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Monday
April 28, 1997

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

RIN 3206–AH66

Administration and General Provisions—Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the adjudication of claims arising under the Civil Service Retirement System (CSRS). The regulation provides that OPM may initially issue decisions that provide the opportunity to appeal directly to the Merit Systems Protection Board (MSPB) without having to request OPM to review its initial decision. The regulation streamlines processing of claims under the CSRS and brings OPM's CSRS regulations into conformity with its Federal Employees Retirement System (FERS) regulations.

EFFECTIVE DATE: May 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Brown, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On December 19, 1996, we published (at 61 FR 66948) proposed regulations to facilitate and streamline our processing of disputed cases under CSRS and bring CSRS regulations into conformity with FERS regulations. We received no comments on the proposed regulations and we are now publishing them as final regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management

James B. King,

Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

Subpart A—Administration and General Provisions

2. In § 831.109, the last sentence in paragraph (c) is removed, the text in paragraph (f) after the heading ''*Final decision*.'' is redesignated as paragraph (f)(1) and paragraph (f)(2) is added to read as follows:

§ 831.109 Initial decision and reconsideration.

* * * * *

(f) * * *

(2) OPM may issue a final decision providing the opportunity to appeal under § 831.110 rather than an opportunity to request reconsideration under paragraph (c) of this section. Such a decision must be in writing and state the right to appeal under § 831.110.

* * * * *

[FR Doc. 97–10899 Filed 4–25–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB05

General Administrative Regulations; Nonstandard Underwriting Classification System

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: Federal Crop Insurance Corporation (FCIC) finalizes amendments to subpart O of the General Administrative Regulations, effective with the 1998 (1999 for Texas and Arizona/California Production Citrus) and succeeding crop years. This amendment is intended to clarify the effect of the nonstandard underwriting classification system (NCS) and to ensure that NCS is applied to all producers in a fair and consistent manner.

EFFECTIVE DATE: May 28, 1997.

FOR FURTHER INFORMATION CONTACT: Bill Smith, Supervisory Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7743.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed OMB.

Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

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. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

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

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions in the rule will not impact small entities to a greater extent than larger entities. NCS program determinations are applied to all producers on a county basis and affect only a small number of producers (approximately 1 percent of all insureds). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before judicial action may be brought.

Environmental Evaluation

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

National Performance Review

The regulatory action is being taken as part of the National Performance Review Program to eliminate unnecessary regulations and improve those that remain in force.

Background

On Thursday, November 7, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 57595–57597 to amend the General Administrative Regulations (7 CFR part 400, subpart O) to be effective for the 1998 (1999 for Texas and Arizona/California Production Citrus) and succeeding crop years. Following publication of that proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 22 comments were received from the crop insurance industry and FCIC. The comments received and FCIC responses are as follows:

Comment: One comment received from FCIC recommended that the Summary, Background, and List of Subjects statements be clarified by changing references to ''Texas and Arizona/California Citrus'' to ''Texas and Arizona/California Production Citrus'' and adding ''sugarcane'' to the list of crops for which this subpart applies for the 1999 crop year. These changes would correspond with the usage of ''production'' and ''sugarcane'' in the definition of ''NCS base period.''

Response: The referenced statements specify the crop year this subpart is to be effective based on the crop year and contract change date contained in the applicable crop provisions. Since citrus trees and citrus production have different crop year definitions and contract change dates, FCIC will add ''production'' to eliminate any possible confusion regarding the crops affected by these statements. Under the policy provisions for sugarcane, this rule is applicable to the 1998 crop year which is consistent with the applicable effective dates specified in this rule as currently written. The exceptions made for crops such as sugarcane in the definition of the ''NCS base period'' are necessary due to the availability of insurance experience data and are not related to the effective date of this subpart. Therefore, no change will be made regarding the addition of ''sugarcane'' to these statements.

Comment: One comment received from FCIC questioned if insurance experience under the Group Risk Protection plan of coverage should be specifically excluded in this subpart from insurance experience based on the individual producer.

Response: FCIC agrees with the comment and will amend § 400.301 to limit this subpart's effect to producers whose insurance coverage or indemnities are based on determinations applicable to the individual insured rather than determinations made on a county or area basis.

Comment: One comment received from the crop insurance industry inquired how FCIC considered certain types of indemnities in making NCS determinations.

Response: FCIC provided language in its definition of ''insurance experience'' that permits adjustment for certain types of indemnities and for the exclusion of replant payments for purposes of NCS selection, as applicable. Limiting the effect of certain losses, which do not clearly establish nonstandard risks, produce more accurate NCS determinations consistent with the purpose for which NCS was developed.

Comment: One comment received from the crop insurance industry recommended that the reference to ''a significant contribution'' in the definition of ''actively engaged in farming'' was too broad and subjective.

Response: FCIC agrees and will change the definition from ''a significant contribution'' to ''a contribution,'' reflecting the current definition before the term ''significant'' was added.

Comment: One comment received from the crop insurance industry recommended ''applicable adjustments'' contained in the definition of ''insurance experience'' be specified.

Response: FCIC believes it is better to reference experience adjustments in broad terms as stated in the proposed definition to maintain flexibility in managing the effects of different loss conditions on insurance experience. Adjustments are made to limit the effect of losses caused by wide-spread crop failures caused by one or more perils affecting a large number of producers or other similar situations determined by FCIC to not reflect nonstandard risks. The impact of such adjustments is to improve identification of persons who represent nonstandard risks. Therefore, no change will be made.

Comment: One comment received from FCIC recommended the definition of ''insurance experience'' be revised to remove the language which excludes replant payments from consideration in determining insurance experience.

Response: FCIC believes that replant payments should not be considered in determining insurance experience for NCS selection purposes. FCIC provides replant payments to defray costs incurred by insureds replanting an insured crop damaged by insured causes, necessary to keep insurance in force or to reduce any future indemnities. Considering such payments when identifying insureds with nonstandard risks would be inequitable when FCIC requires or encourages replanting as a means to promote a sounder insurance program. Therefore, no change will be made.

Comment: One comment received from FCIC recommended that the definition of ''NCS base period'' be changed to establish the base period for raisins as the 10 crop year period ending immediately preceding the crop year the NCS classification becomes effective.

Response: The NCS base period ends 2 or 3 crop years (depending on the crop) prior to the effective NCS crop year to assure that all insurance experience records are available to meet NCS determination and notification requirements prior to the contract change date for each crop. The NCS base period, as defined, meets this requirement. Therefore, no change will be made.

Comment: One comment received from the crop insurance industry recommended the definition of ''NCS base period'' not specify individual crops by base period. Changes in the crops listed would cause the definition to be inaccurate.

Response: FCIC agrees with this comment and will revise the definition to provide crop exceptions on the Special Provisions.

Comment: One comment received from FCIC suggested that the definition of ''NCS base period'' did not agree with the example contained in the definition.

Response: FCIC agrees and has amended the provisions accordingly.

Comment: One comment received from FCIC suggested that section 400.303(a) (1) and (4) were mathematically redundant.

Response: The selection criteria contained in § 400.303(a) (1) and (4) would provide the same effect if, for example, the number of indemnified losses in the NCS base period equals three and the loss frequency is set at 30 percent. However, other frequency percentages are permitted under this subpart. FCIC currently uses 60 percent. The number of indemnified losses will also vary. In either case, each criteria impacts the NCS selection process differently. Therefore, no change will be made.

Comment: Two comments received from FCIC recommended the reference to ''cumulative indemnities'' and ''cumulative loss ratio'' contained in §§ 400.303 (a)(2) and (b)(5) be changed to ''cumulative adjusted indemnities'' and ''cumulative adjusted loss ratio'' to reflect adjustments to indemnities FCIC may make under certain circumstances.

Response: Section 400.303(a) states that nonstandard classification procedures apply when all of the insurance experience criteria, including any adjustments to insurance experience which may be made under § 400.300(c), have been met. However, since the insurance experience for individual producers or individual crop years may not qualify for insurance experience adjustment, it would be incorrect to add the term ''adjusted'' as recommended by the respondent. Therefore, no change will be made.

Comment: One comment received from FCIC recommended deleting § 400.303(a)(3) due to its inconsistency with § 400.307, Discontinuance of participation which, other than as excepted, requires continued insurance experience to be eligible for removal from NCS.

Response: FCIC agrees and will delete paragraph (a)(3) and redesignate paragraphs (a)(4) and (5) as (a)(3) and (4) and correct other section references accordingly.

Comment: Two comments received from FCIC concerning § 400.303(a)(5)(ii) questioned the necessity and advisability of providing notification in the Special Provisions of changes increasing the minimum standards for certain selection criteria contained in this section.

Response: § 400.303 establishes minimum NCS selection criteria which the public is notified through the rule making process. Certain criteria are allowed to increase above the minimum standards, reducing the probability of selection for NCS adjustments. However, such increases can only be applicable if the criteria stated in § 400.303(a) are met and such decisions will be made on a county by county basis. The Special Provisions, which are part of the insurance contract and contain those terms and conditions specific to the county, are the appropriate documents to contain such increases which reduce the probability of selection for NCS. All increases will apply to all producers in the county. For any change in the selection criteria contained in this section that may result in an increased probability of selection for NCS, FCIC will make such changes through the rulemaking process. Therefore, no change will be made.

Comment: One comment received from FCIC recommended § 400.303(c) describe how indemnities are adjusted and reference the procedures and methods used by FCIC in its determinations and their availability to the public.

Response: FCIC believes § 400.303(c) adequately describes indemnity adjustments. Complete details are contained in procedures FCIC develops and publishes. This information is available for public inspection on request. FCIC will amend the rule to determine where such procedures will be available.

Comment: One comment received from FCIC recommended the last sentence of § 400.303(c) be changed to use a means other than the Special Provisions to provide for alternate methodologies of establishing crop disaster adjustments to insurance experience.

Response: FCIC believes the Special Provisions, which are part of the insurance contract and contain those terms and conditions specific to the county, are the appropriate documents to provide for such alternatives. Therefore, no change will be made.

Comment: Two comments received from the crop insurance industry regarding § 400.305 suggested that FCIC implement measures using social security (SSN) or employer identification numbers (EIN) to correctly identify persons affected by NCS and to assure applicable coverage or rate classifications were used to establish liability and premium. Limiting the availability of optional units was also suggested as another way to improve insurance experience.

Response: FCIC currently identifies persons listed on NCS through the use of SSN and EIN's. Changing the availability of optional units would represent a significant change and require an additional comment period to allow interested parties to consider the effects of this change. Therefore, no change will be made to the present rule. However, consideration will be given to this recommendation in any future change to this subpart.

Comment: One comment received from the crop insurance industry recommended NCS classifications under § 400.305(c) should not be assigned to identified insurable acreage or to specific crop practices, types, varieties, options, or amendments.

Response: FCIC believes that assigning NCS classifications to identified insurable acreage or by practice, type, variety, option, or amendment rather than to a person only or to all crop production alternatives for the crop is fair and equitable. Where adverse insurance experience can be attributed to a specific land location or crop production choice, appropriate coverage or rating actions should be targeted at those conditions. Therefore, no change will be made.

Comment: One comment received from FCIC recommended § 400.307 be changed to eliminate the reinstatement requirement for persons who are removed from the NCS listing after stopping all farm operations and then begin farming again at some later time. Such determinations would be difficult to make and there was uncertainty about when the reinstatement would be effective.

Response: FCIC agrees that reinstatements may be difficult to administer timely. FCIC will amend § 400.307 to state that the person will continue to be listed on the NCS list in the county until the producer has ceased participation in the crop insurance program as a policyholder or person with a substantial beneficial interest in a policyholder for as least 10 consecutive crop years. NCS adjustments applicable to such persons will remain in effect in accordance with § 400.307.

Comment: One comment received from FCIC recommended language be added to § 400.309 referencing applicable appeals regulations issued or being developed by the National Appeals Division or FCIC.

Response: Producers are notified of their selection for NCS adjustments and of their rights to reconsideration under § 400.309 (a) through (d). Once FCIC has completed its appeals procedures, producers will be provided with a right to appeal under such regulations. Until such time, FCIC will amend § 400.309 to add paragraph (e) stating that the producer's rights to appeal will be provided under 7 CFR part 11.

In addition to the changes described above, FCIC has made the following changes to this subpart:

1. Clarified the definition of ''indemnified loss'' by changing ''total adjusted indemnity'' to ''total indemnity''. Any applicable adjustments to indemnities for purposes of this definition are provided in the definition of insurance experience.

2. Clarified the definition of ''insurance experience'' by rearranging ''(applicable adjustments)'' and ''(but not including replant payments).'' This change will clarify that adjustments may be made in premiums, indemnities, and other data but that replant payments are not included in indemnities used for NCS selection purposes.

3. Corrected § 400.305(b) to replace the reference to subpart J with 7 CFR part 11.

List of Subjects in 7 CFR Part 400

Crop insurance, Nonstandard Underwriting Classification System.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR part 400, subpart O, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart O—Nonstandard Underwriting Classification System Regulations for the 1991 and Succeeding Crop Years

1. The authority citation for 7 CFR part 400, subpart O, is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Section 400.301 is revised to read as follows:

§ 400.301 Basis, purpose, and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), to prescribe the procedures for nonstandard determinations and the assignment of assigned yields or premium rates in conformance with the intent of section 508 of the Act (7 U.S.C. 1508). These regulations are applicable to all policies of insurance insured or reinsured by the Corporation under the Act and on those policies where the insurance coverage or indemnities are based on determinations applicable to the individual insured. These regulations will not be applicable to any policy where the amount of coverage or indemnities are based on the experience of the area.

3. Section 400.302 is amended to remove all paragraph designations and the definition of ''base period;'' definitions of ''actively engaged in farming'' and ''insurance experience'' are revised; and definitions of ''earned premium,'' ''indemnified loss,'' ''NCS,'' and ''NCS base period'' are added to read as follows:

§ 400.302 Definitions.

* * * * *

Actively engaged in farming means a person who, in return for a share of profits and losses, makes a contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

* * * * *

Earned premium means premium earned (both the amount subsidized and the amount paid by the producer, but excluding any amount of the subsidy attributed to the operating and administrative expenses of the insurance provider) for a crop under a policy insured or reinsured by the Corporation.

* * * * *

Indemnified loss means a loss applicable for the policy for any year during the NCS base period for which the total indemnity exceeds the total earned premium. If the person has insurance for the crop in more than one county for any crop year, indemnities and premiums will be accumulated for all counties for each crop year to determine an indemnified loss.

Insurance experience means earned premiums, indemnities paid (but not including replant payments), and other data for the crop (after applicable adjustments), resulting from all of the insured's crop insurance policies insured or reinsured by the Corporation for one or more crop years and will include all information from all counties in which the person was insured.

* * * * *

NCS means nonstandard classification system.

NCS base period means the 10 consecutive crop years (as defined in the crop policy) ending 2 crop years prior to the crop year in which the NCS classification becomes effective for all crops, except those specified on the Special Provisions. For these excepted crops, the NCS base period means the 10 consecutive crop years ending 3 crop years prior to the crop year in which the NCS classification becomes effective. For example: An NCS classification effective for the 1996 crop year against a producer of citrus production in Arizona, California, and Texas, or sugarcane would have a NCS base period that includes the 1984 through 1993 crop years. An NCS classification effective for the 1996 crop year against a producer of all other crops would have a NCS base period that includes the 1985 through 1994 crop years.

* * * * *

4. Section 400.303 is amended by revising paragraph (a), redesignating paragraph (b) as (c) and adding paragraphs (b), (d), and (e) to read as follows:

§ 400.303 Initial selection criteria.

(a) Nonstandard classification procedures in this subpart initially apply when all of the following insurance experience criteria (including any applicable adjustment in § 400.303(d)) for the crop have been met:

(1) Three (3) or more indemnified losses during the NCS base period;

(2) Cumulative indemnities in the NCS base period that exceed cumulative premiums during the same period by at least $500;

(3) The result of dividing the number of indemnified losses during the NCS base period by the number of years premium is earned for that period equals .30 or greater; and

(4) Either of the following apply:

(i) The natural logarithm of the cumulative earned premium rate multiplied by the square root of the cumulative loss ratio equals 2.00 or greater; or

(ii) Five (5) or more indemnified losses have occurred during the NCS base period and the cumulative loss ratio equals or exceeds 1.50.

(b) The minimum standards provided in paragraphs (a) (2), (3), and (4) of this section may be increased in a specific county if that county's overall insurance experience for the crop is substantially different from the insurance experience for which the criteria was determined. The increased standard will apply until the conditions requiring the increase no longer apply. Any change in the standards will be contained in the Special Provisions for the crop.

* * * * *

(d) Insurance experience for the crop will be adjusted, by county and crop year, to discount the effect of indemnities caused by widespread adverse growing conditions. Adjustments are determined as follows:

(1) Determine the average yield for the county using the annual county crop yields for the previous 20 crop years, unless such data is not available;

(2) Determine the normal variability in the average yield for the county, expressed as the standard deviation;

(3) Subtract the result of § 400.303(d)(2) from § 400.303(d)(1);

(4) Divide the annual crop yield for the county for each crop year in the NCS base period by the result of § 400.303(d)(3), the result of which may not exceed 1.0;

(5) Subtract the result of § 400.303(d)(4) for each crop year from 1.0;

(6) Multiply the result of § 400.303(d)(5) by the liability for the crop year; and

(7) Subtract the result of § 400.303(d)(6) from any indemnity for that crop year.

(e) FCIC may substitute the crop yields of a comparable crop in determining § 400.303(d) (1) and (2), or may adjust the average yield or the measurement of normal variability for the county crop, or any combination thereof, to account for trends or unusual variations in production of the county crop or if the availability of yield and loss data for the county crop is limited. Information about how these determinations are made is available by submitting a request to the FCIC Regional Service Office for the producer's area. Alternate methods of determining the effects of adverse growing conditions on insurance experience may be implemented by FCIC if allowed in the Special Provisions.

5. Section 400.305 is amended by revising paragraph (b) and the introductory text of paragraph (c) to read as follows:

§ 400.305 Assignment of Nonstandard Classification.

* * * * *

(b) Nonstandard classification assignment will be made each year, for the year identified on the assignment forms, and are not subject to change under the provisions of this subpart by the Corporation for that year when included in the actuarial tables for the county, except as a result of a request for reconsideration as provided in section 400.309, or as the result of appeals under 7 CFR part 11.

(c) A nonstandard classification may be assigned to identified insurable acreage; a person; or to a combination of person and identified acreage for a crop or crop practice, type, variety, or crop option or amendment whereby:

* * * * *

6. Section 400.307 is revised to read as follows:

§ 400.307 Discontinuance of participation.

If the person has discontinued participation in the crop insurance program, the person will still be included on the NCS list in the county until the person has discontinued participation as a policyholder or a person with a substantial beneficial interest in a policyholder for at least 10 consecutive crop years. The most recent nonstandard classification assigned will be continued from year to year until participation has been renewed for at least one crop year and at least three years of insurance experience have occurred in the current base period. A nonstandard classification will no longer be applicable to the person or the person on identified acreage if the Corporation determines the person is deceased.

7. Section 400.309 is amended by revising paragraph (a), removing paragraph (e), and redesignating paragraph (f) as (e) and revising newly redesignated paragraph (e) to read as follows:

§ 400.309 Requests for reconsideration.

(a) Any person to be assigned a nonstandard classification under this subpart will be notified of and allowed not less that 30 days from the date notice is received to request reconsideration before the nonstandard classification becomes effective. The request will be considered to have been made when received, in writing, by the Corporation.

* * * * *

(e) Any person not satisfied by a determination of the Corporation upon reconsideration may further appeal under the provisions of 7 CFR part 11.

Signed in Washington, DC, on April 23, 1997.

