment estimated that between 0.5 percent and 5.0 percent of the imported Hass avocado would be transported to an area with suitable hosts and habitat. This was assumed to be the result of either inadvertent or intentional (smuggling) movement to nonapproved avocado-growing or fruit fly-supporting States. The 1996 addendum to the supplemental pest risk assessment reduced these estimates to between 0.05 percent and 2.0 percent as a consequence of the requirement for stickering that was included in the February 1997 final rule.

Actual data for seizures of fruit outside the approved States (see Table 4) indicate that in the 1997–1998 and 1998–1999 shipping seasons, 0.12 percent and 0.36 percent of boxes of imported Mexican Hass avocados were intercepted outside of the approved States. Assuming, for the purposes of this discussion, that all of these intercepted boxes ended up in areas with suitable hosts and climates, the actual values fall well within the range of predicted values. Beginning midway through the third year of the program (1999–2000), a more stringent compliance requirement became effective. Consequently, in the 1999–2000 and 2000–2001 shipping seasons, 0.004 and 0.006 percent of the imported boxes of Mexican Hass avocados were intercepted outside of approved States (see Table 4). Given the reduced levels of fruit leaving the approved States under the stronger compliance requirement, even if one assumes not all diverted fruit is intercepted, the estimates in the 1995 and 1996 risk assessments are, at the very least, accurate and more likely overestimate the likelihood that fruit will be transported to an area with suitable hosts and climate.

P6: Probability Infested Fruit in Suitable Habitat Leads to Outbreak

The proposed changes to the import program would not impact the estimates for this node.

Conclusion

We have reviewed the documents summarized above and find that the evidence, assumptions, and conclusions of the 1995 risk management analysis and the 1995 supplemental pest risk assessment and its 1996 addendum would remain valid even if the proposed changes are made to the Mexican Hass avocado program. Therefore, we have determined that the importation of Hass avocados from Mexico in accordance with the existing regulations as modified by this

proposed rule would present a negligible risk of introducing plant pests into the United States.

Discussion of Comments Received in Response to the May 2000 Notice

Some commenters expressed concern over the number of violations that occurred during the first 2 years of the avocado import program. The commenters requested that the program be terminated because imported Hass avocados have not been completely contained within the limited distribution area. The comments expressed concerns over the number of shipments of Mexican avocados that were moved illegally to States where temperatures are higher, there is more suitable host material available, and the risk of introduction of a plant pest of concern is greater.

During the first 2 years of the Hass avocado import program, boxes of avocados were diverted to States that were not listed as approved for distribution. APHIS conducted investigations and prosecuted several distributors for violations of the regulations. However, the pest risk analysis prepared for the rulemaking that established the current program to import Hass avocados from Mexico takes into account the expected diversion of some avocados to States not approved to receive them. The amount of avocados that were diverted during the first 2 years of the Hass avocado import program did not exceed the estimate used in the calculations of risk.

To help reduce the number of boxes of avocados diverted to nonapproved areas, we amended the regulations (see 64 FR 68001–68005) during the third (1999–2000) shipping season to require that all distributors of Hass avocados enter into a compliance agreement with APHIS that fully explains the distribution restrictions and the distributor's obligations. Before the 1999–2000 shipping season, we conducted an information campaign to inform the public and industry about Mexican avocados and published press releases regarding penalties for violations during previous seasons. The 1999–2000 season had a 20 percent increase in number of boxes of avocados shipped from Mexico to the United States, but only 45 boxes were intercepted in States not approved to receive them (see Table 4 under the heading *Risk Assessment Documentation Supporting the Proposed Rule*). This is 1.5 percent of the number of boxes diverted in the previous (1998–1999) season.

Some commenters stated that fruit flies and stem weevils do exist in the areas of production in Michoacan, Mexico, and expressed concern about the constant danger of infestation or reinfestation of avocado orchards from neighboring orchards and from untreated backyard grown host plants in the production areas.

The risk assessment documents used as the basis for the existing program take into account that fruit flies and stem weevils exist in avocado production areas in Mexico. The regulations in § 319.56–2ff require that trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens, A. serpentina,* and *A. striata* at the rate of one trap per 10 hectares. If one of those fruit flies is trapped, at least 10 additional traps must be deployed in a 50-hectare area immediately surrounding the trap in which the fruit fly was found. If within 30 days of the first finding any additional fruit flies are trapped within the 260-hectare area surrounding the first finding, malathion bait treatments must be applied in the affected orchard in order for the orchard to remain eligible to export avocados.