Suzette M. Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–10890 Filed 4–25–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–96–007]

Amendment to Cotton Board Rules and Regulations Regarding Import Assessment Exemptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is amending the regulations regarding import assessment exemptions by adjusting the provisions for automatic assessment exemptions on certain imports of textile and apparel products. The purpose of this automatic exemption is to avoid multiple assessment of U.S. produced cotton that has been exported and then imported back into the U.S. in the form of textile and apparel products. Also, this final rule will lengthen the amount of time a person has to request an import reimbursement from 90 days from the date the assessment was paid to 180 days from the date the assessment was paid. This rule is consistent with the

business practices of importers and would make it easier for importers to comply with the regulations.

EFFECTIVE DATE: May 28, 1997.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Chief, Cotton Research and Promotion Staff, telephone number (202) 720-2259 facsimile (202) 690–1718.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

Executive Orders 12866 and 12988; the Regulatory Flexibility Act and the Paperwork Reduction Act.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Cotton Research and Promotion Act, 7 U.S.C. §§ 2101–2118 (Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator, Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are an estimated 16,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule will affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601).

This rule will neither raise nor lower assessments paid by importers subject to the Cotton Research and Promotion Order and therefore presents minimal economic impact. This action will improve the agency's ability to prevent double assessment of U.S. produced cotton reentering the U.S. in the form of textile and apparel products. In addition, this rule will lengthen the amount of time a person has to request an import reimbursement from 90 days from the date the assessment was paid to 180 days from the date the assessment was paid. This rule is consistent with the business practices of importers and would make it easier for importers to comply with the regulations.

Under these circumstances AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) the assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended the Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991. Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). The final implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

Section 1205.335 (c)(1) of the Cotton Research and Promotion Order provides for exemptions from assessments for certain imported goods when they contain U.S. produced cotton in order to minimize the occurrence of double assessments on U.S. cotton. All U.S. produced cotton is assessed at the time it is first sold. A significant amount of U.S. produced cotton is converted into fabric in the U.S. and then exported. This U.S. cotton containing fabric often returns to the U.S. in the form of apparel products.

Section 1205.510 (b)(5) of the Cotton Board Rules and Regulations identifies the specific Harmonized Tariff Schedule (HTS) numbers that are exempted to avoid a second unnecessary assessment of this U.S. produced cotton. The numbers currently identified in this section have become out dated because of changes in the HTS. The revision of this section will update the exempted HTS numbers to 9802.00.8015, and 9802.00.9000 which are currently in the HTS.

This rule also lengthens the period of time a person has to request an import assessment reimbursement from 90 to 180 days from the date the assessment was paid. In the past the Cotton Board has received requests for reimbursements beyond the 90 day limit. In responding to these request, importers have informed the Cotton Board that the 90 day period is too restrictive. The Cotton Board has recognized that importer concern over the time period has merit. Therefore, the Cotton Board has requested that the Department extend the period to 180 days. The Cotton Board believes that this will be consistent with the business practices of importers, and make it easier for importers to comply with the regulations.

A proposed rule with a request for comments was published in the **Federal Register** (62 FR 4666) on January 31, 1997. No comments were received during the comment period (January 31, through March 3, 1997).

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(5) is revised read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(5) Imported textile and apparel articles assembled of components formed from cotton produced in the United States and identified by HTS numbers 9802.00.8015 or 9802.00.9000 shall be exempt from assessments under this subpart.

* * * * *

3. In § 1205.520, paragraph (b) introductory text is revised to read as follows:

§ 1205.520 Procedure for obtaining reimbursement.

* * * * *

(b) *Submission of Reimbursement Application to Cotton Board.* Any importer requesting a reimbursement shall mail the application on the prescribed form to the Cotton Board. The application shall be postmarked within 180 days from the date the assessments were paid on the cotton by such importer. The reimbursement application shall show:

* * * * *

Dated: April 22, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–10892 Filed 4–25–97; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, 30, 40, 70, and 73

RIN 3150–AF71

NRC Region II Telephone Number and Address Change

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to change the address and telephone number of the NRC Region II office. These amendments are necessary to inform the public of these administrative changes to the NRC's regulations.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lankford, Nuclear Regulatory Commission, Region II, Atlanta, Georgia, (404) 331–4503.

SUPPLEMENTARY INFORMATION: On April 28, 1997, the NRC will move its Region II office from 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30323 to Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia 30303. The telephone number will be changed from (404) 331–4503 to (404) 562–4400.

Because this amendment deals with agency procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a change in address and telephone number.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0014, 3150–0017, 3150–0020, 3150–0009, 3150–0002.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because it is an administrative action that changes the address and telephone number of an NRC region.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this rule does not involve any provisions that would impose a backfit as defined in § 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Incorporation by reference, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 20, 30, 40, 70, and 73.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845. 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.5, paragraph (b)(2) is revised to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

* * * * *

(b) * * *

(2) Region II, USNRC, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, GA 30303.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Appendix D to Part 20 [Amended]

4. In Appendix D to Part 20, the NRC Region II address is revised to read ''USNRC, Region II, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, GA 30303.'' The NRC Region II telephone number is revised to read ''(404) 562–4400.''

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

5. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 30.6 [Amended]

6. In § 30.6, paragraph (b)(2)(ii), the NRC Region II address in the last sentence is revised to read ''U.S. Nuclear Regulatory Commission, Region II, Material Licensing/Inspection Branch, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia 30303.''

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

7. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 40.5 [Amended]

8. In § 40.5, paragraph (b)(2)(ii), the NRC Region II address in the last sentence is revised to read ''U.S. Nuclear Regulatory Commission, Region II Material Licensing/Inspection Branch, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia 30303.''

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

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

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended 42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.5 [Amended]

10. In § 70.5, paragraph (b)(2)(ii), the NRC Region II address in the last sentence is revised to read ''U.S. Nuclear Regulatory Commission, Region II, Material Licensing/Inspection Branch, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, Georgia 30303.''

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

11. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

Appendix A to Part 73 [Amended]

12. In Appendix A the address for the NRC Region II office is revised to read ''USNRC, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, GA 30303.'' The NRC Region II telephone number is revised to read ''(404) 562–4400.''

Dated at Rockville, Maryland, this 14th day of April 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–10861 Filed 4–25–97; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

[Notice 1997–6]

11 CFR Part 104

Electronic Filing of Reports by Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rules; Announcement of effective date.

SUMMARY: On August 15, 1996, the Commission published the text of regulations implementing a voluntary system of electronic filing for reports of campaign finance activity filed with the agency. These rules were put into effect on an interim basis on January 1, 1997, pending Congressional review at the start of the 105th Congress. The Commission announces that the interim rules are in effect as final rules as of April 28, 1997.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Today, the Commission is announcing the effective date of regulations as final rules implementing a voluntary electronic filing system for reports of campaign finance activity filed with the agency. The new regulations, set out at 11 CFR 104.18, were originally published on August 15, 1996. 61 FR 42371 (Aug. 15,

1996). These rules implement provisions of Pub. L. No. 104–79, which amended the Federal Election Campaign Act of 1971, 2 U.S.C. 431 et seq. [''FECA''], to require, inter alia, that the Commission create a system to ''permit reports required by this Act to be filed and preserved by means of computer disk or any other electronic format or method, as determined by the Commission.'' Federal Election Campaign Act of 1971, Amendment, Pub. L. No. 104–79, section 1(a), 109 Stat. 791 (December 28, 1995).

The rules being put into effect today as final rules have been in effect as interim rules since January 1, 1997. See 61 FR 58460 (Nov. 15, 1997). The Commission put these rules into effect as interim rules in order to meet the statutory deadline set out in section 1(c) of Pub. L. No. 104–79. The Commission originally expected to be able to meet this deadline when it approved these rules on August 9, 1996, and sent them to Congress for legislative review. 61 FR 42371 (Aug. 15, 1996). However, Congress adjourned sine die on October 4, 1996, before the expiration of the legislative review period. Therefore, the Commission put the rules into effect as interim rules, and resubmitted the rules for review in the 105th Congress.

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the FECA controls the legislative review process. See 5 U.S.C. 801(a)(4), Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104–121, section 251, 110 Stat. 857, 869 (1996). Section 438(d) of the FECA requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. Thirty legislative days expired in the House of Representatives on April 15, 1997. Thirty legislative days expired in the Senate on March 14, 1997.

Announcement of Effective Date: 11 CFR 104.17 and 104.18, as published at 61 FR 42371 (Aug. 15, 1996), are effective as final rules as of April 28, 1997.

Dated: April 22, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–10803 Filed 4–25–97; 8:45 am]

BILLING CODE: 6715–01–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the previous Foreign List.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are the deletions from and additions to the Board's OTC List, which was last published on January 27, 1997 (62 FR 3773), and became effective February 10, 1997. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks traded over-the-counter in the United States that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are the deletions from and additions to the Foreign List which was last published on January 27, 1997 (62 FR 3773) and became effective February 10, 1997. A copy of the complete Foreign List is available from the Federal Reserve banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2 and 220.17 Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.

Deletions From the List Of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

AMERICAN EDUCATIONAL PRODUCTS INC.
$.01 par common
AMERICAN LIFE HOLDING COMPANY
$.01 par redeemable cumulative preferred
ANTARES RESOURCES CORPORATION
$.001 par common
ATS MEDICAL, INC.
Warrants (expire 03–09–97)
BANK OF LOS ANGELES
Warrants (expire 12–01–98)
BIOMAGNETIC TECHNOLOGIES, INC.
No par common
BLACK HAWK GAMING & DEVELOPMENT COMPANY, INC.
Warrants (expire 06–30–97)
CALLOWAY'S NURSERY, INC.
$.01 par common
CERPLEX GROUP, INC., THE
$.001 par common
CHAMPION ROAD MACHINERY, LTD.
No par common
CHARTWELL LEISURE, INC.
Rights (expire 03–13–97)
CINCINNATI MICROWAVE, INC.
No par common
Warrants (expire 12–31–98)
COMMUNITY FIRST BANKSHARES, INC.
Depositary Shares
CYTROGEN CORPORATION
Warrants (expire 01–31–97)
DIAGNOSTIC HEALTH SERVICES, INC.
Warrants (expire 06–22–98)
DIAMOND TECHNOLOGY PARTNERS, INC.
Rights (expire 03–31–97)
ENCORE COMPUTER CORPORATION
$.01 par common
EXCEL TECHNOLOGY, INC.
Class B, warrants (expire 02–08–98)
FOREST OIL CORPORATION
$.75 par convertible preferred
HARISTON CORPORATION
No par common
HARVARD INDUSTRIES, INC.
Class B, $.01 par common
INDUSTRIAL HOLDINGS, INC.
Class A, warrants (expire 01–16–97)
IWI HOLDING, LIMITED
No par common
KUSHNER-LOCKE COMPANY, THE
Warrants (expire 03–20–97)
L.A. T SPORTSWEAR, INC.
No par common
LAFAYETTE INDUSTRIES, INC.
$.01 par common
MANHATTAN LIFE INSURANCE COMPANY
$2.00 par common
MERIS LABORATORIES, INC.
No par common
MICROCAP FUND, INC., THE
$.01 par common
MICROELECTRONIC PACKAGING, INC.
No par common
MULTIMEDIA CONCEPTS INTERNATIONAL, INC.
$.001 par common
NATIONAL MERCANTILE BANCORP (CA)
No par common
NATIONSBANK CORPORATION
Depositary shares
QUANTUM CORPORATION
6⅜% convertible subordinated debentures
SALICK HEALTH CARE, INC.
$.001 par common
SMT HEALTH SERVICES, INC.
Warrants (expire 03–04–97)
SPECIALTY TELECONSTRUCTORS, INC.
Warrants (expire 11–02–99)
TELETEK, INC.
$.0001 par common
UNITED HOME LIFE INSURANCE CO.
$1.00 par common
UROHEALTH SYSTEMS, INC.
Warrants (expire 03–20–97)

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

AFFILIATED COMPUTER SERVICES, INC.
Class A, $.01 par common
AHI HEALTHCARE SYSTEMS, INC.
$.01 par common
ALLIED BANKSHARES, INC. (Georgia)
$1.00 par common
ALLIED GROUP, INC.
No par common
AMERICAN RADIO SYSTEMS CORPORATION
Class A, $.01 par common
AMERICAN STUDIOS, INC.
$.001 par common
ARGENTBANK
$2.50 par common
ATLANTIC TELE-NETWORK, INC.
$.01 par common
AZTEC MANUFACTURING CO.
$1.00 par common
B. M. J. FINANCIAL CORP.
$1.00 par common
BABY SUPERSTORE, INC.
No par common
BAREFOOT INC.
$.01 par common
BRIDGEVILLE SAVINGS BANK, FSB (Pennsylvania)
$.10 par common
CABLE DESIGN TECHNOLOGIES CORPORATION
$.01 par common
CAVCO INDUSTRIES, INC.
$.10 par common
CENTRAL TRACTOR FARM & COUNTRY INC.
$.01 par common
CHEMFAB CORPORATION
$.10 par common
CHEMPOWER, INC.
$.10 par common
CITI-BANCSHARES, INC. (Florida)
$.01 par common
CLIFFS DRILLING COMPANY
$.01 par common
CONSOLIDATED GRAPHICS, INC.
$.01 par common
DYNATECH CORPORATION
$.20 par common
EASTBAY, INC.
$.01 par common
ENERGY RESEARCH CORPORATION
$.0001 par common
EPIC DESIGN TECHNOLOGY, INC.
No par common
EZ COMMUNICATIONS, INC.
Class A, $.01 par common
FHP INTERNATIONAL CORPORATION
$.05 par common
Series A, $.05 par cumulative convertible preferred
FIBERMARK, INC.
$.001 par common
FIDELITY FINANCIAL BANKSHARES CORPORATION
$1.00 par common
FIRST FEDERAL BANCSHARES OF EAU CLAIRE INC.
$.01 par common
FIRST FEDERAL SAVINGS BANK OF BRUNSWICK, GEORGIA
$1.00 par common
FIRST STATE FINANCIAL SERVICES, INC.
$.01 par common
FLORIDA FIRST BANCORP INC.
$1.00 par common
FORASOL-FORMER, N.V.
Common shares (par NLG 0.01)
GREAT BAY POWER CORPORATION
$.01 par common
GROVE BANK (Massachusetts)
$.10 par common
HOMELAND BANKSHARES CORPORATION
$12.50 par common
HORIZON BANCORP, INC. (Texas)
$.01 par common

INDEPENDENCE BANCORP, INC. (New Jersey)
$1.667 par common
INNOTECH, INC.
$.001 par common
IWC RESOURCES CORPORATION
No par common
KINDERCARE LEARNING CENTERS, INC.
$.01 par common
Warrants (expire 04–01–97)
LASALLE RE HOLDINGS, LIMITED
$1.00 par common
LIBERTY BANCORP, INC. (Illinois)
$.01 par common
MASTEC, INC.
$.10 par common
MEDEX, INC.
$.01 par common
MIDLAND FINANCIAL GROUP, INC.
No par common
MILGRAY ELECTRONICS, INC.
$.25 par common
NEW WORLD COMMUNICATIONS GROUP INC.
Class A, $.01 par common
NORAND CORPORATION
$.01 par common
OSBORN COMMUNICATIONS CORPORATION
$.01 par common
OXFORD RESOURCES CORPORATION
Class A, $.01 par common
PANATECH RESEARCH AND DEVELOPMENT CORPORATION
$.01 par common
PROVIDENCE AND WORCESTER RAILROAD COMPANY
$.50 par common
QUALITY FOOD CENTERS, INC.
$.001 par common
RESEARCH MEDICAL, INC.
$.50 par common
RIVERSIDE NATIONAL BANK (California)
$1.25 par common
SCI SYSTEMS, INC.
$.10 par common
SDNB FINANCIAL CORP.
No par common
SECURITY BANCORP (Montana)
$1.00 par common
SOFTDESK INC.
$.01 par common
SOUTHWEST BANKS, INC.
$.10 par common
SQA INC.
$.01 par common
SQUARE INDUSTRIES, INC.
$.01 par common
STROBER ORGANIZATION, INC.
$.01 par common
SUIZA FOODS CORPORATION
$.01 par common
SYSTEMIX, INC.
$.01 par common
TARGET THERAPEUTICS, INC.
$.0025 par common
THERATX, INCORPORATED
$.001 par common
TOMPKINS COUNTY TRUSTCO, INC. (New York)
$1.66⅔ par common
TOWER AUTOMOTIVE, INC.
$.01 par common
TPI ENTERPRISES, INC.
$.01 par common
TRIAD SYSTEMS CORPORATION
$.01 par common
TROY HILL BANCORP, INC. (Pennsylvania)
$.01 par common
TSX CORPORATION
$.01 par common
TYLAN GENERAL INC.
$.001 par common
UNITED AIR SPECIALISTS, INC.
No par common
VALLICORP HOLDINGS, INC.
$.01 par common
VENTURA COUNTY NATIONAL BANCORP
No par common
VIDEO SENTRY CORPORATION
$.01 par common
VITALINK PHARMACY SERVICES, INC.
$.01 par common

Additions to The List of Marginable OTC Stocks

1ST SOURCE CORPORATION
Fixed rate cumulative trust preferred securities of 1st Source Capital Trust
Floating rate cumulative trust preferred securities of 1st Source Capital Trust
AASTROM BIOSCIENCES, INC.
No par common
ACCELGRAPHICS, INC.
$.001 par common
AGRIBIOTECH, INC.
$.001 par common
AHL SERVICES, INC.
$.01 par common
ALLIANCE IMAGING, INC.
$.01 par common
AMERICAN BUSINESS FINANCIAL SERVICES, INC.
$.001 par common
AMERITRADE HOLDING CORPORATION
Class A, $.01 par common
AMERUS LIFE HOLDINGS, INC.
Class A, no par common
APEX PC SOLUTIONS, INC.
No par common
ATL PRODUCTS, INC.
Class A, $.0001 par common
BANK OF SANTA CLARA
No par common
BEA SYSTEMS, INC.
$.001 par common
BIORA AB
American Depository Receipts
BIOSITE DIAGNOSTIC, INC.
$.01 par common
BIRMAN MANAGED CARE, INC.
$.001 par common
BRUNSWICK TECHNOLOGIES, INC.
No par common
CAPITAL CITY BANK GROUP (Florida)
$.01 par common
CELL THERAPEUTICS, INC.
No par common
CERUS CORPORATION
$.001 par common
CIENA CORPORATION
$.01 par common
CITIZENS FINANCIAL CORPORATION
Class A, no par common
COAST BANCORP (California)
No par common
COAST DENTAL SERVICES, INC.
$.001 par common
COLDWATER CREEK, INC.
$.01 par common
COLONIAL DOWNS HOLDINGS, INC.
Class A, $.01 par common
COMMUNITY CARE SERVICES, INC.
$.01 par common
COMMUNITY FIRST BANKSHARES, INC.
Cumulative capital securities
$25 liquidation
COMMUNITY TRUST BANCORP, INC.
No par preferred stock
COULTER PHARMACEUTICAL, INC.
$.001 par common
CRESUD S.A.C.I.F. Y. A.
American Depositary Receipts
CRYSTAL SYSTEMS SOLUTIONS, LTD.
Ordinary shares (NIS .01)
DAOU SYSTEMS, INC.
$.001 par common
DATA SYSTEMS NETWORK CORPORATION
$.01 par common
DATAMARK HOLDING, INC.
$.0001 par common
DELTEK SYSTEMS, INC.
$.001 par common
DIAMOND TECHNOLOGY PARTNERS, INC.
Class A, $.001 par common
DIGITAL LIGHTWAVE, INC.
$.0001 par common
EARTHLINK NETWORK, INC.
$.01 par common
EDGE PETROLEUM CORPORATION
$.01 par common
ELTEK LTD.
Ordinary Shares (NIS .6)
EMCORE CORPORATION
No par common
EMPIRE FEDERAL BANCORP, INC. (Montana)
$.01 par common
ENCORE MEDICAL CORPORATION
$.001 par common
Warrants (expire 03–08–2003)
ENDOCARDIAL SOLUTIONS, INC.
$.01 par common
ENSTAR, INC.
$.01 par common

ENVIRONMENT/ONE CORPORATION
$.10 par common
EPIX MEDICAL, INC.
$.01 par common
ERGOBILT, INC.
$.01 par common
ESPRIT TELECOM GROUP PLC
American Depositary Receipts
EURONET SERVICES, INC.
$.01 par common
FIELDWORKS, INCORPORATED
$.001 par common
FIRST AVIATION SERVICES, INC.
$.01 par common
FIRST BANKS, INC. (Missouri)
No par cumulative trust preferred securities
FIRST STERLING BANKS, INC.
No par common
FIRSTFED BANCORP, INC. (Alabama)
$.01 par common
FONIX CORPORATION
$.0001 par common
FOUR MEDIA COMPANY
$.01 par common
FREEPAGES GROUP PLC
American Depositary Receipts
FULTON BANCORP, INC.
$.01 par common
GEOGRAPHICS, INC.
Warrants (expire 06–01–99)
GFSB BANCORP, INC.
$.10 par common
GREATER BAY BANCORP (California)
9.75% cumulative trust preferred
GREEN MOUNTAIN COFFEE, INC.
$.01 par common
GS FINANCIAL CORPORATION
$.01 par common
GUARANTY FINANCIAL CORPORATION
$1.25 par common
GUITAR CENTER, INC.
$.01 par common
GULF ISLAND FABRICATION, INC.
No par common
HAMILTON BANCORP, INC. (Florida)
$.01 par common
HEMLOCK FEDERAL FINANCIAL CORPORATION
$.01 par common
HIGH POINT FINANCIAL CORPORATION
No par common
HOMELAND HOLDING CORPORATION
$.01 par common
HOSPITALITY WORLDWIDE SERVICES, INC.
$.01 par common
HUMASCAN, INC.
$.01 par common
IAT MULTIMEDIA, INC.
$.01 par common
ICG COMMUNICATIONS, INC.
$.01 par common
ILEX ONCOLOGY, INC.
$.01 par common
ILOG S.A.
American Depositary Receipts
IMAGE GUIDED TECHNOLOGIES, INC.
No par common
INTERSTATE NATIONAL DEALER SERVICES, INC.
Warrants (expire 07–22–99)
IONA TECHNOLOGIES, PLC
American Depositary Receipts
JACOR COMMUNICATIONS, INC.
Warrants (expire 02–27–2002)
JAKKS PACIFIC, INC.
$.001 par common
JEFFBANKS, INC.
9.25% no par preferred securities
JENNA LANE, INC.
$.01 par common
Class A, warrants (expire 03–19–2000)
JUDGE GROUP, INC., THE
$.01 par common
KNIGHTSBRIDGE TANKERS, LTD.
$.01 par common
KOS PHARMACEUTICALS, INC.
$.01 par common
LOGITECH INTERNATIONAL S.A.
American Depositary Receipts
MACROVISION CORPORATION
$.01 par common
MANSUR INDUSTRIES, INC.
$.001 par common
MEADE INSTRUMENTS CORPORATION
$.01 par common
MEDIALINK WORLDWIDE INCORPORATED
$.01 par common
MEDICAL MANAGER CORPORATION
$.01 par common
MEDIRISK, INC.
$.001 par common
METRO INFORMATION SERVICES, INC.
$.01 par common
MICRO THERAPEUTICS, INC.
$.001 par common
MISSISSIPPI VALLEY BANCSHARES, INC.
Floating rate cumulative trust—preferred securities of MVBI Capital Trust
MULTIMEDIA GAMES, INC.
$.01 par common
NACT TELECOMMUNICATIONS, INC.
$.01 par common
NAMIBIAN MINERALS CORPORATION
No par common
NATIONAL AUTO FINANCE COMPANY, INC.
$.01 par common
NEOMAGIC CORPORATION
$.001 par common
NETCOM SYSTEMS, AB
American Depositary Receipts
NETSMART TECHNOLOGIES, INC.
$.01 par common
NEWSOUTH BANCORP, INC. (North Carolina)
$.01 par common
NEXAR TECHNOLOGIES, INC.
$.01 par common
NOVATEL, INC.
No par common
OLD GUARD GROUP, INC.
No par common
OMNIQUIP INTERNATIONAL, INC.
$.01 par common
ORTEC INTERNATIONAL, INC.
$.001 par common
OVERLAND DATA, INC.
No par common
PACIFICARE HEALTH SYSTEMS, INC.
Series A,
$1.00 par cumulative convertible preferred
PALEX, INC.
$.01 par common
PEOPLES FINANCIAL CORPORATION
No par common
PEREGRINE SYSTEMS, INC.
$.001 par common
PERPETUAL BANK, A FEDERAL SAVINGS BANK (South Carolina)
$1.00 par common
PHOTOELECTRON CORPORATION
$.01 par common
PHYSICIANS' SPECIALITY CORPORATION
$.001 par common
PREMIER RESEARCH WORLDWIDE, INC.
$.01 par common
PRIME CAPITAL CORPORATION
$.05 par common
PROMEDCO MANAGEMENT COMPANY
No par common
QUALIX GROUP, INC.
$.001 par common
RADIANT SYSTEMS, INC.
No par common
RAIL AMERICA, INC.
$.001 par common
RANDGOLD & EXPLORATION COMPANY LTD.
American Depositary Receipts
ROYALE ENERGY, INC.
No par common
SAVANNAH BANCORP, INC., THE
$1.00 par common
SEARCH CAPITAL GROUP, INC.
$.01 par common
$.01 par preferred stock
SEMICONDUCTOR LASER INTERNATIONAL CORPORATION
$.01 par common
SIGNATURE INNS, INC.
No par common
Series A, cumulative convertible preferred
SILGAN HOLDINGS, INC.
$.01 par common
SOURCE CAPITAL CORPORATION
No par common
SOUTHWEST BANCORPORATION OF TEXAS, INC.
$1.00 par common
SPECIAL METALS CORPORATION
$.01 par common

SPECIALITY CARE NETWORK, INC.
$.001 par common
SPINNAKER INDUSTRIES, INC.
No par common
STOCKER & YALE, INC.
$.001 par common
STORAGE DIMENSIONS, INC.
$.005 par common
SUN BANCORP, INC. (New Jersey)
9.85% preferred stock
TANGRAM ENTERPRISE SOLUTIONS, INC.
$.01 par common
TEMPLATE SOFTWARE, INC.
$.01 par common
TOTAL CONTROL PRODUCTS, INC.
No par common
TOTAL WORLD TELECOMMUNICATIONS, INC.
$.00001 par common
TRANSCRYPT INTERNATIONAL, INC.
$.01 par common
VALLEY NATIONAL GASES, INC.
$.001 par common
VDI MEDIA
No par common
VISTANA, INC.
$.01 par common
VYREX CORPORATION
$.001 par common
WALBRO CORPORATION
Convertible trust preferred securities
WESLEY JESSEN VISIONCARE, INC.
$.01 par common
WINTRUST FINANCIAL CORPORATION
No par common
YURIE SYSTEMS, INC.
$.01 par common
ZINDART LIMITED
American Depositary Receipts

Deletions From the Foreign Margin List

BRAZIL

COMPANHIA SUZANO DE PAPEL CELULOSE PN
No par non-voting, preferred
LOJAS AMERICANAS S.A.
No par common

HONG KONG

WINSOR INDUSTRIAL CORPORATION LTD.
HK$.50 par ordinary shares

JAPAN

AT&T GLOBAL INFORMATION SOLUTIONS JAPAN, LTD.
¥50 par common
CENTRAL FINANCE CO., LTD.
¥50 par common
GODO STEEL, LTD.
¥50 par common
JAPAN DIGITAL LABORATORY CO., LTD.
¥50 par common
KEIYO CO., LTD.
¥50 par common
MITSUI CONSTRUCTION CO., LTD.
¥ 50 par common
NICHIEI CONSTRUCTION CO., LTD.
¥ 50 par common
NIHON NOSAN KOGYO K.K.
¥ 50 par common
NIPPON DENSETSU KOGYO CO., LTD.
¥ 50 par common
NISSHA PRINTING CO., LTD.
¥ 50 par common
RAITO KOGYO CO., LTD.
¥ 50 par common
SENSHUKAI CO., LTD.
¥ 50 par common
SHOKUSAN JUTAKU SOGO CO., LTD.
¥ 50 par common
SUMITOMO CONSTRUCTION CO., LTD.
¥ 50 par common
TAIHEI DENGYO KAISHA, LTD.
¥ 50 par common
TAKAOKA ELECTRIC MFG. CO., LTD.
¥ 50 par common
TOA STEEL CO., LTD.
¥ 50 par common
TOENEC CORPORATION
¥ 50 par common
TOKUYAMA SODA CO., LTD.
¥ 50 par common
TSUMURA & CO.
¥ 50 par common
YAOHAN JAPAN CORPORATION
¥ 50 par common

SOUTH AFRICA

MIDDLE WITWATERSRAND (WESTERN AREA) LTD.
Ordinary shares, par 0.01 South African rand

SWEDEN

STADSHYPOTEK AB
A Free Shares, par 10 Swedish krona

TAILAND

FINANCE ONE PUBLIC CO., LTD.
Ordinary shares, par 10 Thai baht
INTERNATIONAL COSMETICS PUBLIC CO., LTD.
Ordinary shares, par 10 Thai baht
UNIVEST LAND PUBLIC CO., LTD.
Common shares, par 10 Thai baht

UNITED KINGDOM

INVESCO PLC
Ordinary shares, par 25 p
LONDON ELECTRICITY PLC
Ordinary shares, par 50 p
YORKSHIRE ELECTRICITY GROUP PLC
Ordinary shares, par .5682 p

Additions to the Foreign Margin List

BRAZIL

CENTRAIS ELETRICAS BRASILEIRAS S.A. (ELETROBRAS)
No par common
COMPANHIA SIDERURGIA NACIONAL
No par common
LIGHT PARTICIPACOES, S.A. (LIGHT PAR)
No par common
UNIAO DE BANCOS BRASILEIRAS S.A.
No par non-voting, preferred

HONG KONG

CHINA OVERSEAS LAND & INVESTMENT, LTD.
HK$.10 par ordinary shares
CHINA RESOURCES ENTERPRISE, LTD.
HK$1.00 par ordinary shares
COSCO PACIFIC, LTD.
HK$.50 par ordinary shares
GUANDONG INVESTMENT, LTD.
HK$.50 par ordinary shares
KERRY PROPERTIES, LTD.
HK$.10 par ordinary shares
PEARL ORIENTAL HOLDINGS, LTD.
HK$.10 par ordinary shares
TSIM SHA TSUI PROPERTIES, LTD.
HK$.20 par ordinary shares

ITALY

H.P.I. SPA
Ordinary shares, par 5000 lira

JAPAN

ACOM CO., LTD.
¥50 par common
DDI CORPORATION
¥5000 par common
NICHIEI CO., LTD.
¥50 par common
NTT DATA CORPORATION
¥50,000 par common
ORIENTAL LAND CO., LTD.
¥50 par common
PROMISE CO., LTD.
¥50 par common
WEST JAPAN RAILWAY CO.
¥50,000 par common

SOUTH AFRICA

AVMIN LIMITED
Ordinary shares, par .01 South African rand

SWITZERLAND

CIBA SPECIALTY CHEMICALS HOLDINGS AG
Registered shares, par 10 Swiss francs

THAILAND

ICC INTERNATIONAL PUBLIC CO., LTD.
Ordinary shares, par 10 Thai baht

UNITED KINGDOM

AMVESCO PLC
Ordinary shares, par 25 p

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and

Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), April 23, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–10838 Filed 4–25–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

21 CFR Part 177

[Docket No. 96F–0213]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,4-benzenedicarboxylic acid, polymer with 1,4-butanediol, (Σ)-2-butenedioic acid, 1,2-ethanediol, ethyl 2-propenoate, hexanedioic acid and 2-propenoic acid, graft, in Nylon 6 and Nylon 6 modified with Nylon MXD–6 articles intended for use in contact with food. This action is in response to a petition filed by Toyobo Co., Ltd.

DATES: Effective April 28, 1997; written objections and requests for a hearing by May 28, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 18, 1996 (61 FR 37484), FDA announced that a food additive petition (FAP 6B4511) had been filed by Toyobo Co., Ltd., 2–1–1 Hon Katata Otsu, Shiga 520–02, Japan. The petition proposed to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500) to provide for the safe use of 1,4-benzenedicarboxylic acid, polymer with 1,4-butanediol, (Σ)-2-butenedioic acid, 1,2-ethanediol, ethyl 2-propenoate, hexanedioic acid, and 2-propenoic acid, graft, in Nylon 6 and Nylon 6 modified with Nylon MXD–6 articles intended for use in contact with food. The graft resins of this type are generically called copolyester-graft-acrylate copolymer.

During the agency's review of the petition, the agency observed that the nomenclature for (Σ)-2-butenedioic acid was incorrect. The correct nomenclature is (*E*)-2-butenedioic acid. This document uses the correct designation for the subject component in the codified final rule.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the additive will have its intended technical effect, and therefore, that the regulations in § 177.1500 should be amended as set forth below.

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

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. No comments were received during the 30-day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

Any person who will be adversely affected by this regulation may at any time on or before May 28, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

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

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1500 is amended by redesignating paragraph (c) as paragraph (d), by adding a new paragraph (c), and in the last sentence of newly designated paragraph (d)(5)(ii) by removing the phrase ''paragraph (c)(5)(i)'' and adding in its place the phrase ''paragraph (d)(5)(i)'' to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(c) *Nylon modifier*—(1) *Identity.* Copolyester-graft-acrylate copolymer is the substance 1,4-benzenedicarboxylic acid, polymer with 1,4-butanediol, (*E*)-2-butenedioic acid, 1,2-ethanediol, ethyl 2-propenoate, hexanedioic acid and 2-propenoic acid, graft (CAS Reg. No. 175419–23–5), and is derived from grafting of 25 weight percent of acrylic polymer with 75 weight percent of copolyester. The copolyester is polymerized terephthalic acid (55 mol%), adipic acid (40 mol%), and fumaric acid (5 mol%) with ethylene glycol (40 mol%) and 1,4-butanediol (60 mol%). The acrylic polymer is made from acrylic acid (70 mol%) and ethyl acrylate (30 mol%).

(2) *Specifications.* The finished copolyester-graft-acrylate copolymer shall meet the following specifications:

(i) Weight average molecular weight 15,000–35,000,

(ii) pH 7.2 to 8.2, and

(iii) Glass transition temperature –15 to –25 °C.

(3) *Conditions of use.* (i) Copolyester-graft acrylate copolymer described in paragraph (c)(1) of this section is intended to improve the adhesive qualities of film. It is limited for use as a modifier of Nylon 6 and Nylon 6 modified with Nylon MXD–6 at a level not to exceed 0.17 weight percent of the additive in the finished film.

(ii) The finished film is used for packaging, transporting, or holding all types of foods under conditions of use B through H, described in Table 2 of § 176.170(c) of this chapter, except that in the case of Nylon 6 films modified with Nylon MXD–6 (complying with § 177.1500, item 10.2), the use complies with the conditions of use specified in Table 2.

(iii) *Extractives.* Food contact films described in paragraphs (c)(1) of this section, when extracted with solvent or solvents prescribed for the type of food and under conditions of time and temperature specified for the intended use, shall yield total extractives not to exceed 0.5 milligram per inch squared of food-contact surface when tested by the methods described in § 176.170(d) of this chapter.

(iv) *Optional adjuvant substances.* The substances employed in the production of Nylon modifiers listed in paragraph (c)(1) of this section may include:

(A) Substances generally recognized as safe for use in food and food packaging;

(B) Substances subject to prior sanction or approval for use in Nylon resins and used in accordance with such sanctions or approval; and

(C) Optional substances required in the production of the additive identified in this paragraph and other optional substances that may be required to accomplish the intended physical or technical effect.

Dated: April 2, 1997.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–10909 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADA's) from Ciba-Geigy Animal Health, Ciba-Geigy Corp. to Novartis Animal Health US, Inc.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA's 140–915, 141–026, and 141–035 to Novartis Animal Health US, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by removing Ciba-Geigy Animal Health, Ciba-Geigy Corp., because the firm is no longer the sponsor of any approved NADA's, and by alphabetically adding a new listing for Novartis Animal Health US, Inc. The drug labeler code assigned is being retained for the new sponsor.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300'' and by alphabetically adding a new entry for ''Novartis Animal Health US, Inc.''; and in the table in paragraph (c)(2) in the entry for ''058198'' by removing the sponsor name ''Ciba-Geigy Animal Health, Ciba-Geigy Corp.'' and adding in its place ''Novartis Animal Health US, Inc.''

Dated: April 8, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–10912 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new abbreviated animal drug application (ANADA) from Phoenix Pharmaceutical, Inc., to Phoenix Scientific, Inc.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd., P.O. Box 6457 Farleigh Station, St. Joseph, MO 64506–0457, has informed FDA that it has transferred ownership of, and all rights and interests in, approved ANADA 200–042 (ketamine hydrochloride injection) to Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457. Accordingly, the agency is amending the regulations in 21 CFR 522.1222a to reflect the change of sponsor.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1222a [Amended]

2. Section 522.1222a *Ketamine hydrochloride injection* is amended in paragraph (c) by removing the number ''057319'' and adding in its place ''059130''.

Dated: March 31, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–10914 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin Meglumine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for use of flunixin meglumine injection in horses for alleviation of inflammation and pain associated with musculoskeletal disorders and visceral pain associated with colic.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, filed ANADA 200–061, which provides for intravenous or intramuscular use of flunixin meglumine injection in horses for alleviation of inflammation and pain associated with musculoskeletal disorders and visceral pain associated with colic. Flunixin meglumine is for veterinary prescription use only.

Approval of ANADA 200–061 for Agri Laboratories' flunixin meglumine injection is as a generic copy of Schering-Plough's Banamine® (flunixin meglumine) Solution (injection) NADA 101–479. The ANADA is approved as of September 11, 1996, and the regulations are amended in 21 CFR 522.970(b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The firm has submitted an abbreviated environmental assessment. In response, FDA has prepared a finding of no significant impact. The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.970 is amended by revising paragraph (b) to read as follows:

§ 522.970 Flunixin meglumine solution.

* * * * *

(b) *Sponsors.* See Nos. 000061, 000856, 057561, and 059130 in § 510.600(c) of this chapter.

* * * * *

Dated: April 8, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–10910 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Gentamicin Sulfate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for the use of gentamicin sulfate solution in the dipping treatment of turkey hatching eggs as an aid in the reduction or elimination of certain organisms.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767, has filed ANADA 200–191, which provides for use of Gentasol (gentamicin sulfate solution) in the dipping treatment of turkey hatching eggs as an aid in the reduction or elimination of the following organisms from turkey hatching eggs: *Arizona hinshawii* (paracolon), *Salmonella st. paul*, and *Mycoplasma meleagridis*.

The ANADA is approved as a generic copy of Schering Plough's NADA 92–523, Garasol® Solution (gentamicin sulfate veterinary). ANADA 200–191 is approved as of March 24, 1997, and the regulations are amended in 21 CFR 529.1044b to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.1044b [Amended]

2. Section 529.1044b *Gentamicin sulfate solution* is amended in paragraph (b) by removing ''No. 000061'' and adding in its place ''Nos. 000061 and 051259''.