In addition, the regulations require that the orchards where avocados are grown and all contiguous orchards and properties be surveyed annually and found to be free from the avocado stem weevil *Copturus aguacatae.* The survey must be conducted during the growing season and completed prior to the harvest of the avocados. If Sanidad Vegetal (Mexico's plant protection organization) discovers the stem weevil in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, Sanidad Vegetal must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken and the orchard in which the pest was found will lose its export certification immediately and will be denied export certification for the entire shipping season. Further, if Sanidad Vegetal discovers the stem weevil in fruit at a packinghouse, Sanidad Vegetal must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and will be denied export certification for the entire shipping season.

Survey information from trapping in avocado orchards, and fruit cutting in avocado orchards, packinghouses in the production areas in Mexico, and at the border when shipments enter the United States, show that avocados imported under the Mexican Hass avocado import program are not infested by any pest of concern (see Table 5 under the heading *Risk Assessment Documentation Supporting the Proposed Rule*). Based on these surveys, we believe the elements of the systems approach regulations described above protect against infestation or reinfestation of avocado orchards from neighboring orchards and from untreated, backyard-grown host plants in the production areas.

Some commenters stated that there are other hosts for fruit flies that APHIS has not considered that grow or are being cultivated in States where expanded avocado distribution is proposed. The commenters suggest that we need information from extension services in States where distribution is proposed in order to identify what alternate hosts are present and available for infestation. One comment stated that all but five States in the United States have plants that are suitable hosts for fruit flies, and that seven States (AL, AZ, CA, GA, FL, LA, and TX) grow suitable host plants that are valued at $3 billion.

As stated earlier in this document, APHIS recently completed the U.S. portion of a NAPPO project, entitled ''Identification of Susceptible Areas for the Establishment of *Anastrepha* spp. Fruit Flies in the United States and Analysis of Selected Pathways'' (Sequeira, et al., 2001), that identifies areas in the United States that are susceptible to the establishment of fruit flies. In conducting this study, we did contact extension services in States where expansion of the distribution area is proposed. The information that we received from extension services on alternate hosts cultivated in those States and on wild host material common in those States was used in the development of the Sequeira, *et al.,* study.

The Sequeira, et al., study identifies U.S. States that have suitable host material for fruit flies. Based on the findings of the Sequeira, et al., study and the other risk documents discussed in this document, we are not proposing to allow avocados to be imported into any of the seven States listed above by the commenter (AL, AZ, CA, GA, FL, LA, and TX).

Some commenters asserted that our determinations on when and where to allow importations of Hass avocados from Mexico depend too much on temperature data alone. Commenters suggested that we should consider other climactic factors that also play a role in the establishment of fruit flies.

We agree with the commenters that any determination regarding when and

where avocados may be distributed in the United States should be based on a study of all relevant climate-related factors. For the 1995 and 1996 risk documents, we used only temperature data in considering the risk posed by imported Mexican Hass avocados. However, the Sequeira, et al., study, which is described above, considers and evaluates the effects of the following climate-related variables on potential fruit fly establishment:

- The presence of fruit fly hosts and their seasonal and geographical availability.
- Reproduction potential of fruit flies at various temperatures.
- Selection of areas where temperatures are warm enough for a long enough period of time to support reproducing fruit fly populations.

Some commenters suggested that we use several verifiable and reliable sources of temperature data in determining monthly and daily mean, minimum, and maximum temperatures in Mexico.

We believe that additional temperature data for production areas is not necessary for the purposes of this proposed rule. As stated elsewhere in this document, trapping, survey, and fruit cutting data for production areas in Mexico show that imported avocados are not infested with any pests of concern. We believe that such data provide a more accurate estimate of pest presence in avocado production areas than the consideration of additional temperature data would.

Some commenters requested that we wait until the NAPPO Fruit Fly Panel completes its investigation into the susceptibility of areas for the establishment of fruit flies until we move forward with this proposed rule. The NAPPO Fruit Fly Panel requested the NAPPO Pest Risk Assessment Panel to conduct a study using modeling, climatology, and phenology to determine where fruit flies could become established in North America.