Dated: April 8, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–034–FOR]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the North Dakota regulatory program (hereinafter referred to as the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to rules pertaining to: Permit application requirements for the disposal of noncoal wastes; performance standards concerning soil redistribution; revegetation success standards on lands developed for use as prime farmland, recreation, and on previously-mined areas to be developed for water, residential, industrial, and/or commercial uses. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiencies.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, Telephone: (307) 261–6550.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated March 20, 1996, North Dakota submitted a proposed amendment (Amendment No. XXIII, administrative record No. ND–Y–01) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment on its own initiative and in response to required program amendments at 30 CFR 934.16 (aa) and (bb). OSM announced receipt of the proposed amendment in the April 24, 1996, **Federal Register** (61 FR 18100; administrative record No. ND–Y–05), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. The public comment period ended May 24, 1996. Because no one requested a public hearing or meeting, none was held.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on March 20, 1996, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to North Dakota's Rules

North Dakota proposed revisions to its approved program that are nonsubstantive in nature and consist of editorial changes. North Dakota proposed to replace, throughout its program, the name of the U.S. ''Soil Conservation Service''with its new name, the ''National Resource Conservation Service.'' North Dakota also proposed to replace the name of the North Dakota ''Department of Health and Consolidated Laboratories,'' with its new name, the ''Department of Health.''

Because these editorial revisions have no significant impact on the substance of the requirements of the program, other than to correctly identify the appropriate Federal and State agencies, the Director finds that the proposed revisions are consistent with and no less effective than the Federal program and approves them.

2. Substantive Revisions to North Dakota's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

North Dakota proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses).

NDAC 69–05.2–19–04.3 (30 CFR 816.89(b)), concerning design and construction of noncoal waste disposal sites to ensure that leachate and drainage from the noncoal waste areas does not degrade surface or underground water.

NDAC 69–05.2–26–05.3.e (30 CFR 823.15(b)(5)), concerning the demonstration of restoration of prime farmland productivity, to require an average annual yield rather than yields from three consecutive growing seasons.

Because these proposed revisions to North Dakota rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the corresponding Federal regulations. The Director approves these proposed revisions.

3. NDAC 69–05.2–09–02.8, Permit Applications Requirements for Noncoal Waste Disposal

North Dakota proposed to revise NDAC 69–05.2–09–02.8, which currently provides that the required maps and plans of the proposed permit and adjacent areas show each coal storage, cleaning, and loading area, and each coal waste and noncoal waste storage area. Under the proposed revisions, for noncoal wastes that will be disposed of in the proposed permit area, the applicant would be required to provide a description of: (1) Any wastes listed under NDAC 33–20–02.1–01.2.i and (2) ''any other wastes requiring a permit from the state department of

health.'' Pursuant to NDAC 33–20–02.1–01.2.i, a solid waste management permit is not required for the disposal of certain specified mining operation wastes into areas designated in a surface coal mining permit issued by the State regulatory authority for such disposal. Thus, the Director interprets the proposed revision as requiring a description of all noncoal wastes that will be disposed of in the proposed permit area, whether or not the applicant is required to obtain a solid waste management permit from the State Department of Health. North Dakota also proposed to require that the location of any noncoal waste disposal areas within the proposed permit area be shown on a map of the permit area.

There are no exact Federal counterpart provisions to the State's proposed revisions to NDAC 69–05.2–09–02.8. Pursuant to 30 CFR 730.11(b), States may promulgate regulations for which no corresponding provisions exist in SMCRA or the Federal regulations. Since there are no exact Federal counterpart provisions, OSM compared North Dakota's proposed revisions to NDAC 69–05.2–09–02.8 for consistency with section 515(b)(14) of SMCRA and the Federal regulations at 30 CFR 780.11(b)(4).

Section 515(b)(14) of SMCRA requires that surface coal mining and reclamation operations be conducted in a manner which insures, among other things, that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters. The Federal regulations at 30 CFR 780.11(b)(4) require that each permit application contain a narrative explaining, among other things, the use and maintenance of coal processing waste and noncoal disposal areas. Existing North Dakota rule NDAC 69–05.2–09–01 ''Permit applications—Operation plans—General requirements'' requires that ''Each application must contain a detailed description of the proposed mining operations, including: ''3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use and maintenance of each mine facility, water and air pollution control facilities or structures, * * *. In addition, NDAC 69–05.2–09–02. ''Permit applications—Operation plans—Maps and plans.'' requires that ''Each application must contain * * * an appropriate combination of * * * topo maps, planimetric maps, and plans of the proposed permit and adjacent areas showing: ''8. Each coal storage, cleaning and loading area, and each coal waste and noncoal waste storage area.'' These North Dakota rules meet the requirements of 30 CFR 780(b)(4).

The Director finds that North Dakota's proposed revisions will assist the State in insuring that wastes produced by surface coal mining and reclamation operations be disposed of in a manner designed to prevent contamination of ground or surface waters.

Based on the above discussion, the Director finds that North Dakota's proposed revisions to NDAC 69–05.2–09–02.8 are not inconsistent with section 515(b)(14) of SMCRA or the provisions of 30 CFR 780.11(b)(4) and approves the proposed revisions.

4. NDAC 69–05.2–13–02, General Requirements for an Annual Map

North Dakota proposed to revise NDAC 69–05.2–13–02 to more clearly specify the required scale for an annual map (1:4,800), and to allow another scale upon approval of North Dakota's Public Service Commission.

There are no exact Federal counterpart provisions to the State's proposed revisions to NDAC 69–05.2–13–02 as the Federal regulations do not require submission of an annual map. Pursuant to 30 CFR 730.11(b), States may promulgate regulations for which no corresponding provisions exist in SMCRA or the Federal regulations. Since there are no exact Federal counterpart provisions, OSM evaluated North Dakota's proposed revisions to NDAC 69–05.2–13–02 for consistency with the Federal regulations at 30 CFR 777.14(a), which deals with the requirements for maps submitted with a permit application.

The Federal regulations at 30 CFR 777.14(a) require, among other things, that maps of the permit area submitted with applications shall be presented at a scale of 1:6,000 or larger and maps of the adjacent area shall be in a scale determined by the regulatory authority, but in no event smaller than 1:24,000.

North Dakota's proposed rule provides for reporting requirements on maps that are larger than those required by the Federal program. Because the required maps are on a larger scale than required to be in Federal permit applications and locations will therefore be shown with more specificity, the required map scale is not inconsistent with the Federal regulation at 30 CFR 777.14. Given that there is no Federal counterpart for reporting on annual maps, and given 30 CFR 730.11(b) which has been previously discussed in this section, the requirement for annual maps at other scales approved by the Public Service Commission is not inconsistent with the requirements of the Federal program. Moreover, the Director notes that the North Dakota provision concerning maps submitted with a permit application, NDAC 69–05.2–09–02, requires the scale of such maps to be 1:4,800.

Based on the aforementioned discussion, the Director finds that the proposed revisions to NDAC 69–05.2–13–02 are not inconsistent with the requirements of the Federal regulations at 30 CFR 777.14(a) and approves the proposed revisions.

5. NDAC 69–05.2–15–04.4.a(2)(c), Performance Standard Concerning an Alternative Method for Determining the Requirements for Redistribution of Suitable Plant Growth Material

On October 21, 1986 (51 FR 37271, 37273, finding No. 8), the Director approved the provision at NDAC 69–05.2–15–04.4(a)(2) that allows an alternative method for determining the depth of suitable plant growth material required to be redistributed. North Dakota now proposes to revise NDAC 69–05.2–15–04.4a(2)(c) to specify that the rule is effective for those areas distributed prior to the year 1999, rather than 1997. Because there is no exact Federal counterpart provision to the State's proposed revision, 30 CFR 730.11(b) is relevant. It says that States may promulgate regulations for which no corresponding provisions exist in SMCRA or the Federal regulations. The effect of proposed NDAC 69–05.2–15–04.4a(2)(c) is to extend the applicable time of the rule by two years, to 1999.

The Federal regulations at 30 CFR 816.22 allow an operator to demonstrate to the regulatory authority that the resulting soil medium of substituting or supplementing the overburden soil medium is equal to or more suitable for sustaining vegetation.

OSM notes that the technical information submitted when the alternative was first approved indicates that adverse effects on vegetation were unlikely. Further, permittees employing the alternative are still responsible for meeting revegetation success standards at the end of the responsibility period.

North Dakota explained (administrative record Nos. ND–Y–13, 14, 16) that the time extension until 1999 is necessary because a draft of a study, which just became available in 1997, and which examined the option of respreading a lesser amount of suitable plant growth material rather than the procedure imposed by existing North Dakota State rules, shows no difference in vegetation results and therefore there is no rational basis for not allowing the State to allow its operators to use the

less expensive option. In addition, before the study is finalized and data completely synthesized and analyzed, the State sees no reason why the option should not be continued until its 1999 sunset provision is eliminated and the option becomes permanent.

The Director agrees with the State and finds that the proposed revision to NDAC 69–05.2–15–04.4.a(2)(c) is not inconsistent with the Federal regulations at 30 CFR 816.22 and approves the proposed revision.

6. NDAC 69–05.2–19–04.2, Performance Standards for the Disposal of Noncoal Wastes

The modified regulation as proposed by North Dakota would provide as follows:

Noncoal wastes including concrete products, plastic material, abandoned mining machinery, wood materials, and other non-hazardous materials generated during mining and noncoal waste materials from activities outside the permit area, such as municipal wastes, must be placed and stored in a controlled manner in a designated approved portion of the permit area. Placement and storage must ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. Any wastes containing asbestos may not be disposed of in the permit area unless specific approval is obtained from the state department of health. Solvents, grease, lubricants, paints, flammable liquids, and other combustible materials must be disposed off the permit area except for land treatments of small spills as approved by the state department of health.

The Federal regulations at 30 CFR 816.89(a) provide for placement and storage of noncoal mine wastes such as grease, lubricants, flammable liquids, garbage and abandoned mining machinery in a controlled manner in a designated portion of the permit area. In addition, .89(a) goes on to say that ''Placement and storage shall ensure that leachate and surface run off do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. The Federal regulations at 30 CFR 816.89(b) provide that final disposal of such noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. They go on to state ''Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal waste area does not degrade surface or underground water.'' Further, that ''Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste.'' And that ''When disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 886.111 through 886.116.'' Finally, that ''Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements.''

North Dakota's proposed requirement at NDAC 69–05.2–19–04.2 that ''solvents, grease, lubricants, paints, flammable liquids, and combustibles in general, be disposed of off the permit area'' is consistent with the federal regulation insofar as the federal regulations at 30 CFR 816.89(b) anticipate disposal of non-coal wastes either in a designated disposal site on the permit area or in a State-approved solid-waste area. The North Dakota Department of Health rules at NDAC 33–20–04.1 contain the general performance standards for solid waste management facilities including performance standards for, among other things, location, plan of operation, record keeping and reporting, closure, transfer stations, baling and compaction systems and drop box facilities, solid wastes and resource recovery, and general disposal.

The state also proposes that, ''any wastes containing asbestos may not be disposed of in the permit area unless specific approval is obtained from the state department of health.'' There is no direct Federal counterpart regulation. Pursuant to 30 CFR 730.11(b), States may promulgate provisions for which no corresponding provisions exist in SMCRA or the Federal regulations. Moreover, the Director finds that the State proposal is not inconsistent with the requirements of the Federal regulations at 30 CFR 816.89.

North Dakota's proposed allowance for the placement and storage of nonhazardous non-coal waste materials, including concrete, plastic, and wood, is not less effective than the Federal regulations at 30 CFR 816.89(a). Like the Federal regulations, the State regulations require that such wastes be placed and stored in a controlled manner in a designated approved portion of the permit area. The State regulations also require, like the Federal regulations, that placement and storage of nonhazardous noncoal wastes ensure that: (1) Leachate and surface runoff do not degrade surface or ground water; (2) fires are prevented; and (3) that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. In addition, North Dakota solid waste management rules specify detailed standards for storage and treatment which apply to of nonhazardous solid waste, including ''solid waste stored or treated in piles, composting, sludge piles, tire piles . . ., garbage which is in place for more than three days, putrescible waste, other than garbage, which is in place for more than three weeks, and other solid waste not intended for recycling which is in place for more than three months.'' *See e.g.,* NDAC 33–20–04.1–07 and NDAC 33–20–01.1–04.

North Dakota's proposed rules are different from the Federal regulations insofar as the State standards for placement and storage of noncoal waste within the permit area only apply to nonhazardous noncoal waste. The Federal regulations at 30 CFR 816.89 are not so limited. That is, the Federal standards for placement and storage of noncoal wastes apply to *all* types of noncoal wastes.

The rationale provided by North Dakota for not including standards for placement and storage of hazardous noncoal wastes on the permit area is that the State does not allow the storage or placement of hazardous wastes on the permit area (see the telephone conference call of 1/23/97 with Jim Deutsch, administrative record No. ND–Y–15). The State explained that such wastes will be routinely picked up from the permit area and disposed of off-permit. However, in order to be no less effective than the counterpart Federal regulations, the State must provide standards for placement and storage of all types of noncoal wastes, even if certain wastes will only be stored or placed on the permit area for a short period of time before they are removed for disposal off-permit.

Based upon the above discussion, the Director finds that proposed NDAC 69–05.2–19–04.2 is not inconsistent with the Federal regulations at 30 CFR 816.89(a) and (b), concerning disposal of noncoal wastes on the permit site, and approves the proposed rule. However, the State needs to provide standards for placement and storage of all types of noncoal wastes and therefore the Director is requiring North Dakota to further amend the rule to include placement and storage standards for all types of noncoal wastes.

7. NDAC 69–05.2–22–07.3.c and 4.d, and NDAC 69–05.2–26–05.3.c, Requirements for Demonstrating Success of Revegetation Prior to Stage 3 Bond Release on Prime Farmland

OSM required at 30 CFR 934.16(aa) that North Dakota revise Chapter II, Section C in its revegetation document

and its rules at NDAC 69–05.2–22–07.3.c and 69–05.2–26–05.3.c to require that, prior to stage 3 bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using 3 crop years (finding No. 3.a, 60 FR 36213, 36217 through 18, July 14, 1995; administrative record No. ND–Y–10).

In response to this required amendment, North Dakota proposed to revise NDAC 69–05.2–22–07.3.c to require, for demonstration of success of productivity on prime farmland prior to stage 3 bond release (equivalent to OSM's Phase II release), that the annual average crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for a minimum of three crop years. North Dakota proposed to revise NDAC 69–05.2–26–05.3.c, concerning the demonstration of restoration of prime farmland productivity, to reference the measurement period (3 years) for determining average annual crop production that is specified at proposed NDAC 69–05.2–22–07.3.c. In addition, North Dakota proposed to revise NDAC 69–05.2–22–07.4.d, concerning requirements for final or stage 4 bond release (equivalent to OSM's Phase III release), to reference the demonstration required at proposed NDAC 69–05.2–22–07.3.c for stage 3 bond release in addition to the requirement for the completion of the 10 year liability period.

The Federal regulations at 30 CFR 800.40, concerning phase II bond release on prime farmland, and 30 CFR 823.15(b), concerning the measurement for success of productivity on prime farmland prior to bond release, require a successful demonstration of productivity using 3 years of data prior to phase II bond release (equivalent to North Dakota's stage 3 bond release).

Because North Dakota has, with the revisions described above, clearly required that a permittee demonstrate restoration of productivity using 3 crop years prior to stage 3 bond release on land reclaimed for use a prime farmland, the Director finds that the proposed revisions to NDAC 69–05.2–22–07.3.c and 4.d and NDAC 69–05.2–26–05.3.c are no less effective than the Federal regulations at 30 CFR 800.40 and 823.15(b). The Director approves the proposed revisions.

However, because North Dakota has, with the above rule revisions, only partially satisfied the requirement at 30 CFR 934.16(aa), the Director is revising 30 CFR 934.16(aa) to state that North Dakota must revise Chapter II, Section C in its revegetation document to require, prior to stage 3 bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using 3 crop years, consistent with the proposed rules discussed in this finding. (In its side-by-side comparison which it submitted along with its 3/30/96 State Program Amendment proposal, North Dakota stated that ''once the rule change is in place, North Dakota will make the appropriate modification to its revegetation document).

8. NDAC 69–05.2–22–07.4.i, Final Bond Release on Previously Mined Areas

North Dakota proposed to revise NDAC 69–05.2–26–07.4.i, concerning the stage 4 or final bond release requirement for ground cover on previously mined areas, to delete the phrase ''of living plants'' which appears whenever the term, ''ground cover'' is used.

The Federal regulations at 30 CFR 816.116(b)(5) require that vegetative ground cover shall not be less than the cover existing prior to redisturbance and shall be adequate to control erosion. The requirements for ground cover at final bond release at proposed NDAC 69–05.2–22–07.4.i are otherwise substantively identical to the Federal regulations at 30 CFR 816.116(b)(5). North Dakota explained that it deleted the phrase ''of living plants'' because ''by definition, ground cover is vegetative'' (administrative record number ND–Y–08) and is therefore duplicative and unnecessary. Moreover, North Dakota's existing definition of ''ground cover'' at NDAC 69–05.2–01–02.39 is substantively identical to the same Federal definition at 30 CFR 701.5. Both include the statement that ground cover is vegetative.

Based on the aforementioned discussion, the Director finds that the proposed revision to NDAC 69–05.2–22–07.4.i is no less effective than the Federal regulation at 30 CFR 816.116(b)(5) and approves the proposed revision.

9. NDAC 69–05.2–22–07.4.j, Final Bond Release Requirements for Ground Cover on Areas to be Developed for Water, Residential, or Industrial and Commercial Uses

North Dakota proposed to revise NDAC 69–05.2–22–07.4.j, concerning the final bond release requirement that ground cover must not be less than that required to control erosion, to delete a reference to ''recreation'' so that the rule applies only to ''areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement'' and to delete the phrase ''of living plants'' after ''ground cover 'of living plants' on these areas must not be less than required to control erosion.''

North Dakota's requirement at proposed NDAC 69–05.2–22–07.4.j, that ground cover, prior to final bond release, must be not be less than that required to control erosion, is substantively identical to the requirement for ground cover on land developed for residential or commercial and industrial use at 30 CFR 816.116(b)(3). North Dakota's proposed deletion of the reference to ''recreation'' is appropriate because proposed NDAC 69–05.2–22–07.4.k now addresses standards for land reclaimed for use as recreation (see discussion in finding No. 10 below). The deletion of the word ''areas'' after water is editorial in nature and does not affect the substance of the rule. As stated in the preceding finding No. 8, North Dakota explained that the term ''of living plants'' is duplicative since ground cover by definition is living plants.

Therefore, the Director finds that the proposed revisions to NDAC 69.05.2–22–07.4.j are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and approves the proposed revisions.

10. NDAC 69–05.2–22–07.4.k, final Bond Release requirements for Ground Cover and Woody Plant Stocking and Plant Establishment Standards on Areas Developed for Recreation

OSM required at 30 CFR 934.16(bb) that North Dakota revise Chapter II, Section I in its revegetation document and its rule at NDAC 69–05.2–22–07(4)(j) to require tree and shrub stocking standards that meet all requirements in 30 CFR 816.116(b)(3), including approval by the appropriate State agencies, on land reclaimed for use as recreation. OSM also required that North Dakota also provide documentation of consultation with and approval from the appropriate State agencies for the ground cover standard in Chapter II, Section I on land reclaimed for use as recreation. (finding No. 3.e, 60 FR 36213, 36219, July 14, 1995; administrative record No. ND–Y–10).

In response to the required amendment at 30 CFR 934.16(bb), North Dakota proposed to add a new rule at NDAC 69–05.2–22–07.4.k, concerning land reclaimed for use as recreation, that requires (1) Standards for woody plants by reference to NDAC 69–05.2–22–07.4e(1) and f, existing approved rules for respectively, revegetation in general and fish and wildlife habitat or

shelterbelts standards, and (2) ground cover not less than that required to achieve the approved postmining land use.

For areas developed for use as recreation, the Federal regulations at 30 CFR 816.116(b)(3) (i) through (iii) and 817.116(b)(3) (i) through (iii) require, that success of revegetation be determined on the basis of tree and shrub stocking and vegetative ground cover and include the requirements that, among other things, (1) Permit specific or programwide minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs, (2) trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons, (3) at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility, and (4) vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

By referencing the tree and shrub standards at previously approved NDAC 69–05.2–22–07.4e(1) and f, North Dakota has included in its requirements for final bond release on land developed for recreation, woody plant (i.e. tree and shrub) standards that are no less effective than the requirements in the Federal regulations at 30 CFR 816.116(b)(3) (i) and (ii). North Dakota's proposed requirement that ground cover must not be less than required to achieve the approved postmining land use is substantively identical to the Federal regulations at 30 CFR 816.116(b)(3)(iii). OSM erred in its requirement that ground cover standards must also meet the consultation and approval requirement of appropriate State agencies. That requirement is only applicable to woody plants.