Again, the Sequeira, et al., study described above represents the U.S. portion of the NAPPO project. The study provides part of the basis for our decision to expand the Mexican Hass avocado import program to include 12 more States and to lengthen the shipping season by 2 months. We are not basing our proposal to allow the expanded importation of Mexican Hass avocados on the findings of the other portions of the NAPPO project and see no reason to wait for their completion.

Some commenters criticized as inadequate the survey techniques used in the areas of production in Michoacan, Mexico, to determine population levels of pests of concern, stating that McPhail traps are ineffective, avocado stem weevils are surveyed in the wrong season, and reliable surveys for avocado seed moths are not conducted.

We believe that the required trap density of 1 trap per 10 hectares will be sufficient to indicate the presence of fruit fly populations in the orchards. In the United States, the national detection protocol for *Anastrepha* ranges from 1 trap per 10 square miles to 5 traps per square mile; the Rio Grande Valley and Florida citrus protocol for *Anastrepha* ranges from 5 to 15 traps per square mile. The density required in the Mexican orchards—1 trap per 10 hectares—works out to approximately 25 traps per square mile, which is the same density required to maintain the fruit fly-free zone in the Mexican State of Sonora. With regard to the type of traps used, we believe that some of the other traps currently available may be comparable to the McPhail trap, but none are better for monitoring for *Anastrepha* fruit flies. Further, the surveys for avocado stem weevils and seed moths are conducted twice a year and include a survey in the spring when pest numbers are the highest. These surveys use the most effective available methods for detecting the pests.

One commenter stated that APHIS should assess the potential for introduction of other Mexican insect pests that could infest crops grown in the United States. The commenter cited introductions of the Persea mite (*Oligonychus perseae*) and avocado thrip (*Scirtothrips perseae*) into California as cause for concern.

As stated earlier in this document, in our 1995 supplemental pest risk assessment, APHIS identified a list of 91 pests of avocado in Mexico (26 pathogens and 65 arthropods). Of the 91 pests identified, 32 (2 pathogens and 30 arthropods) satisfy the geographic and regulatory criteria for designation as a quarantine pest. Of these 32 quarantine pests, only 9 arthropods are expected, based on their biology, to follow the pathway of imported Mexican Hass avocado fruit.

The persea mite (*Oligonychus perseae*) and avocado thrip (*Scirtothrips perseae*) are currently established in the United States, and are not under official control, and therefore, do not meet the definition of a quarantine pest. Pests that do not satisfy internationally accepted criteria for designation as quarantine pests are not analyzed in detail in risk assessments because nonquarantine pests are not candidates for risk mitigation. Although *O. persea* and *S. perseae* should have been listed on the pest list, their inclusion would not have changed the supplemental pest risk assessment beyond the pests listed in table 3. Listing of *O. persea* and *S. perseae* in table 3 would not have changed the findings of the risk assessment and would not have altered the proposed mitigation program, which focuses on quarantine pests.

One commenter questioned if surveys have been conducted in Michoacan within the context of limited pesticide use, since pesticides can mask the presence of pest species during surveys but do not eliminate pests possibly present in or on fruit eligible for export.

APHIS pest surveys include areas with backyard and feral avocado trees and groves. We believe that surveying such areas provides a context to examine the presence of pests in a limited pesticide use context.

One commenter suggested that the States bordering avocado-producing States should be considered buffer States. Buffer States should not be eligible to receive Mexican Hass avocados due to their proximity to avocado producing areas.

We have not proposed to allow Mexican Hass avocados to be distributed in any State that borders California, Florida, and Texas, the only U.S. States that produce avocados.

One commenter asked that the Government of Mexico be required to submit detailed workplans to APHIS and to growers in the United States, with survey protocols, orchard management practices, and inspection reports from site visits to observe the program in Mexico.

The Government of Mexico and APHIS already agree upon such an operational workplan, which is reviewed and updated annually and shared with the California Avocado Commission. Since the avocado import program began, APHIS has conducted two comprehensive reviews, which are available to the public as described earlier in this document.

Some commenters argued that we should conduct a new pest risk analysis and include new data and new developments in risk assessment methodology made available since the original assessment was completed in 1995.