Based on the above discussion, the Director finds that North Dakota's proposed revisions to NDAC 69–05.2–22–07.4.k are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Director approves the proposed revisions to NDAC 69–05.2–22–07.4.k.

However, because North Dakota has, with the above rule revisions, only partially satisfied the requirement at 30 CFR 934.16(bb), the Director is revising 30 CFR 934.16(bb) to state that North Dakota must revise Chapter II, Section C in its revegetation document to require tree and shrub stocking standards that meet all requirements in 30 CFR 816.116(b)(3), including approval by the appropriate State agencies, on land reclaimed for use as recreation. It should be noted that in the ''Changes and Legal Effect'' column of the side-by-side comparison chart that North Dakota submitted with this State Program Amendment, North Dakota stated that it would make the appropriate modification to its revegetation document ''once these rule changes are in place''

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that we received by OSM, and OSM's responses to them.

1. Public Comments

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

2. Federal Agency Comments

Pursuant to § 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program (administrative record No. ND–Y–01).

The U.S. Natural Resources Conservation Service, responded on June 18, 1996 (administrative record No. ND–Y–07), with the following comment concerning the performance standards for prime farmland:

> The [North Dakota's] previous standards stated that crop production on prime farmland must be equal to or greater than that of approved reference areas for three consecutive years. It now states that annual average crop production must be equal to or greater than that of approved reference areas for a minimum of three crop years.
>
> Our understanding of this change is that it would allow the performance standards to be dependent upon the selection of three years of yield information instead of the last three years of crop production. This would allow the selection of the most optimum data and may not truly reflect the average production of the permit area. This change seems to weaken the language related to the performance standards.

The commenter referred to the revisions proposed by North Dakota at NDAC 69–05.2–22–07.3.c and 69–05.2–26–05.3.c. North Dakota revised these rules to require a demonstration of restoration of productivity on prime farmland prior to stage 3, rather than stage 4, bond release, using the average annual yields from 3 crop years rather than from 3 consecutive crop years. It is the *comparison* of yield data from the reclaimed area to yield data from nonmined prime farmland (or to a technical standard determined from data applicable to the reclaimed and surrounding nonmined prime farmland) that determines whether restoration of productivity is successful. Because crop data will fluctuate accordingly for both mined and nonmined prime farmland, a meaningful comparison can be made whether the 3 years are consecutive or not. In addition, because the Federal regulations at 30 CFR 730.5(b) only require that a State's laws be ''in accordance with'' and ''no less effective than'' the Federal regulations meeting the requirements of SMCRA, the Director does not have the authority to require standards in excess of the Federal regulations that implement SMCRA. For this reason, the Director is not requiring that North Dakota further revise its program in response to this comment.

The U.S. Fish and Wildlife Service responded on May 3, 1996 (administrative record No. ND–Y–04), that the proposed changes were logical and reasonable.

3. Environmental Protection Agency (EPA) Concurrence and Comments

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

OSM solicited EPA's concurrence with the proposed amendment (administrative record No. ND–Y–01). EPA responded on April 30, 1996 (administrative record No. ND–Y–09), with its concurrence.

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND–Y–03). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, as discussed in:

Finding No. 1, nonsubstantive revisions reflecting editorial changes to include the new names of the U.S. Natural Resource Conservation Service and the North Dakota Department of Health;

Finding No. 2, NDAC 69–05.2–19–04.3 and 69–05.2–22–07.3.c, concerning substantive revisions that are

substantively identical to the corresponding provisions of the Federal regulations; concerning substantive revisions that are substantively identical to the corresponding provisions of the Federal regulations;

Finding No. 3, NADC 69–05.2–09–02.8, concerning permit application requirements for noncoal waste disposal;

Finding No. 4, NADC 69–05.2–09–02, concerning general requirements for an annual map;

Finding No. 5, NADC 69–05.2–15–04.4a(2)c, concerning an alternative method for determining the requirements for soil redistribution;

Finding No. 6, NADC 69–05.2–19–04.2, concerning performance standards for the disposal of noncoal wastes;

Finding No. 7, NADC 69–05.2–22–07.3.c and 4.d and NDAC 69–05.2–26–05.3.c, concerning requirements for demonstrating success of revegetation prior to stage 3 bond release on prime farmland;

Finding No. 8, NADC 69–05.2–22–07.4.i, concerning final bond release requirements for ground cover on previously mined areas;

Finding No. 9, NDAC 69–05–22–07.4.j, concerning final bond release requirements for ground cover on areas to be developed for water, residential or industrial and commercial uses; and

Finding No. 10, NDAC 69–05–22–07.4.k, concerning final bond release requirements for ground cover and woody plant stocking and plant establishment standards on areas developed for recreation.

The Federal regulations at 30 CFR part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

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

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

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

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 2, 1997.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

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

PART 934—NORTH DAKOTA

1. The authority citation for 30 CFR part 934 continues to read as follows:

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

2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
March 20, 1996	April 28, 1997	NDAC 69–05.2–09–02.8 –13–02, –15–04.4a(2)c, –19–04.2, 3, –22–07.3.c, 4.d, 4.i, –26–05.3.c; 69–05, 22–07.4.j, .k; changes to new names of U.S. Natural Resource Conservation Service and the North Dakota Department of Health.

3. Section 934.16 is amended by revising paragraphs (aa) and (bb) and adding (cc) to read as follows:

§ 934.16 Required program amendments.

* * * * *

(aa) by June 27, 1997, North Dakota shall revise Chapter II, Section C of its revegetation document to require, prior to stage 3 bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using three crop years.

(bb) By June 27, 1997, North Dakota shall revise Chapter II, Section C in its revegetation document to require tree and shrub stocking standards that meet all requirements in 30 CFR 816.116(b)(3), including approval by the appropriate State agencies, on land reclaimed for use as recreation.

(cc) By June 27, 1997, North Dakota shall revise its rules at NDAC 69–05.2–19–04.2, ''Performance Standards for Disposal of Noncoal Wastes,'' to include placement and storage standards for all types of noncoal hazardous wastes.

[FR Doc. 97–10823 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–05–M

LEGAL SERVICES CORPORATION

45 CFR Parts 1612, 1626, and 1636

Restrictions on Lobbying and Certain Other Activities; Restrictions on Legal Assistance to Aliens; Client Identity and Statement of Facts

AGENCY: Legal Services Corporation.

ACTION: Corrections to final rules.

SUMMARY: This document contains corrections to three final rules published on April 21, 1997 (62 FR 19398–19427). The rules relate to lobbying and certain other activities; restrictions on legal assistance to aliens; and client identity and statement of facts.

EFFECTIVE DATE: The rules are effective on May 21, 1997.

SUPPLEMENTARY INFORMATION: As published on April 21, 1997 (62 FR 19398–19427), the final rules contain errors that need correction. Accordingly, the publications are corrected as follows:

§ 1612.2 [Corrected]

On page 19404, column 3, in § 1612.2(b)(2), insert ''does'' after ''legislation'' the first time it appears.

§ 1626.10 [Corrected]

On page 19415, column 3, in § 1626.10(e), insert ''to'' after ''pursuant''.

Part 1636 [Corrected]

On page 19420, column 2, in the part heading, delete ''identify'' and insert ''identity'' in its place to read as follows: ''PART 1636—CLIENT IDENTITY AND STATEMENT OF FACTS''.

Dated: April 22, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–10822 Filed 4–25–97; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–180; RM–8863]

Radio Broadcasting Services; Amargosa Valley, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Amargosa Valley Broadcasters, allots Channel 266A to Amargosa Valley, NV, as the community's first local aural broadcast service. *See* 61 FR 48659, September 16, 1996. Channel 266A can be allotted to Amargosa Valley in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–38–38 North Latitude and 116–23–58 West Longitude. With this action, this proceeding is terminated.

DATES: Effective June 2, 1997. The window period for filing applications will open on June 2, 1997, and close on July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–180, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Amargosa Valley, Channel 266A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–10845 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–236; RM–8907]

Radio Broadcasting Services; Wake Village, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Phillip W. O'Bryan, allots Channel 223A to Wake Village, Texas, as the community's first local FM service. *See* 61 FR 63809, December 2, 1996. Channel 223A can be allotted to Wake Village in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) northeast in order to avoid a short-spacing conflict with an application for Channel 224C2 at Blossom, Texas. The coordinates for Channel 223A at Wake Village are 33–25–09 NL and 94–04–18 WL. With this action, this proceeding is terminated.

DATES: Effective June 2, 1997. The window period for filing applications will open on June 2, 1997, and close on July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–236, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference

Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082;47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Wake Village, Channel 223A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–10851 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 042297C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Fishery Category by Vessels Using Trawl Gear in Bycatch Limitation Zone 1

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for the Pacific cod fishery category by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1997 bycatch allowance of *C. bairdi* Tanner crab apportioned to the trawl Pacific cod fishery category in Zone 1.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), April 23, 1997, through 2400 hrs, A.l.t., December 31, 1997.

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

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

The bycatch allowance of *C. bairdi* Tanner crab for Zone 1 of the BSAI trawl Pacific cod fishery category, which is defined at § 679.21(e)(3)(iv)(E), was established by the Final 1997 Harvest Specifications of Groundfish (62 FR 7168, February 18, 1997) as 177,632 animals. On March 24, 1997, NMFS published a final rule implementing Amendment 41 to the FMP (62 FR 13839). Amendment 41 amended Table 7 of the final specifications. The revised bycatch allowance for *C. bairdi* Tanner crab for Zone 1 for the BSAI trawl Pacific cod fishery category is 133,224 animals.

In accordance with § 679.21(e)(7)(ii), the Administrator, Alaska Region, NMFS, has determined that the 1997 bycatch allowance of *C. bairdi* Tanner crab apportioned to the trawl Pacific cod fishery in Zone 1 has been caught. Consequently, NMFS is prohibiting directed fishing for the Pacific cod fishery category by vessels using trawl gear in Zone 1.

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

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: April 22, 1997.

George H. Darcy,

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

[FR Doc. 97–10840 Filed 4–23–97; 2:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 81
Monday, April 28, 1997

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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Household Products Containing Petroleum Distillates and Other Hydrocarbons; Advance Notice of Proposed Rulemaking; Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of comment period for advance notice of proposed rulemaking.

SUMMARY: There are child-resistant packaging standards in effect under the Poison Prevention Packaging Act (''PPPA'') for some products that contain petroleum distillates or other hydrocarbons. In the **Federal Register** of February 26, 1997, the Consumer Product Safety Commission (''CPSC'' or ''Commission'') published an advance notice of proposed rulemaking (''ANPR'') requesting comments on whether additional products containing these substances should be subject to child-resistant packaging standards. 62 FR 8659.

As requested by the Chemical Specialties Manufacturers Association (''CSMA''), the Commission is extending the period for receiving written comments on the ANPR.

DATES: Written comments in response to the ANPR must be received by the Commission by July 11, 1997.

ADDRESSESS: Comments, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Alternatively, comments may be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned ''Comments on ANPR for Petroleum Distillates.''

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION: Existing PPPA standards require child-resistant packaging for some products that contain petroleum distillates or other hydrocarbons. Aspiration of small amounts of these chemicals into the lung can cause chemical pneumonia, pulmonary damage, and death.

In the **Federal Register** of February 26, 1997, the CPSC published an ANPR that initiated a rulemaking proceeding to consider whether additional household products containing petroleum distillates and other hydrocarbons should be subject to PPPA standards. 62 FR 8659. The Commission solicited written comments from interested persons concerning these risks, the regulatory alternatives discussed in the ANPR, other possible means to address the risks, and the economic impacts of the various regulatory alternatives. The Commission provided for a 75-day comment period, which expires May 12, 1997.

CSMA requested a 60-day extension of the comment period, which it stated was needed due to the breadth of issues involved. CSMA also stated that additional time was needed to complete the processing of its request for CPSC documents.

CSMA represents many companies that manufacture products that contain petroleum distillates or other hydrocarbons. Therefore, the information that they can supply concerning these issues is important to the rulemaking. Accordingly, the Commission granted its request for an extension of the comment period, and extends the period for submission of written comments to July 11, 1997.

Dated: April 22, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–10821 Filed 4–25–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket Nos. RM96–12–000 and RM97–4–000]

Pipeline Customer Coalition Petition for Expedited Complaint Procedures; Interstate Natural Gas Association of America Petition for Rulemaking

April 17, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE

ACTION: Petitions for rulemaking.

SUMMARY: Two petitions for rulemaking have been filed with the Commission that propose certain procedures for the expedited consideration of complaints concerning the services of interstate natural gas pipelines. The Commission is providing a period for comment on these proposals.

DATES: Comments are due on or before May 16, 1997.

ADDRESSES: Submit comments to Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: Take notice that on April 3, 1997, the Pipeline Customer Coalition (the Coalition) filed a petition in Docket No. RM96–12–000, requesting the Commission to adopt certain expedited procedures for the consideration of formal complaints concerning the services of interstate natural gas pipelines. Take notice also that on April 10, 1997, the Interstate Natural Gas Association of America (INGAA) filed a petition in Docket No. RM97–4–000, requesting the Commission to adopt an alternative to the Coalition's proposal.

The Coalition's April 3, 1997 proposal amends an earlier filed petition submitted on May 31, 1996. The April 3 petition requests the adoption of regulations that would (1) require each interstate pipeline to include in its tariff a procedure for addressing informally whatever complaints are presented to it by any of its customers, (2) provide for

the codification of the Commission Staff's Enforcement Task Force Hot Line procedures, and (3) provide specific criteria defining the subject matter and other procedural factors required of complaints that would qualify for expedited Commission resolution.

INGAA opposes the Coalition's amended petition. INGAA's April 10, 1997 alternative proposal (1) initially requires informal negotiations between representatives of the complainant and the natural gas company; (2) if the negotiations are unsuccessful, the complainant could then utilize a codified Hot Line procedure to seek advice from Commission Staff; and (3) if the Hot Line procedure is unsuccessful, the complainant would either ask the natural gas company to agree to arbitration, or the complainant could initiate a formal complaint under Rule 206 (18 CFR 385.206), with expedition obtainable at the Commission's discretion, after a recommendation by the Hot Line Staff.

Any person desiring to be heard on the Coalition's and INGAA's petitions is invited to submit written comments on the matters and issues raised by the respective proposals. Additionally, comments should be submitted electronically. Participants can submit comments on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket Nos. RM96–12–000 & RM97–4–000 on the outside of the diskette. Copies of the Coalition's and INGAA's petitions, and all written comments that are received, will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426. All comments must be filed on or before May 16, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10804 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5815–7]

District of Columbia; Approval of Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination, public hearing, and public comment period.

SUMMARY: The District of Columbia has applied for approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the District of Columbia's application and has made the tentative decision that the District of Columbia's underground storage tank program satisfies all of the requirements necessary to qualify for approval. The District of Columbia's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application unless insufficient public interest is expressed.

DATES: Unless insufficient public interest is expressed in holding a hearing, a public hearing will be held on June 5, 1997. However, EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing by May 29, 1997. EPA will determine by June 2, 1997, whether there is sufficient interest to hold the public hearing. The District of Columbia will participate in any public hearing held by EPA on this subject. All written comments on the District of Columbia's application for program approval must be received by 4:30 p.m. on May 29, 1997.

ADDRESSEES: Copies of the District of Columbia's application for program approval are available between 8:30 a.m. to 4:30 p.m. at the following locations for inspection and copying:

Location: D. C. Department of Consumer and Regulatory Affairs, Environmental Regulation Administration Underground Storage Tank Branch, 2100 Martin Luther King, Jr., Avenue, S.E., Suite 203, Washington, D.C. 20020–5732.

Contact: Dr. V. Sreenivas, Program Manager.

Telephone: 201–645–6080 ext. 3009.

Contact: Laura Gilbert, Environmental Legislative Analyst.

Telephone: 201–645–6080 ext. 3007.

Location: United States Environmental Protection Agency, Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway,Arlington, VA 22202.

Telephone: (703) 603–9231.

Location: United States Environmental Protection Agency, Region III Library, 841 Chestnut Building, Philadelphia, Pennsylvania l9l07.

Contact: Hazardous Waste Technical Information Center;

Telephone: (215) 566–5534 or (215) 566–5364.

Written comments should be sent to: Karen L. Bowen, Program Manager, State Programs Branch, (3HW60), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 566–3382.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the District's application for program approval on June 5, 1997, at 7:00 p.m. at the Department of Consumer & Regulatory Affairs, Environmental Regulation Administration, 2100 Martin Luther King, Jr. Avenue, SE., Room 300, Washington, DC 20020.

Anyone who wishes to learn whether or not the public hearing on the District's application has been cancelled should telephone after June 2, 1997, the EPA Program Manager listed above or Dr. Venkataiah Sreenivas, Chief, UST Branch, DC Department of Consumer and Regulatory Affairs, Environmental Regulation Administration, (202) 645–6080, ext. 3009.

FOR FURTHER INFORMATION CONTACT: Karen L. Bowen, State Programs Branch (3HW60), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 566–3382.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in lieu of the Federal underground storage tank (UST) program. EPA may approve a State program if the Agency finds pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the State program is ''no less stringent'' than the Federal program in all seven elements set forth at section 9004(a) (1) through (7), 42 U.S.C. 6991c(a) (1) through (7), and meets the notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8) and also provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)).

B. District of Columbia

The District of Columbia Department of Consumer and Regulatory Affairs (DCRA), is the implementing agency for UST activities in the District, a jurisdiction recognized as a ''State'' pursuant to Section 1004(31) of RCRA. The Underground Storage Tank Branch of DCRA is dedicating a substantial effort to prevent, control and remediate UST-related groundwater contamination. The Underground Storage Tank Branch maintains a strong field presence and works closely with

the regulated community to ensure compliance with regulatory requirements.

The scope of the District of Columbia UST Program extends beyond the scope of the Federal UST Program, for example:

- In addition to the approximately 3,780 USTs covered by both the Federal and District programs, the District also regulates an estimated 2,250 USTs each containing 1100 gallons or more containing heating oil.
- A broad range of persons are required to report suspected releases, not just owners and operators, as required by the Federal program.

In addition, certain requirements of the District's program are more stringent than the analogous requirements of the Federal UST Program. For example:

- The District's new tank performance standards are more stringent than the Federal new tank performance standards, requiring all new petroleum USTs installed after the effective date of the regulations to be of double walled construction or to have other secondary containment.
- Under the District's program hazardous substance USTs were required to have met the new tank performance standards or to have been upgraded by December 22, 1994. The federal regulations do not require this until December 22, 1998.
- The District of Columbia's release detection requirements are more stringent than those of the Federal regulations in that the use of monthly inventory control combined with annual tightness testing was eliminated as an acceptable method of release detection effective December 22, 1994. The Federal regulations continue to allow monthly inventory control combined with annual tightness testing as an acceptable method of release detection until December 22, 1998.
- The District of Columbia requires UST systems within 100 feet of a subway to meet additional requirements.
- The District of Columbia requires all piping for hazardous substance USTs and pressurized piping for petroleum USTs to be equipped with secondary containment. Federal regulations do not require such secondary containment.
- The District of Columbia regulations go beyond the Federal regulations in that the District regulations on corrective action establish specific requirements for the disposal of contaminated soils, require preparation of a Quality Assurance/ Quality Control Plan, include specific standards for water and soil quality and include special procedures for closure of contaminated sites.

Any contaminated soils that are stockpiled on site are required to be treated or removed within 30 days. There is no Federal regulation requiring pile removal within 30 days.