We believe that the 1995 and 1996 risk documents, in conjunction with the Sequeira, et al., study and 4 years of trapping and shipping data, provide a sound scientific basis for this proposed rule. APHIS' review and consideration of the existing pest risk analysis for the avocado program is described in the information memo for the record mentioned earlier in this document. The information memo for the record

explains our proposal to expand the area of distribution to include 12 more States and lengthen the shipping season by the months of March and April and is supported by the documents described above under the heading *Risk Assessment Documentation Supporting the Proposed Rule.* We acknowledge that there have been developments in risk methodology since 1995, but there are no new methodologies that would substantively alter the findings of the pest risk analysis used for the 1997 final rule.

Further, APHIS does not intend to conduct a new risk assessment for this proposed rule because the relevant information that would be needed to complete a new risk assessment is already available in the risk documents that we used as a basis for this proposed rule. We believe that the ''Information Memo for the Record'' (April 30, 2001) described earlier in this document synthesizes the findings of the various risk documents and provides a clear statement that this proposed rule presents a negligible risk of introducing plant pests into the United States.

One commenter suggested that we use a mean monthly temperature of 50 degrees in destination States to determine their eligibility to receive Mexican Hass avocados, because fruit flies can successfully reproduce at 55 degrees. The comment also suggested that Mexican Hass avocados should not be approved for destination States where alternate host material is available up to 3 months after the shipping season ends, because a partially mature fruit fly can live as long as 3 months after shipping.

While it is possible that fruit flies could survive and reproduce in an area with a mean monthly temperature of 55 degrees, other factors play a role in determining whether fruit flies could survive in a given environment. The Sequeira, et al., study described above considers temperature and the presence of suitable host material, as well as other factors, to identify the areas in the United States that are not at risk for the introduction of fruit flies. We believe this type of study provides a more accurate identification of areas in which fruit flies can survive than an analysis based on mean monthly temperatures alone.

One commenter suggested that APHIS approve the month of April for the lengthened shipping season, rather than October, because October is warmer than April.

In our May 2000 request for comments, we stated that Mexico had requested that APHIS allow the Hass avocado shipping season to begin 1 month earlier (October rather than November) and end 1 month later (March rather than February). As stated earlier in this document, since the request for comments was published, Mexico has requested that avocados be allowed to be shipped year round. After a review of temperature and fruit fly survey data for Mexico and a review of phenological data for the United States, we are proposing to lengthen the shipping season of Hass avocados by 2 months, from November to April. Fruit fly trapping data for the approved municipalities in Michoacan show that in recent years, fewer fruit flies have been trapped in April than October. Based on the available trapping data, and the findings of the Sequeira, et al., study, we believe the pest risk posed by allowing Hass avocados to be imported in March and April would be no greater than it is for the current shipping season.

One commenter suggested that we develop temperature data for all species of the pests of concern, not just for fruit flies.

The other species of pests found on avocados are host-specific, and therefore are only able to live with avocados as their food source, whereas fruit flies can attack other crops than avocados. Since the proposed rule would allow distribution of Mexican Hass avocados only in areas where avocados are not grown, we see no reason to consider temperature and other climatic data for avocado pests other than fruit flies at this time.

Some commenters critiqued the pest risk analysis used to establish the present importation program for Hass avocados from Mexico. They asserted that we should not have used median temperatures in our calculations, but rather we should have used mean daily maximum temperatures, which are more scientifically sound.

The 1995 supplemental pest risk assessment that provided the basis for the proposed and final rules that established the current avocado import program did, as noted by the commenters, use monthly median temperatures in determining what areas in the United States and Mexico are susceptible to fruit fly infestations. While we continue to believe that the conclusions of the 1995 supplemental pest risk assessment are valid, we do agree with the commenters that using daily temperature data provides a more accurate estimate in determining what areas are susceptible to fruit fly infestations. The Sequeira, et al., study, which provides the primary basis for the proposed expansion of the current program, does use daily maximum and minimum temperatures to determine the susceptibility of areas of the United States to the establishment of fruit flies, as suggested by the commenters. We believe that the Sequeira, et al., study, in conjunction with the other risk documents discussed in this document, provide a sound scientific basis for this proposed rule.

Another commenter stated that fruit flies are hardier and more long-lived than we estimated in the calculations for our 1995 and 1996 risk assessment documents.