The District of Columbia requires sellers of real property to notify prospective purchasers in writing of tanks existing on the property or previously removed from the property. The Federal regulations do not have a similar requirement.

The D.C. Department of Consumer and Regulatory Affairs submitted an official application for approval on October 4, 1996. Prior to its submission, the District of Columbia provided an opportunity for public notice and comment in the development of its underground storage tank program, as required by 40 CFR 281.50(b). EPA has reviewed the District's application, and has tentatively determined that the District's program meets all of the requirements necessary to qualify for final approval. However, EPA intends to review all timely received public comments prior to making a final decision on whether to grant approval to the District of Columbia to operate its program in lieu of the Federal program.

EPA is aware that the District of Columbia intends to transfer its underground storage tank program from the Department of Consumer and Regulatory Affairs to the Department of Health. EPA invites comment on this planned transfer of functions.

In accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR 281.50(e), the Agency will hold a public hearing on its tentative decision on June 5,1997, at 7:00 p.m. at the Department of Consumer & Regulatory Affairs, Environmental Regulation Administration, 2100 Martin Luther King, Jr. Avenue, S.E., Room 300, Washington, D.C. 20020, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until May 29, 1997. Copies of The District's application are available for inspection and copying at the locations indicated in the ''Addressees'' section of this notice.

EPA will consider all public comments on its tentative determination received at the public hearing, if a hearing is held, and during the public comment period. Issues raised by those comments may be the basis for a decision to deny approval to the District of Columbia. EPA will give notice of its final decision in the **Federal Register**; the document will include a summary of the reasons for the final determination and a response to all significant comments.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this action from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's proposed rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the District of Columbia program are already imposed by the District and subject to District law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. The District of Columbia's participation in an authorized UST program is voluntary.

Even if today's proposed rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the District of Columbia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA

requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing District law which are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being authorized by EPA. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing District law to which small entities are already subject. It does not impose any new burdens on small entities. This proposed rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This document is issued under the authority of Section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

Dated: April 3, 1997.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 97–10885 Filed 4–25–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–116, RM–9050]

Radio Broadcasting Services; Everglades City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Keith L. Reising requesting the allotment of Channel 224A to Everglades City, Florida, as that community's first local broadcast service. The coordinates for Channel 224A at Everglades City are 25–52–16 and 81–22–49. There is a site restriction 1.3 kilometers (0.8 miles) north of the community.

DATES: Comments must be filed on or before June 9, 1997, and reply comments on or before June 24, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Keith L. Reising, 1680 Hwy 62 NE, Corydon, Indiana 47112.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.97–116, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–10849 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–117, RM–9009]

Radio Broadcasting Services; Wray and Otis, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by New Directions Media, Inc., licensee of Station KATR-FM, Channel 252C2, Wray, Colorado, requesting the substitution of Channel 252C1 for Channel 252C2 at Wray, as well as the reallotment of Channel 252C1 from Wray to Otis, Colorado, and modification of the license for Station KATR-FM to specify Otis as its community of license, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for Channel 252C1 at Otis are 40–08–54 and 102–57–48.

DATES: Comments must be filed on or before June 9, 1997, and reply comments on or before June 24, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: New Directions Media, Inc., Attn: Robert D. Zellmer, President, P.O. Box 2475, Greeley, CO 80632.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–117, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–10848 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–120, RM–9054]

Radio Broadcasting Services; Gideon, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Gideon Radio Company proposing the allotment of Channel 280A to Gideon, Missouri, as that community's first local broadcast service. The coordinates for Channel 280A are 36–32–10 and 89–49–18. There is a site restriction 12.9 kilometers (8 miles) northeast of the community.

DATES: Comments must be filed on or before June 9, 1997, and reply comments on or before June 24, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John M. Pelkey, Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–120, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–10847 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–118, RM–9061]

Radio Broadcasting Services; Walhalla, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Roger Lewis Hoppe II, proposing the allotment of Channel 274A to Walhalla, Michigan, as that community's first local broadcast service. The coordinates for Channel 274A are 43–56–48 and 86–07–18. Canadian concurrence will be requested for the allotment of Channel 274A at Walhalla.

DATES: Comments must be filed on or before June 9, 1997, and reply comments on or before June 24, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Roger Lewis Hoppe II, 12013 U.S. 31 South, Bear Lake, Michigan 49614.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–118, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–10846 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–119, RM–9072]

Radio Broadcasting Services; Victor, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by West Wind Broadcasting proposing the allotment of Channel 289A to Victor, Montana, as that community's first local

broadcast service. The coordinates for Channel 289A at Victor are 46–25–06 and 114–08–54. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before June 9, 1997, and reply comments on or before June 24, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, Jr., President, West Vind Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.97–119, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–10850 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 960318084–6199–03; I.D. 071596C]

RIN 0648–AG55

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: On March 11, 1997, the U.S. Navy submitted a petition to NMFS amending its June 7, 1996, application and requesting a modification to the proposed effective date of the regulations proposed by NMFS issuing an incidental small take exemption under the Marine Mammal Protection Act (MMPA) to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast in 1997. By this notice, NMFS, in accordance with the Navy's request, amends the proposed regulations to make them effective from April 1 through September 30, 1998 and 1999. NMFS invites comment on this modification.

DATES: Comments must be received no later than May 28, 1997.

ADDRESSES: Comments should be addressed to Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the March 11, 1997 petition, the application, or the proposed rule may be obtained by writing to the above address, telephoning the person below (see **FOR FURTHER INFORMATION CONTACT**) or by leaving a voice mail request at (301) 713–4070.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals, will not have an unmitigable adverse impact on the availability of these species for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

On June 7, 1996, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take marine mammals incidental to shock testing the USS SEAWOLF submarine off the U.S. Atlantic coast. The USS SEAWOLF is the first of a new class of submarines being acquired by the Navy. In accordance with 10 U.S.C. 2366, each new class of ships constructed for the Navy cannot proceed beyond initial production until realistic survivability testing of the ship and its components are completed. Realistic survivability testing means testing for vulnerability in combat by firing munitions likely to be encountered in combat. This testing and assessment is commonly referred to as ''Live Fire Test & Evaluation (LFT&E).'' Because realistic testing by detonating torpedoes or mines against a ship's hull could result in the loss of a multi-billion dollar Navy asset, the Navy has established an LFT&E program consisting of computer modeling, component and surrogate testing, and shock testing the entire ship. Together, these components complete the survivability testing as required by 10 U.S.C. 2366.

The shock test component of LFT&E is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. While computer modeling and laboratory testing provide useful information, they cannot substitute for shock testing under realistic, offshore conditions. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

In its original application, the Navy proposed to shock test the USS SEAWOLF by detonating a single 4,536–kg (10,000–lb) explosive charge near the submarine once per week over a 5-week period between April 1 and September 30, 1997. If the Mayport, FL, site is selected, the shock tests would be conducted between May 1 and September 30, 1997 in order to minimize risk to sea turtles. Detonations would occur 30 m (100 ft) below the ocean surface in a water depth of 152 m (500 ft). The USS SEAWOLF would be underway at a depth of 20 m (65 ft) at the time of the test. For each test, the submarine would move closer to the explosive so the submarine would experience a more severe shock.

As part of a separate review under the National Environmental Policy Act, two sites, Mayport, FL and Norfolk, VA, are being considered by the Navy for the USS SEAWOLF shock test effort. The Mayport site is located on the continental shelf of Georgia and northeast Florida and the Norfolk site is located on the continental shelf offshore of Virginia and North Carolina. The Mayport site is the preferred location by the Navy because of a lower abundance of marine mammals at that site. Because of the potential impact on marine mammals, the Navy has requested NMFS to grant an exemption under section 101(a)(5)(A) of the MMPA that would authorize the incidental taking and issue regulations governing the take.

On August 2, 1996 (61 FR 40377), NMFS published a proposed rule to issue an incidental small take exemption under the MMPA to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast in 1997. A correction notice on the proposed regulations was published on August 23, 1996 (61 FR 43517). The comment period for the proposed rule closed on September 17, 1996. During the 45-day comment period, NMFS received 5 letters commenting on the rule. These comments, and relevant comments received as a result of this notice, will be addressed in the notice of final determination which will be published in the **Federal Register**.

Summary of Request

On March 11, 1997, the U.S. Navy submitted a petition to NMFS amending its June 7, 1996, application and requesting a modification to the proposed regulations for an incidental small take exemption under the MMPA to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast in 1997. The petition states that the U.S. Navy, for reasons unrelated to the environment, will not be able to conduct the shock trial from April 1, 1997, through September 30, 1997, and requests that the period of effectiveness for the regulations and the shock trial be extended until 1999. No modification to the proposed seasonal restriction (which would prohibit any marine mammal takings from October 1 through March 31 at the Norfolk site and from October 1 through April 30 at the Mayport site) to protect marine mammal and sea turtle species is requested. Because section 101(a)(5)(A) of the MMPA provides for small take authorizations to be effective for periods up to 5 years, NMFS believes that granting this request to modify the effective date of the proposed rule is warranted.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that the August 2, 1996, proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. Extending the effective date for the rule has no effect on the economic impact or on who would be impacted.

This proposed rule does not contain a collection-of- information requirement subject to the provisions of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: April 22, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise noted.

2. Subpart O is amended by adding § 216.162 to read as follows:

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS SEAWOLF by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

* * * * *

§ 216.162 Effective dates.

Regulations in this subpart are effective from April 1 through September 30, 1998, and April 1 through September 30, 1999.

[FR Doc. 97–10800 Filed 4–25–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[I.D. 040797B]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To Revise Critical Habitat Designation for Snake River Spring/Summer Chinook Salmon in Idaho

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

ACTION: Notice of finding and request for information.

SUMMARY: NMFS has received a petition to revise critical habitat for Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) to not include Napias Creek, a tributary to the Salmon River, located in the State of Idaho. NMFS has determined that the petition presents substantial scientific information indicating that the petitioned revision may be warranted. Therefore, NMFS is initiating a review to determine if the petitioned action is warranted. NMFS is soliciting information and comments on the petitioned revision.

DATES: Information and comments on the revision must be received by June 27, 1997.

ADDRESSES: Information and comments on this action should be submitted to Garth Griffin, Protected Species Program, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005 or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

NMFS proposed listing Snake River spring/summer chinook salmon (56 FR 29542) as a threatened species under the Endangered Species Act (ESA) on June 27, 1991. The final determination listing Snake River spring/summer chinook salmon as threatened was published on April 22, 1992 (57 FR 14653) and corrected on June 3, 1992 (57 FR 23458). Critical habitat was designated for Snake River spring/summer chinook salmon on December 28, 1993 (58 FR 68543). An emergency reclassification of spring/summer chinook salmon was published on August 18, 1994, (59 FR 42529) and expired twelve months later.

Section 4(b)(3)(D) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to revise a critical habitat determination. Section 4(b)(3)(D)(i) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted.

On January 6, 1997, the Secretary received a petition from Meridian Gold Company to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, ID. Copies of this petition are available (see **ADDRESSES**). The Assistant Administrator for Fisheries, NOAA, has determined that the petition presents substantial scientific information indicating that a revision may be warranted pursuant to the criteria specified in 50 CFR 424.14(c)(2). In accordance with section 4(b)(3)(D)(ii) of the ESA, the Secretary will make his determination whether a revision is warranted within 12 months from the date the petition was received (January 6, 1997). Interested parties are encouraged to provide comments and additional information on this action (see **DATES AND ADDRESSES**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 21, 1997.

Hilda Diaz-Soltero,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–10799 Filed 4–25–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 81
Monday, April 28, 1997

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

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 1, 1996. The list of newspapers will remain in effect until April 1997 when another notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Vaughn Stokes, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625–5232.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:
The Idaho Statesman, Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada:
The Reno Gazette-Journal, Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming:
Casper Star-Tribune, Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah
Standard Examiner, Ogden, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Standard Examiner, Ogden, Utah

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star-Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Boise District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisor decisions:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Malad District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Pocatello District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:

The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Richfield, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Richfield, Utah

Humboldt-Toiyabe National Forests

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
Spring Mountains National Recreation Area Ecosystems (SMNRAE):
Spring Mountain National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada
Central Nevada Ecosystems (CNECO):
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada

Manti-Lasal National Forest

Manti-Lasal Forest Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon and Challis National Forests

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho

Sawtooth National Forest

Sawtooth Forest District Ranger decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah, and *Wasatch Wave,* Heber City, Utah
Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah

Dated: April 15, 1997.

Jack G. Troyer,

Deputy Regional Forester.

[FR Doc. 97–10792 Filed 4–25–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

I–90 Land Exchange, Wenatchee National Forest, Kittitas County, Washington; Mt. Baker-Snoqualmie National Forest, King and Pierce Counties, Washington; and Gifford Pinchot National Forest, Cowlitz, Lewis, and Skamania Counties, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to develop and evaluate a range of alternatives for a land exchange that involves approximately 43,000 acres of Plum Creek Timber Company, Limited Partnership land and 41,000 acres of National Forest System land. The values of the lands exchanged must be equal. The alternatives will be developed with the emphasis on social, economic and ecological values. It is believed that the integrity of these

values will be improved by reducing fragmentation that is created by the current ownership pattern. This proposal is scheduled for completion no later than October 1998.

DATES: Comments concerning the scope and implementation of this proposal must be received by June 1, 1997.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Floyd Rogalski, Project Planner, Cle Elum Ranger District, 803 West Second Street, Cle Elum, Washington 98922; phone 509–674–4411, ext. 315.

SUPPLEMENTARY INFORMATION: The Forest Service is initiating this action in response to a request by Plum Creek to exchange lands that will provide public benefits while improving management opportunities. Lands with high wildlife, aquatic and recreation values are proposed to be exchanged for lands more suitable to timber management. Also being considered is the opportunity to consolidate lands into more easily managed contiguous blocks.

Issues that have been identified to date include: (1) The impact of providing contiguous blocks of National Forest land on a landscape where much of the land is fragmented by a ''checkerboard'' pattern of ownership; (2) spectrum of recreational opportunities, regardless of ownership, continue to exist; (3) the impact on the economies of the affected counties; (4) the impact to cultural and historic sites; and (5) tribal concerns.

The decision to be made is what lands, if any, should be exchanged as part of this proposal. The proposed action is to analyze whether to exchange approximately 41,000 acres of National Forest System land for 43,000 acres of Plum Creek land, adjusted for equal value as required by law. Other alternatives will be developed during the scoping process for the environmental impact statement.

All alternatives will need to respond to the specific condition of providing benefits equal to or better than the current condition. Alternatives being considered at this time include: (1) No Action and (2) Exchanging lands as identified in the proposed action.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring and identifying additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments. Public meetings will be held in both eastern and western Washington, Notice of meeting dates and locations will be published in the newspapers of record. Wenatchee National Forest—*The Wenatchee World* and *The Yakima Herald-Republic*; Mt. Baker-Snoqualmie National Forest—*Seattle Post-Intelligencer;* and Gifford Pinchot National Forest—*Columbian*.

At this time, the scoping meetings are planned to be held in April and May 1997. The scheduled meeting dates are as follows: April 30, Hal Holmes Center, Ellensburg, Washington, 6–9 p.m.; May 1, Holiday Inn, Issaquah, Washington, 6–9 p.m.; May 7, Randle Ranger Station, Randle, Washington, 6–9 p.m.; and May 8, Mt. St. Helens Visitor Center, Castle Rock, Washington, 6–9 p.m.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1997. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment.

It is very important that those interested in the management of the Gifford Pinchot, Mr. Baker-Snoqualmie, and Wenatchee National Forests participate at that time. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed in October 1998. In the final EIS, The Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

Judith E. Levin, Acting Director of Recreation, Lands and Mineral Resources, Pacific Northwest Region is the responsible official. As the responsible official she will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR Part 215).

Dated: April 21, 1997.

Judith E. Levin,

Acting Director of Recreation, Lands, and Mineral Resources.

[FR Doc. 97–10825 Filed 4–25–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR Part 4284 Rural Cooperative Development Grants.

DATES: Comments on this notice must be received by June 27, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION:

Title: Rural Cooperative Development Grants.

OMB Number: 0570–0006.

Expiration Date of Approval: August 31, 1997.

Type of Request: Intent to extend the currently approved information collection and record keeping requirements.

Abstract: The overall purpose of the Rural Cooperative Development Grant program is for the establishment and/or operation of centers for cooperative development that can improve the economic condition of rural areas through the development of new cooperatives and improving operations of existing cooperatives. The U.S. Department of Agriculture desires to encourage and stimulate the development of effective cooperative organizations in rural America as a part of its total package of rural development efforts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.58 hours per response.

Respondents: Nonprofit corporations and institutions of higher education.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 15.68.

Estimated Total Annual Burden on Respondents: 1,012 hours.

Copies of this information collection can be obtained from Sam Spencer, Regulations and Paperwork Management Branch, at (202) 720–9588.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of Rural Business-Cooperative Service'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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Sam Spencer, Regulations and Paperwork Management Branch, US Department of Agriculture, Rural Development, Stop 0743, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 21, 1997.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 97–10818 Filed 4–25–97; 8:45 am]

BILLING CODE 3410–XY–U

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Access Board Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Monday, Tuesday, and Wednesday, May 12–14, 1997 at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, May 12, 1997

9:00 a.m.–Noon Committee of the Whole—Final Rule for Children's Elements (Closed Meeting).

1:30 p.m.–5:30 p.m. Committee of the Whole—ADAAG Revision (Closed Meeting).

Tuesday, May 13, 1997

9:00 a.m.–Noon Committee of the Whole—ADAAG Revision (Closed Meeting).

1:30 p.m.–4:30 p.m. ADAAG Revision (Closed Meeting).

4:30 p.m.–5:30 p.m. Long-Range Planning Group.

Wednesday, May 14, 1997

9:00 a.m.–10:30 a.m. Planning and Budget Committee.

10:30 a.m.–Noon Technical Programs Committee.

1:30 p.m.–2:30 p.m. Executive Committee.

3:00 p.m.–5:00 p.m. Board Meeting.

ADDRESSES: The meetings will be held at: Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items. Specific voting items are noted next to each committee report.

Open Meeting

- Approval of the Minutes of the March 12, 1997 Board Meeting
- Long-Range Planning Group Report
- Planning and Budget Committee Report
- Technical Programs Committee Report—FY 1998 and Future Research Projects
- Executive Committee Report—Board Bylaws
- Play Facilities Regulatory Negotiation Committee Report

Closed Meeting

- Final Rule on Children's Elements
- Committee on the Whole Report on ADAAG Revision
- Final Rule on State and Local Government Facilities

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

James J. Raggio,

General Counsel.

[FR Doc. 97–10904 Filed 4–25–97; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the antidumping duty administrative review of Cold-Rolled Carbon Steel Flat Products from the Netherlands. This review covers the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0405 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: Due to the complexity of issues involved in this case, it is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the preliminary results until September 2, 1997, in accordance with section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: April 22, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–10902 Filed 4–25–97; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–602]

Certain Forged Steel Crankshafts From the United Kingdom; Notice of Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On October 17, 1996, the Department of Commerce (the Department) published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom. As a result of revocation of the order, the Department is now terminating the review covering the period September 1, 1995 through August 31, 1996.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: David Dirstine, Lyn Johnson, or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On September 30, 1996, KGC petitioner in this proceeding, requested an administrative review of certain forged steel crankshafts from the United Kingdom for the review period September 1, 1995 through August 31, 1996. On October 17, 1996, the Department published in the **Federal Register** (61 FR 54154) the notice of initiation of this administrative review.

On April 8, 1997, the Department revoked the antidumping duty order on certain forged steel crankshafts from the United Kingdom as to all entries of subject merchandise entered or withdrawn from warehouse on or after August 31, 1995 (see Certain Forged Steel Crankshafts from the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order (62 FR 16768, 16771)). Therefore, we are terminating this review which covers shipments of subject merchandise from the United Kingdom during the period September 1, 1995 through August 31, 1996. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct Customs to refund with interest any cash deposits on entries made after August 31, 1995.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative notice is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 17, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–10903 Filed 4–25–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan; Extension of Time Limits for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for antidumping duty administrative review of professional electric cutting tools from Japan.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limits for the preliminary results of

the antidumping duty administrative review of the antidumping order on professional electric cutting tools from Japan. This review covers one manufacturer and exporter of the subject merchandise: Makita Corporation. The period of review is July 1, 1995 through June 30, 1996.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques, AD/CVD Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230, telephone (202) 482–3434.

SUPPLEMENTARY INFORMATION: The Department initiated this administrative review on August 15, 1996 (61 FR 42416). Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for the preliminary results of the aforementioned review to July 31, 1997. *See* memorandum from Joseph A. Spetrini to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 20, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–10901 Filed 4–25–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041897A]

Marine Mammals; Permit No. 945 (P319D)

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

ACTION: Issuance of amendment.

SUMMARY: Notice is hereby given that an amendment to permit no. 945, issued to Dr. Randall S. Wells, Sarasota Dolphin Research Program, c/o Mote Marine Laboratory, 1600 Thompson Parkway, Sarasota, FL 34236, to satellite tag up to 5 bottlenose dolphins previously authorized to be tagged has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (tel: 813/570–5301).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.29 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: April 18, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–10839 Filed 4–25–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: May 12, 1997 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: April 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–10834 Filed 4–25–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Joint Military Intelligence College Closed Meeting

AGENCY: Defense Intelligence Agency Joint Military Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Monday, 9 June 1997, 0800 to 1800; and Tuesday, 10 June 1997, 0800 to 1200.

ADDRESS: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b (c) (1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: April 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–10835 Filed 4–25–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, 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 June 27, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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 Director, Information Resources Management Group publishes this 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 at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

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: April 22, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Title: Quality Assurance (QA) Workbook.

Frequency: Semi-annually.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; Federal Government.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 60,000.

Abstract: Only 300 postsecondary institutions have voluntarily agreed to participate in the Quality Assurance Program. They have received a waiver of certain regulations for their cooperation. As participants in the Program, respondents are required to complete activities as described in the QA Workbook throughout the year. The Workbook itself is what we are requesting OMB to approve and clear. Twice a year, in February and August, participants send requested information to the Department.

[FR Doc. 97–10820 Filed 4–25–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 28, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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 Director of the Information Resources Management Group publishes this 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 at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: April 22, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected or Delinquent Children.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 4,130.

Abstract: An annual survey is conducted to collect data on (1) The number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day

programs for N or D children, and adult correctional institutions and (2) the October caseload of N or D children in local institutions.

[FR Doc. 97–10819 Filed 4–25–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–145]

Application To Export Electric Energy; British Columbia Power Exchange Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: British Columbia Power Exchange Corporation (Powerex) has submitted an application to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 28, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Rusell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On April 21, 1997, Powerex filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico pursuant to section 202(e) of the FPA. Specifically, Powerex has proposed to transmit to Mexico electric energy purchased from electric utilities and other suppliers located in Canada and the United States.

Powerex would arrange for the exported energy to be transmitted to Mexico over the international transmission facilities owned by San Diego Gas and Electric Company. The transmission facilities, as more fully described in this application, have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Paul W. Fox and David A. Montoya, Bracewell and Patterson, L.L.P., 111 Congress Avenue, Suite 2300, Austin, TX 78746, FAX (512) 472–9123 *and* Douglas Little, Manager, Trade Policy & Regulation, British Columbia Power Exchange Corporation, 666 Burrard Street, Suite 2210, Vancouver, British Columbia, Canada V6C2X8, FAX 604–891–5015.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on April 22, 1997.

Anthony J. Como,

Director, Electric Power Regulation, Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–10857 Filed 4–25–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–143 and EA–144]

Applications To Export Electric Energy; CNG Energy Services Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: CNG Energy Services Corporation (CNG), a power marketer, has submitted applications to export electric energy to Mexico and Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 28, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202–586–5883 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On April 10, 1997, CNG filed two applications with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico (Docket EA–143) and Canada (Docket EA–144) as a power marketer, pursuant to section 202(e) of the FPA. Specifically, CNG has proposed to transmit to Mexico and Canada electric energy purchased from electric utilities and other suppliers.

CNG would arrange for the exported energy to be transmitted to Mexico over the international transmission facilities owned by San Diego Gas and Electric, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electracidad. GNC would arrange for the exported energy to be transmitted to Canada over the international facilities owned by Basin Electric, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company. Each of the transmission facilities, as more fully described in these applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Responses to CNG's request to export to Mexico should be clearly marked with Docket EA–143. Responses to CNG's request to

export to Canada should be clearly marked with Docket EA–144. Additional copies are to be filed directly with: Kevin J. Lipson, Jolanta Sterbenz, Hogan & Hartson L.L.P. Columbia Square, 555 Thirteenth Street, N.W., Washington, D.C. 20004–1109, (202)637–5600 *and* Gary A. Jeffries, CNG Energy Services Corporation, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746, (412)787–4268.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on April 21, 1997.

Anthony J. Como,

Director, Electric Power Regulation, Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–10858 Filed 4–25–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Uranium Mill Tailings Remedial Action (UMTRA) Ground Water Project

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) is issuing this Record of Decision regarding its programmatic decision for the Uranium Mill Tailings Remedial Action (UMTRA) Ground Water Project. This decision enables DOE to take action under its UMTRA Ground Water Project, and is based on the environmental analyses in the Final Programmatic Environmental Impact Statement (PEIS) for the Uranium Mill Tailings Remedial Action Ground Water Project (DOE/EIS–0198), which DOE issued in December 1996. The Nuclear Regulatory Commission, the Navajo Nation, the Hopi Tribe, the State of Colorado and the State of Texas cooperated in the preparation of the PEIS.

Under Title I of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), DOE is responsible for performing remedial action to bring 22 designated former uranium mill processing sites into compliance with applicable Environmental Protection Agency (EPA) standards for milling-related contamination (40 CFR part 192). Under DOE's UMTRA Surface Project, DOE has completed surface remediation at 20 sites and work is underway at the remaining two sites. These sites are located in nine States and are on or near four Indian Tribal lands. The shallow ground water at most of these sites has been contaminated with uranium, nitrates, and other milling-related contaminants. The purpose of the UMTRA Ground Water Project is to protect human health and the environment by meeting EPA's ground water standards, which were issued January 11, 1995.

DOE has decided to implement the Proposed Action for conducting the Ground Water Project. The Proposed Action, which was identified as DOE's preferred alternative in the final PEIS, is intended to establish a consistent risk-based framework for implementing the UMTRA Ground Water Project and determining appropriate ground water compliance strategies for complying with EPA ground water standards at the UMTRA project former processing sites. Under this preferred alternative, DOE may use active, passive, and no-remediation strategies to comply with the ground water standards as conditions warrant at specific sites.

Before making site-specific decisions to implement the preferred alternative for the Ground Water Project, DOE will prepare appropriate further National Environmental Policy Act (NEPA) documentation. DOE encourages affected States, tribes, local government agencies and members of the public to continue to participate in the site-specific decision making processes for the Ground Water Project.

FOR FURTHER INFORMATION CONTACT: Further information on the final PEIS can be obtained by contacting Mr. Donald R. Metzler, Grand Junction Office, Department of Energy, 2567 B 3/4 Road, Grand Junction, Colorado 81503, telephone 970–248–7612. Information about the Department of Energy National Environmental Policy Act process can be obtained by contacting Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585, telephone 202–586–4600, or leave a message at 800–472–2756.

SUPPLEMENTARY INFORMATION: DOE has prepared this Record of Decision pursuant to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508) and DOE's NEPA regulations (10 CFR part 1021). This Record of Decision is based on the Final Programmatic Environmental Impact Statement for the Uranium Mill Tailings Remedial Action Ground Water Project (PEIS) (DOE/EIS–0198, issued December 1996). The Nuclear Regulatory Commission (NRC), the Navajo Nation, the Hopi Tribe, the State of Colorado and the State of Texas participated as cooperating agencies in the preparation of this PEIS.

A Notice of Intent was published in the **Federal Register** on November 18, 1992 (57 FR 54374), announcing that the Department would prepare a PEIS to examine programmatic alternatives for conducting the UMTRA Ground Water Project at former uranium processing sites. Dates, locations, and times for public scoping meetings were announced locally and published in the **Federal Register** on February 8, 1993 (58 FR 7551). Nineteen public scoping meetings in 16 communities were held between November 18, 1992, and April 15, 1993, to solicit public comment regarding the scope and content of the PEIS. The UMTRA Ground Water Project PEIS Implementation Plan (DOE/AL/62350–72D, March 31, 1994) summarized the comments received during scoping and described how the comments would be addressed in the PEIS.

A Notice of Availability of the draft PEIS was published in the **Federal Register** on May 17, 1995 (60 FR 26417). Nine public hearings were conducted in communities near tailings sites between June 7 and 28, 1995, to solicit public comment on the draft PEIS. Volume II of the final PEIS identifies and responds to the 576 comments received during the public comment period.

Alternatives Considered

Proposed Action (Preferred Alternative)

Under the proposed action, which was identified in the draft PEIS as DOE's preferred alternative, DOE would use ground water compliance strategies tailored for each site to achieve conditions that are protective of human health and the environment and that meet EPA ground water standards. The proposed action would consider ground water compliance decisions in a step-by-step approach, beginning with consideration of a ''no-remediation'' strategy and proceeding, if necessary, to consideration of passive strategies, such as natural flushing with compliance monitoring and institutional controls, and finally to consideration of more complex, active ground water methods, if needed. For example, under the proposed action, if a site risk assessment and Site Observational Work Plan

indicate that the strategy of ''no-remediation'' would be protective of human health and the environment, a more complex and potentially environmentally disruptive strategy involving active cleanup methods would not be necessary.

The proposed action is intended to establish a consistent risk-based framework for implementing the UMTRA Ground Water Project and determining appropriate ground water compliance strategies for complying with EPA ground water standards at the UMTRA Project former processing sites. In determining site-specific ground water compliance strategies DOE will consider: site-specific ground water conditions; human and environmental risks; the views of tribes, States and local communities; and cost. The proposed action as well as all the other alternatives discussed below except for ''no action,'' are sufficiently flexible to allow DOE to conduct interim actions, such as providing alternate water supply systems, should they be necessary in order to reduce risk and/or support institutional controls. The proposed action would also allow the consideration of new ground water cleanup methods as they become available.

No Action Alternative

The Council on Environmental Quality regulations for implementing NEPA require assessment of the no action alternative (40 CFR 1502.14(d)), even if the agency is under a legislative mandate to act, to enable decision makers to compare the magnitude of environmental effects of the action alternatives (51 FR 15618 April 25, 1986). Under the no action alternative, no further activities would be carried out to comply with EPA standards at the inactive UMTRA Project former processing sites.

Active Remediation to Background Levels Alternative

Under this alternative, ground water at the former processing sites would be restored to background levels or to levels as close to background as possible using active ground water remediation methods without regard to existing risk or cost of implementation. The philosophy behind this alternative is an assumption that ground water at most of the former uranium processing sites was of better quality before uranium processing activities occurred and that the ground water should be restored to its preprocessing quality. If this alternative were implemented, most of the UMTRA Project sites would require the use of active ground water remediation methods such as gradient manipulation, ground water extraction and treatment, or *in situ* ground water treatment, regardless of the quality of the unaffected background ground water. The specific active remediation method at each site would be determined using the observational approach and evaluation of site-specific data in the pertinent Site Observational Work Plans.

Passive Remediation Alternative

Under this alternative, only passive remediation strategies would be used to meet the EPA ground water standards.[1] The passive remediation strategies are: (1) Performing no remediation at sites that qualify for supplemental standards or alternate concentration limits as defined below or sites where contaminant concentrations are below maximum concentration limits or background levels, or (2) relying on natural flushing. Natural flushing means allowing the natural ground water movement and geochemical processes to decrease contaminant concentrations. This alternative differs from the no action alternative in that it includes site characterization, monitoring, and risk assessment activities.

Under the first strategy of this alternative, the DOE would apply supplemental standards or alternate concentration limits if maximum concentration limits and/or background concentrations were exceeded. If supplemental standards or alternate concentration limits are to be applied at any site, concurrence by the NRC would be required.

Under the second strategy of this alternative, natural flushing would be used to achieve background levels or maximum concentration limits if supplemental standards and alternate concentration limits are not applied. Concurrence by the NRC would be required. According to the EPA standards, natural flushing can be used if it is shown to be protective of human health and the environment, if it will meet the EPA standards within 100 years, and if it complies with other provisions that EPA established for its use. However, natural flushing may not always meet the EPA standards in 100 years, and may not be protective of human health and the environment at all sites. Therefore, if the passive remediation alternative were selected, DOE may not comply with the EPA standards at some sites.

The specific passive ground water compliance strategy selected for each site would be determined using the observational approach and evaluation of data gathered and included in the pertinent Site Observational Work Plan. Active ground water remediation methods would not be used under this alternative, even if the EPA standards cannot be met by passive methods.

Existing Conditions

The designated UMTRA Project processing sites were active for varying lengths of time from the 1940s into the 1970s. These sites, the surrounding areas, and the underlying ground water constitute the affected environment for this PEIS. Minority or low income groups near UMTRA sites that have the potential for disproportionately high and adverse effects include those near the Tuba City and Monument Valley, Arizona; Shiprock, New Mexico; Mexican Hat, Utah; and Riverton, Wyoming, sites. Land contaminated by uranium mill tailings and other contaminants associated with UMTRA Title I former processing sites ranged from a low of 21 acres (ac) (8 hectares (ha)) at the Spook, Wyoming, site to a maximum of 612 ac (248 ha) at the Ambrosia Lake, New Mexico, site. The amount of contaminated materials ranged from 85,000 cubic yards (yd^3) (65,000 cubic meters (m^3)) at the North Continent Slick Rock, Colorado, site to 5,764,000 yd^3 (4,407,000 m^3) at the Falls City, Texas, site. The total amount of contaminated material at the sites is 39,000,000 yd^3 (30,000,000 m^3). As a result of uranium processing, contaminants have entered the shallow ground water at most of the UMTRA Project sites. Some of the more common contaminants at UMTRA sites that exceed maximum concentration limits under EPA's standards include but are not limited to molybdenum, nitrate, selenium, and uranium.

DOE currently estimates that approximately 10 billion gallons (gal) (39 million m^3) of ground water are contaminated. One site (Lowman, Idaho) shows no sign of contamination related to processing activities. The site with the largest amount of contamination, Gunnison, Colorado, has an estimated 1.9 billion gal (7.0 million m^3) of contaminated ground water.

[1] EPA's ground water protection standards provide three alternative approaches to determining site-specific cleanup requirements. Concentrations of certain contaminants that are within ''maximum concentration limits'' or at background levels are acceptable without further consideration. Alternatively, DOE may apply ''alternate concentration limits'' that will not pose a substantial present or potential hazard to human health or the environment under site-specific circumstances. Finally, when certain criteria are met (e.g., ground water restoration is technically impracticable), DOE may develop and apply ''supplemental standards'' in lieu of the otherwise applicable standards.

Surface remediation of the designated sites has been in progress since the mid-1980s; surface remediation is complete at 20 sites and under way at the remaining two sites. Two additional sites, in Belfield and Bowman, North Dakota, were included in the PEIS analysis but at the request of the State are not scheduled for surface remediation. These two sites therefore will not be included in the DOE Ground Water Program. Affected States are required by UMTRCA to share 10 percent of remedial action costs.

Impacts Analysis

The PEIS provides a qualitative analysis of potential impacts of the alternative ground water compliance strategies and compares the relative potential impacts of the alternatives. More detailed site-specific quantitative impact assessments will be provided in the NEPA documents that tier off the PEIS. Tiering is process in which broad environmental issues are analyzed in an initial NEPA document (the PEIS in this case) to facilitate subsequent NEPA reviews of narrower scope (site-specific reviews in this case).

To give more weight to impacts that may have more significant consequences (for example, human health), long-term and short-term impacts are compared separately in the PEIS. Long-term impacts are those that would occur from leaving contaminated ground water in place or from implementing institutional controls for an extended period of time. Short-term impacts would usually occur only during remediation activities. In general, short-term impacts would be less significant than long-term impacts, because most (for example, habitat destruction, noise, and dust emissions) would be relatively minor and temporary and could be mitigated. While these impacts are of concern, there is greater concern regarding potential long-term health and environmental effects.

Potential long-term impacts could arise under the following circumstances:

- If the contaminated ground water did not comply with EPA standards and its use were not sufficiently controlled. This could occur under the no action alternative and the passive remediation alternative.
- If the ground water compliance strategy were not protective of human health and the environment at all sites. This could occur under the no action alternative and passive remediation alternative.
- If institutional controls were implemented and were needed for longer than they should reasonably be relied upon (i.e., in excess of 100 years under the EPA standard). This could occur under all the alternatives except the no action alternative, but is unlikely to occur under the proposed action and active remediation alternatives.

If the no action alternative were selected, significant adverse impacts to human health and the environment could result. Under this alternative, the public could be exposed to hazardous contaminants by drinking contaminated ground water. Further, minority and/or low-income communities would be disproportionately impacted under the no action alternative because such communities comprise the majority of the population near several UMTRA Project sites. Adverse impacts to the environment could potentially occur if contamination enters the food chain (such as through livestock or produce) or affects sensitive habitats (such as wetlands) or threatened or endangered species. These potentially significant adverse impacts are not expected to occur under the proposed action or the active remediation to background levels alternative because these alternatives are intended to comply with EPA standards at all UMTRA Project sites in a reasonable timeframe. In addition, when required, surface and ground water monitoring would take place before, during, and after implementation of the proposed action and the active remediation to background levels alternative to ensure the public is not exposed to existing or potential surface and ground water contamination.

Implementation of the passive remediation alternative also could result in potential exposure of humans and the environment to hazardous contaminants because institutional controls may not always effectively restrict access to contaminated ground water. Under the passive remediation alternative, no active remediation of contaminated ground water would occur even if such a hazard were identified. In contrast, under both the proposed action and active remediation to background levels alternatives, DOE would use hydrogeologic data and risk assessments to identify the need for implementing active remediation strategies to mitigate risks.

While no active remediation would occur under this alternative, the passive remediation alternative could result in institutional controls for more than 100 years and could result in potentially significant long-term land use and social and economic impacts associated with access restrictions at contaminated sites. In contrast, the proposed action and the active remediation to background levels alternatives would implement strategies intended to achieve ground water compliance within 100 years.

In summary, the proposed action and active remediation to background levels alternatives are most effective in protecting human health and the environment from the contaminated ground water at the UMTRA Project sites. Short-term adverse environmental impacts associated with construction and operation of ground water remediation systems (e.g., habitat destruction, noise and dust emissions) would occur under both of these alternatives; such impacts would likely be greater under the active remediation alternative because remediation systems would be employed at every site. For all the reasons stated above, DOE regards both of these alternatives as environmentally preferable to the no action and passive remediation alternatives. The proposed action likely would be more cost effective than the active remediation alternative because it relies on less costly passive ground water compliance strategies at sites where these strategies can be shown to be protective of human health and the environment. The active remediation alternative would be the most costly option. Both it and the preferred alternative would result in compliance with the EPA ground water standards, but the active remediation alternative, with its reliance on active ground water remediation, would provide no substantial additional benefits to human health and the environment. Further, active remediation technologies may not always achieve background concentrations of contaminants within 100 years at former uranium processing sites.

Decision

The Department has decided to implement the proposed action, which was identified as the Department's preferred alternative in the draft PEIS. This approach provides a health and environmental risk-based framework for implementing the UMTRA Ground Water Project and for determining appropriate ground water compliance strategies at the UMTRA Project former processing sites.

The Department will use a logic framework established by the proposed action to identify the appropriate specific ground water compliance strategy or strategies for a site to ensure compliance with EPA standards and the protection of public health and the environment.