In node P3 of the risk model used in the 1995 supplemental pest risk assessment, we estimated that in the highly unlikely event that imported Mexican Hass avocados were infested with fruit flies, there is a 70 to 90 percent chance that the fruit flies could survive shipment to the United States. Once in the United States, the fruit flies would have to escape detection at the port of entry (considered in node P4) and be transported to areas with suitable hosts and climate (node P5). Consistent with the findings of the 1995 supplemental pest risk assessment and the 1996 addendum to it, the Sequeira, et al., study shows that during the proposed shipping season of November to April, the current and proposed avocado distribution areas would not provide the host material and climatic conditions necessary for the survival of fruit flies. For these reasons, we concluded, and continue to believe, that the likelihood that fruit flies could become established in the United States via imported Mexican Hass avocados is extremely low.

Some commenters submitted temperature and other data in response to our request for data regarding Mexico's request that APHIS expand the area of distribution and the length of shipping season for Mexican Hass avocados. All such information was considered in the development of the Sequeira, et al., study.

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.

For this proposed rule, we have prepared a regulatory impact analysis. The regulatory impact analysis also contains an initial regulatory flexibility analysis, which considers the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The regulatory impact

analysis and regulatory flexibility analysis are summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT,** or on the Internet at http://www.aphis.usda.gov/ppq/avocados/. We do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

Summary of Regulatory Impact Analysis

Our analysis considers economic impacts on U.S. producers and consumers/ merchandisers of Hass avocados that could result from allowing fresh Hass avocados from Michoacan, Mexico, to be imported into additional areas of the United States and over a longer period each year than is currently allowed. Since the 1997/98 season, imports of avocados from approved orchards in Michoacan, Mexico, have been allowed to be imported into the United States and distributed in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin during the months of November through January. Under this proposed rule, distribution would be expanded to include the States of Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. The shipping season would also be expanded to include March and April.

We are proposing this action in response to a request from the government of Mexico, and after determining that this action would present a negligible risk of introducing plant pests into the United States.

Impacts on U.S. producers and consumers/merchandisers would derive from the increased supply of Hass avocados from Mexico and concomitant price declines. Essentially all domestically produced Hass avocados are grown in California. U.S. producers and California producers are therefore used interchangeably in the analysis. The 1997 rule that first allowed for the importation of Mexican Hass avocados to 19 states and the District of Columbia resulted in a redistribution of California-grown Hass avocados from markets in the approved States during the months that imports are allowed from Mexico. This proposed rule, if adopted, is expected to have a similar effect. Anecdotal experience suggests that benefits resulting from the existing rule have been largely realized at the wholesale level, and discussion of consumer gains therefore includes explicit reference to merchandisers as well.

In our analysis, we use two models are used to estimate impacts. The first is a nationwide model that does not distinguish between the approved and nonapproved States. The rationale underlying this model is that given sufficient time, a single price for avocados would obtain in the two regions. Although Mexico's supply is restricted to the approved States for specified months of the year, California and other foreign suppliers can move in and out of the two markets, and would do so in search of profits until prices in the approved and nonapproved States essentially equalize.

The second model explicitly recognizes the approved and nonapproved States as two regions. Estimated economic losses include direct market loss for California producers in approved States, and losses related to increased supply in nonapproved States, as the diversion of California Hass avocados from approved to nonapproved States depresses prices. Consumers/merchandisers would be expected to gain in both approved and nonapproved States from the lower prices. A theoretical limitation of the regional model, in contrast to the national model, is the assumed maintenance of a price differential between the approved and nonapproved States.

Both models use a partial equilibrium economic surplus framework to consider benefits and costs of the proposed rule. Potential producer losses and consumer/merchandiser gains are quantified in terms of changes in producer and consumer surplus resulting from the increased imports expected from Mexico. To simplify the analysis, the demand curve is assumed to be of constant elasticity while U.S. supply is assumed to be fixed. The supply curve is assumed to be vertical at least in the short run, that is, supply is perfectly inelastic and does not respond to changes in price.

In the national model, additional Hass avocado imports from Mexico totaling 16.87 million pounds are estimated to result in a 12 percent drop in the wholesale price, from $1.34 per pound to $1.18 per pound. Consumers/merchandisers would gain by $27.65 million per year and California Hass avocado producers would lose by $17.93 million per year, for a net benefit of $9.72 million per year.

In the regional model, the same level of additional Mexican Hass avocado imports is assumed (16.87 million pounds), an amount equivalent to the maximum quantity assumed could be wholly diverted from approved to nonapproved States. Impacts are examined using three scenarios. In the first scenario, 70 percent of California Hass avocados that would otherwise be sold in the approved States are diverted to nonapproved States; in the second scenario, 85 percent are diverted; and in the third scenario, 100 percent are diverted. The 85 percent diversion scenario is considered representative of what is most likely to occur, given historic changes in quantities of California Hass avocados shipped to the existing approved States due to Mexican imports.

The first scenario of the regional model (70 percent diversion) would mean 6.07 million pounds of California Hass avocados remain in the approved States, and 11.81 million pounds are diverted to the nonapproved States. The additional supply of Mexican Hass avocados results in a price decline that benefits consumers/merchandisers in the approved States by about $10.12 million per year. California producers whose Hass avocados are sold in the approved States face a revenue loss of $17.15 million per year. The net loss in the approved States is $7.03 million per year.

In the nonapproved States, the 11.81 million pounds of California Hass avocados diverted from the approved States result in a price decline that causes a revenue loss of $0.35 million per year for California producers. Consumers/merchandisers in the nonapproved States benefit by $19.31 million per year, for a net benefit of $18.96 million per year.

Net losses in the approved States ($7.03 million per year) and net gains in the nonapproved States ($18.96 million per year) yield an overall net gain of $11.94 million per year in the first scenario.

The second scenario (85 percent diversion) yields producers losses and consumer/ merchandiser gains comparable to the first one. Net losses in the approved States ($13.93 million

per year) and net benefits in the nonapproved States ($22.79 million per year) combine for an overall net gain estimated at $8.87 million per year.

In the third scenario (100 percent diversion), 16.87 million pounds of California Hass avocados are diverted to the nonapproved States. Consumers/merchandisers in the approved States gain by $1.59 million per year, and California's producers lose by $22.64 million per year, for a net loss of $21.05 million per year. Consumers/merchandisers in the nonapproved States gain by $28.14 million per year, and California's producers lose by $1.60 million per year, for a net gain of $26.54 million per year. With 100 percent diversion, net losses in the approved States ($21.05 million per year) and net gains in the nonapproved States ($26.54 million per year) yield a combined net benefit of $5.50 million per year in the third scenario.

In sum, impacts of the proposed rule for U.S. producers and consumers/merchandisers range from net benefits of $11.94 million per year for the 70 percent diversion scenario and $8.87 million per year for the 85 percent diversion scenario, to $5.50 million per year for the 100 percent diversion scenario. The net benefit estimated using the national model, $9.72 million per year, is contained within this range. The overall impact in all cases is minor. In the event the price elasticity of demand is larger than that used in this analysis (−0.86), losses to California producers will be less than those calculated. APHIS requests comments on the appropriate choice of elasticity for the analysis. Another factor that could reduce losses to California producers would be activities to increase the demand for Hass avocados, that is, activities would increase sales at any given price.

Summary of Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that impacts on small entities be taken into consideration in rulemaking, to ensure that such businesses are not disproportionately burdened. There are about 6,000 producers and 100 handlers of Hass avocados in southwestern California that could be affected by this rule, as well as about 200 importers. APHIS has been unable to obtain information on the size distribution of affected avocado producers, and invites public comment that would help in determining the number of producers that can be considered small. For the purposes of our analysis, we assume that the size distribution of the 6,000 producers is the same as the size distribution of avocado farms reported in the 1997 Census of Agriculture; that is, 98 percent are small entities ($750,000 or less in annual receipts). Most avocado importers are reportedly also small entities (100 or fewer employees, respectively), while most Hass avocado handlers are large (more than $5 million in annual receipts). Given the declines in revenue that are described in the three scenarios of the regional model, average annual losses for small-entity California Hass avocado producers could range between $1,870 and $2,593. This impact could prove significant if producers rely upon Hass avocado production as their principal source of income.

Two variations of the regional model are presented as examples of rule modifications that would mitigate adverse impacts on small-entity California Hass avocado producers. Alternative A would extend the four-month period of import by two months, March and April, but would not expand the region of approved States. Alternative B would maintain the current four-month period of import, but would expand the approved region by the same States as in the proposed rule. For both alternatives, losses to California's Hass avocado producers would be less than have been calculated for the proposed rule. Under the 85 percent diversion scenario, California producer losses would be $12.46 million per year and $2.50 million per year for alternatives A and B, respectively, compared to an annual producer loss of $20.55 million under the proposed rule. However, consumer/merchandiser gains would also be reduced in both cases. Annual net benefits are estimated to be $6.52 million per year for alternative A and $3.67 million per year for alternative B, compared to $8.87 per year for the proposed rule.

There are no other rules that would overlap, duplicate, or conflict with this proposed rule.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule would allow fresh Hass avocado fruit to be imported into the United States from the Mexican State of Michoacan. If this proposed rule is adopted, State and local laws and regulations regarding fresh Hass avocado fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has been prepared for this proposed rule. The environmental assessment documents our review of the environmental impacts associated with this proposed rule. We are making the environmental assessment available to the public for review and comment.

The environmental assessment was 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).

Copies of the environmental assessment 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 copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** The environmental assessment is also available on the Internet at: http://www.aphis.usda.gov/ppq/avocados/.

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. 00–003–2. Please send a copy of your comments to: (1) Docket No. 00–003–2, 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.

In this document, we are proposing to amend the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also proposing to increase the length of the shipping season during which the Mexican Hass avocados may be imported into the United States. This action would require that importers, shippers, distributors, and handlers of Mexican Hass avocados in the United States enter into compliance agreements with APHIS. We are asking OMB to approve our use of this information collections in connection with our efforts to ensure that fresh Hass avocados from Mexico pose a negligible risk of introducing exotic insect pests into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will 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 of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.2 hours per response.

Respondents: Importers, shippers, distributors, and handlers of fresh Hass avocados imported into the United States.

Estimated annual number of respondents: 250.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 300 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56–2ff would be amended as follows:

a. By revising the section heading, the introductory text, and paragraphs (a)(2), (a)(3), and (c)(3)(vii).

b. In paragraphs (e)(2) and (e)(3), by removing the word ''February'' each time it appears and adding the word ''April'' in its place.

c. By revising paragraphs (f)(1), (g), and (i).

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Mexico to approved States.

Fresh Hass variety avocados (Persea americana) may be imported from Mexico into the United States for distribution in approved States only under a permit issued in accordance with § 319.56–4, and only under the following conditions:

* * * * *

(a) * * *

(2) The avocados may be imported only during the months of November, December, January, February, March, and April; and

(3) The avocados may be distributed only in the following States: Colorado, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

* * * * *

(c) * * *

(3) * * *

(vii) The avocados must be packed in clean, new boxes. The boxes must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement ''Distribution limited to the following States: CO, CT, DC, DE, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, MT, NE, NH, NJ, NY, ND, OH, PA, RI, SD, UT, VA, VT, WV, WI, and WY.''

* * * * *

(f) * * *

(1) Any port located in a State specified in paragraph (a)(3) of this section;

* * * * *

(g) *Shipping areas.* (1) Except as explained in paragraph (g)(3) of this section for avocados that enter the United States at Nogales, AZ, avocados moved by truck or rail car may transit only that area of the United States bounded as follows:

(i) On the east and south by a line extending from Brownsville, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, to Knoxville, TN, following Interstate 40 to Raleigh, NC, and due east from Raleigh, and

(ii) On the west by following Interstate 10 North from El Paso, TX, to Las Cruces, NM, and north following Interstate 25 to the Colorado border, then west along Colorado and Utah's southern borders, then north along Utah's western border, then west along Idaho's southern border and north along Idaho's western border to the border with Canada.

(2) All cities on the boundary lines described in paragraph (g)(1) of this section are included in this shipping area. If the avocados are moved by air, the aircraft may not land outside this shipping area.

(3) Avocados that enter the United States at Nogales, AZ, must be moved to Las Cruces, NM, by the route specified on the permit, and then must remain within the shipping area described in paragraph (g)(1) of this section.

* * * * *

(i) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to an approved State, and upon arrival at the terminal market in the approved States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

* * * * *

Done in Washington, DC, this 9th day of July 2001.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs, USDA.

[FR Doc. 01–17444 Filed 7–10–01; 8:45 am]

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

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