The first step in the decision process will be to determine whether the uranium processing activities at a specific site have resulted in ground

water contamination exceeding background levels or maximum concentration limits. If ground water contamination has not exceeded these standards and is not expected to do so in the future, remediation will not be required.

Pursuant to the EPA standards, if ground water has been contaminated by uranium processing activities and the contamination exceeds background levels or maximum concentration limits, the next step will be to determine whether compliance with EPA ground water standards could be achieved by applying supplemental standards under 40 CFR 192.21(g), based on a determination that the ground water met EPA's definition of ''limited use ground water.'' ''Limited use ground water'' means ground water that is not a current or potential source of drinking water because of: high concentration of dissolved solids; ambient contamination unrelated to milling operations that cannot reasonably be cleaned up; or poor aquifer yield (40 CFR 192.11(e)). If limited use ground water is shown to exist and if supplemental standards are protective of human health and the environment, no site-specific remediation will be required. If supplemental standards based on limited use ground water is not applicable, the next step will be to determine whether alternate concentration limits apply.

If alternate concentration limits are protective of human health and the environment, alternate concentration limits will be applied. If not, it will be necessary to determine whether the contaminated ground water plume(s) will qualify for supplemental standards which, under 40 CFR 192.21(b) of the EPA ground water standards, may be appropriate if remediation will cause more environmental harm than benefit. At some sites where supplemental standards or alternate concentration limits may be applied, ground water monitoring and institutional controls may be necessary to ensure that the application of alternate concentration limits or supplemental standards will continue to be protective of human health and the environment. In addition, when limited-use ground water is present, supplemental standards must ensure that current and reasonably projected uses of the affected ground water are preserved.

If supplemental standards will not be protective, the next step will be to determine whether natural flushing (attenuation) will bring the contaminated ground water into compliance (i.e., within maximum concentration limits, background levels, or alternate concentration limits) within 100 years. Natural flushing could be used if DOE determines and NRC concurs that institutional controls could be implemented, maintained, and enforced during the natural flushing period; that this strategy is protective of human health and the environment; and that all other EPA provisions are met.

If natural flushing will not be protective, it will be necessary to determine whether natural flushing combined with active remediation methods will meet the EPA ground water standards and will be protective of human health and the environment. If so, a two-part strategy will be implemented. Active remediation methods will first be used for a short time to remove the most contaminated ground water in a discrete area, and then natural flushing will occur. When appropriate, DOE would use active methods that have low operational and maintenance requirements, such as gradient manipulation or geochemical barriers, in conjunction with natural flushing.

Site characterization data may show that natural flushing combined with active remediation will not result in ground water quality that is protective of human health and the environment. If that is the case, the next step in the framework will be to determine whether active ground water remediation techniques will meet the EPA ground water standards, and if so, to implement these techniques. Several methods of active ground water remediation could be used, including gradient manipulation, ground water extraction, and *in situ* ground water treatment. The active remediation methods could be used individually or in combination with other cleanup methods. If active remediation results in compliance with the EPA standards, remedial action will be complete. If these methods do not result in compliance, supplemental standards based on technical impracticability of remediation will be applied, along with institutional controls where necessary.

Site-specific NEPA documentation will be prepared to evaluate the impact(s) from alternative strategies for implementing the programmatic decision described above. In accordance with DOE policy, DOE will solicit input from the public, local organizations, and educational institutions on issues that should be identified, considered, and analyzed, and will conduct public meetings for that purpose in the affected communities. Furthermore, DOE will adopt all practicable means to avoid or minimize environmental harm during site-specific activities.

Issued in Washington, DC, on April 21, 1997.

Alvin L. Alm,

Assistant Secretary for Environmental Management.

[FR Doc. 97–10860 Filed 4–25–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed by May 28, 1997. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer,

Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Office of Statistical Standards, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–887, ''DOE Customer Surveys''
2. Department of Energy; OMB No. 1901–0302; Extension of Currently Approved Collection; Voluntary
3. DOE–887 will be used to contact users and beneficiaries of DOE products or other services to determine how the Department can better improve its services to meet their needs. Information is needed to make the Department's products more effective, efficient, and responsive and at a lesser cost. Respondents will be users and beneficiaries of the Department's products and services.
4. Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government
5. 12,500 hours (.25 hrs. per response × 1 response per year × 50,000 respondents)

Statutory Authority

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., April 21, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–10856 Filed 4–25–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 97–14; Advanced Computational Testing and Simulation Software Activities

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Mathematical, Information, and Computational Sciences (MICS) Division of the Office of Computational and Technology Research (OCTR), Office of Energy Research (ER), U.S. Department of Energy (DOE) announces its interest in receiving applications for research grants in Advanced Computational Testing and Simulation Software Activities.

DATES: Formal applications submitted in response to this notice must be received not later than 4:30 p.m. E.D.T., July 16, 1997, to permit timely consideration for award early in fiscal year 1998.

ADDRESSES: Formal applications, referencing Program Notice 97–14, should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, Attn: Program Notice 97–14. The above address also must be used when submitting formal applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Anne Scott, Office of Energy Research, U.S. Department of Energy, OCTR/MICS, ER–31, 19901 Germantown Road, Germantown, MD 20874–1290. Tel: (301) 903–6368; E-mail: scott@er.doe.gov.

SUPPLEMENTARY INFORMATION: The vision of the DOE 2000 Initiative is to accelerate DOE mission accomplishments through advanced collaboration and simulation. Objectives include improved ability to solve DOE's scientific problems, an increased R & D productivity and efficiency, and enhanced access to DOE resources by R & D partners.

One of the two major thrusts for addressing these objectives is the Advanced Computational Testing and Simulation (ACTS) Toolkit. This toolkit will provide an integrated set of software tools, algorithms, and environments that accelerate the adoption and use of advanced computing by DOE programs for mission-critical problems. The toolkit will include capabilities for representing complex geometries, solving diverse numerical equations, simplifying multi-language parallel execution, evaluating and enhancing code performance, and dynamically steering calculations during execution. The strategy for building this toolkit is to select a base set of existing successful tools, provide support to make them interoperable, and then add new tools and interfaces to make the entire toolkit robust for diverse application needs.

In FY 1997, the founding efforts for the ACTS Toolkit were begun—the Scientific Template Library (SciTL). SciTL concentrates on three areas of tool development: interoperable numeric libraries, object-oriented libraries and capabilities for modular code development, and runtime libraries for efficient parallel execution (including dynamic load-balancing). All portions of the SciTL work are tied to specific DOE applications (Accelerated Strategic Computing Initiative (ASCI) codes and ER Grand Challenges) and initially targeted to specific computing platforms (ASCI machines). The FY 1997 SciTL project description, including detailed plans, deliverables, and participants, can be found via the Internet at the following URL: http://www.acl.lanl.gov/SciTL

In FY 1998, the ACTS Toolkit efforts will begin to expand. Applications are solicited to build on the SciTL to further advance the strategies of the ACTS Toolkit. Technical areas of interest include, but are not limited to: additional application-specific data structures required for scientific codes, additional numerical solvers, parallel and distributed data structures to support numerical techniques; high-performance parallel input/output components, language interoperability (primarily Fortran, C, and C++), tools for enhancing fault tolerance, tools for easily saving and restoring complex pointer-based structures and objects, tools for debugging and performance analysis/tuning; and toolkit components required for new domains of use. Applications are also encouraged for expanding the use of the ACTS Toolkit to a wider range of DOE applications and for expanding the types of computing platforms on which the Toolkit can be used.

Successful applications will relate to the current SciTL structure by one or more of the following:

- Building new ACTS Toolkit capabilities by using the current functionality provided by the SciTL interface,
- Expanding capabilities of the SciTL interface by developing complementary libraries that interoperate with relevant portions of the existing SciTL components,
- Evaluating the current capabilities of the SciTL components for their functionality, performance, and portability in the context of new application and/or computing systems domains,
- Restructuring portions of the existing SciTL components to enhance functionality, improve performance, and/or expand portability,

• Linking the ACTS Toolkit with components in the other DOE 2000 thrust: National Collaboratories (see the Internet web page at URL: http://www.mcs.anl.gov/DOE2000/).

Applications may be for up to three years in duration, with second and third year funding subject to progress demonstrated in annual reviews. Based on anticipated available funding and sufficient applications of high merit, approximately 4–6 applications averaging $250K/year could be supported.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following criteria listed in descending order of importance as codified for review of applications from the academic and industrial sectors in 10 CFR part 605:

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

Within the Scientific and/or Technical Merit criterion above, the following subcriteria will be used for evaluation purposes (relative to the current SciTL), and will be evaluated equally:

i. Increased functionality.
ii. Enhanced performance.
iii. Improved usability.
iv. Widened scope of applicability.

Within the Appropriateness of Method criterion above, applicants are encouraged to identify opportunities for collaboration with ongoing DOE 2000 projects and other applications important to DOE missions.

External peer reviewers will be selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s).

Information about the development and submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. The Application Guide is available from the U.S. Department of Energy, Office of Energy Research, OCTR/MICS, ER–31, 19901 Germantown Road, Germantown, MD 20874–1290. Telephone requests may be made by calling (301) 903–5800. Electronic access to ER's Application Guide is possible via the Internet at the following URL: http://www.er.doe.gov/production/grants/grants.html.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on April 15, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–10609 Filed 4–23–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Proposed Information Collection and Request for Comments (FERC Form No. 542)

April 23, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before June 27, 1997.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 542 ''Gas Pipeline Rates: Rate Tracking (Non-Formal'' (OMB No. 1902–0070) is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, and Sections 4, 5, and 16, of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). As a result of the issuance and implementation of Order No. 636, the sales function performed by the interstate pipelines has mostly disappeared. Customers have overwhelmingly chosen to do their own procurement of gas supplies coupled with the use of transportation service on the pipelines rather than buying gas from pipelines. For pipelines to recover a variety of transportation costs they have developed filings to track these expenditures and include such charges us: Costs of obtaining the use of upstream pipeline capacity to fulfill pipeline service obligations; electric power cost filings; gas supply realignment transition cost flowthrough; fuel usage; and Gas Research Institute research fees. Tracking filings are submitted at any time to track upstream cost changes or are filed on a regularly schedule basis as specified in the companies' tariffs establishing the tracking mechanism. Filings can be either: accepted; suspended but not set for hearing; suspended for further review or a technical conference and additional Commission action as deemed necessary; or suspended and set for hearing. Before the Commission allows the rate change to become effective, staff analysis is performed to ensure that the rate change is just and reasonable. The data submitted in the rate tracking filing are used by the Commission to verify the costs proposed to be recovered under those filings. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 154.4; 154.7; 154.101; 154.107; 154.201; 154.207–154.209 and 154.401–154.403.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
60	5	120	36,000.

Estimated cost burden to respondents: 36,000 hours divided by 2,087 hours per year times $104,350 per year equals $1,800,000. The cost per respondent is equal to $30,000.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10867 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Proposed Information Collection and Request for Comments (FERC Form No. 543)

April 23, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before June 27, 1997.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 543 ''Gas Pipeline Rates: Rate Tracking (Formal)'' (OMB No. 1902–0152) is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, and Sections 4, 5, and 16, of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). As a result of the issuance and implementation of Order No. 636, the sales function performed by the interstate pipelines has mostly disappeared. Customers have overwhelmingly chosen to do their own procurement of gas supplies coupled with the use of transportation service on the pipelines rather than buying gas from pipelines. For pipelines to recover a variety of transportation costs they have developed filings to track these expenditures and include such charges as: Costs of obtaining the use of upstream pipeline capacity to fulfill pipeline service obligations; electric power cost filings; gas supply realignment transition cost flowthrough; fuel usage; and Gas Research Institute research fees. Tracking filings are submitted at any time to track upstream cost changes or are filed on a regularly scheduled basis as specified in the companies' tariffs establishing the tracking mechanism. Filings can be either: Accepted; suspended but not set for hearing; suspended for further review or a technical conference and additional Commission action as deemed necessary; or suspended and set for hearing. When a filing is suspended and set for hearing, it is considered a formal filing and the portion of the rate filing associated with the disputed issues becomes the subject of an investigation. Before the Commission allows the rate change to become effective, staff analysis is performed to ensure that the rate change is just and reasonable. The data submitted in the rate tracking filing are used by the Commission to verify the costs proposed to be recovered under those filings. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 154.4; 154.7; 154.101; 154.107; 154.201; 154.207–154.209 and 154.312; 154.314; 154.401–154.403; 154.601–154.603.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
2	1	1,030	2,060

Estimated cost burden to respondents: 2,060 hours divided by 2,087 hours per year times $104,350 per year equals $103,000. The cost per respondent is equal to $51,500.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain,

disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10868 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–4–32–001]

Colorado Interstate Gas Company; Notice Compliance of Tariff Filing

April 22, 1997.

Take notice that on April 16, 1997, Colorado Interstate Gas Company (CIG) filed Substitute First Revised Fourth Revised Sheet No. 230, First Revised Volume No. 1 and First Revised First Revised Sheet No. 230A, First Revised Volume No. 1, pursuant to the Commission's Letter Order issued March 27, 1997 which requires CIG to submit this filing to revise Section 1.14 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10816 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–21–003]

Florida Gas Transmission Company; Notice of Compliance Filing

April 22, 1997.

Take notice that on April 16, 1997, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective June 1, 1997, the following tariff sheet:

Fourth Revised Sheet No. 117A

FGT states that it is revising its timetable for submitting nominations to FGT for transportation through FGT's capacity on Southern Natural Gas Company (Southern) in accordance with the Commissions Order on Compliance issued November 15, 1996 in FGT's GISB proceeding in Docket No. RP97–21. The proposed tariff language provides that nominations from FGT's shippers for transportation on Southerns system must be received by FGT by 11:30 A.M. Central Time. The proposed effective date of June 1, 1997 conforms with Southern's GISB implementation date of June 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10809 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–4–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 22, 1997.

Take notice that on April 16, 1997, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective May 1, 1997, the following tariff sheets:

Twenty-First Revised Sheet No. 8A
Thirteenth Revised Sheet No. 8A.01
Thirteenth Revised Sheet No. 8A.02
Nineteenth Revised Sheet No. 8B
Twelfth Revised Sheet No. 8B.01

FGT states that in Docket No. TM97–3–34–000 filed on February 28, 1997 and approved by Commission order dated March 24, 1997, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 2.85% to become effective April 1, 1997. In the instant filing, FGT is filing a flex adjustment of 0.50% to be effective May 1, 1997, which, when combined with the Base FRCP of 2.85%, results in an Effective Fuel Reimbursement Charge Percentage of 3.35%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions (GTC) of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall

become effective without prior FERC approval provided that such flex adjustment may not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date.

FGT states that the instant filing comports with these provisions and FGT is posting notice of the flex adjustment on its EBB concurrent with the instant filing.

FGT states that since April 1, 1997 when the Base FRCP of 2.85% became effective, FGT has been experiencing increased throughput on its system and higher compressor fuel usage than is being recovered through the Base FRCP. Consequently, to minimize the operational problems experienced as a result of this underrecovery of fuel, and to minimize the balance of the deferred fuel account to be resolved in a subsequent period, FGT is increasing the Effective Fuel Reimbursement Charge Percentage to 3.35%.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10817 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–142–001]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

April 22, 1997.

Take notice that on April 17, 1997 K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets listed on Appendix A to the filing, to be effective June 1, 1997.

KNI states that these tariff sheets are being filed in order to implement Order Nos. 587 and 587–B as well as to comply with the Commission's Order in this proceeding dated March 17, 1997.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest with reference to this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests filed with the Commissions will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10812 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1414–000]

Niagara Energy & Steam Co., Inc.; Notice of Issuance of Order

April 23, 1997.

Niagara Energy & Steam Co., Inc. (Niagara Steam) submitted for filing a rate schedule under which Niagara steam will engage in wholesale electric power and energy transactions as a marketer. Niagara Steam also requested waiver of various Commission regulations. In particular, Niagara Steam requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Niagara Steam.

On April 7, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Niagara Steam 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).

Absent a request for hearing within this period, Niagara Steam is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Niagara Steam's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 7, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10869 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1816–000]

NICOR Energy Management Services Company; Notice of Issuance of Order

April 23, 1997.

NICOR Energy Management Services Company (NICOR) submitted for filing a rate schedule under which NICOR will engage in wholesale electric power and energy transactions as a marketer. NICOR also requested waiver of various Commission regulations. In particular, NICOR requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NICOR.

On April 8, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard

or to protest the blanket approval of issuances of securities or assumptions of liability by NICOR 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).

Absent a request for hearing within this period, NICOR is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NICOR's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 8, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10870 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–131–001]

Overthrust Pipeline Company; Notice of Tariff Filing

April 22, 1997.

Take notice that on April 16, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing and acceptance, as part of its FERC Gas Tariff, First Revised Volume No. 1–A, original and revised tariff sheets, to be effective June 1, 1997.

Overthrust states that the filing is being filed in compliance with the Commission's March 14, 1997, Order on Compliance Filing.

Overthrust states that the proposed tariff sheets, which are identified on Appendix A to the filing, implement the requirements of Order Nos. 587, 587–A and 587–B (Order 587) by revising provisions applicable to nominations, allocations, balancing, measurement, invoicing and capacity release as required by the Commission's March 14 order.

Overthrust states that it has revised various sections of the General Terms and Conditions of its tariff in order to implement the requirements of Order 587 and the March 14 order. More specifically, Overthrust has revised Section 1 (Definitions), Section 4 (Electronic Bulletin Board (EBB)), Section 8 (Capacity Release and Assignment), Section 13 (Measurement), Section 15 (Scheduling of Gas Receipts and Deliveries), Section 16 (Balancing of Gas) and Section 17 (Billing and Payment).

Overthrust states that it has added a new Section 29 (GISB Standards) to the General Terms and Conditions. Overthrust has also revised the Table of Contents to reflect changes in the location of certain sections due to incorporation of the new and revised tariff provisions and the footnotes to the Statement of Rates.

Overthrust states that a copy of this filing has been served upon its customers, and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filling are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10811 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG97–8–001]

Pacific Interstate Offshore Company; Notice of Filing

April 22, 1997.

Take notice that on April 15, 1997, Pacific Interstate Offshore Company (PIOC) revised its standards of conduct to reflect revisions required by the Commission's March 31, 1997 order. 78 FERC ¶ 61,385 (1997).

PIOC states that it has served copies of its revised standards of conduct upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 7, 1997. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10806 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–129–001]

Questar Pipeline Company; Notice of Tariff Filing

April 22, 1997.

Take notice that on April 16, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, original and revised tariff sheets, to be effective June 1, 1997.

Questar states that the filing is being filed in compliance with the Commission's March 17, 1997, Order on Compliance Filing.

Questar states that the proposed tariff sheets, which are identified on Appendix A to the filing, implement the requirements of Order Nos. 587, 587–A and 587–B (Order 587) by revising provisions applicable to nominations, allocations, balancing, measurement, invoicing and capacity release as required by the Commission's March 17 order.

Questar states that it has revised the Table of Contents, the footnotes to the Statement of Rates and various sections of the General Terms and Conditions of Part 1 of its tariff in order to implement the requirements of Order 587 and comply with the March 17 order. Questar has revised Section 1 (Definitions), Section 2 (Electronic

Bulletin Board (EBB)), Section 6 (Capacity Release and Assignment), Section 8 (Creditworthiness), Section 10 (Use of Receipt and Delivery Points), Section 11 (Operating Provisions for Transportation and Storage Service), Section 12.3 (Monthly Balancing), Section 14 (Measurement) and Section 18 (Billing and Payment).

Questar states that it has added a new Section 29 (GISB Standards) to Part 1 of the General Terms and Conditions. Sections 9.3 and 10.3 (Commencement of Service) of the General Terms and Conditions of Parts 2 and 3, respectively, of Questar's tariff have also been revised.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10810 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–332–000]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

April 22, 1997.

Take notice that on April 16, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1 the tariff sheets listed on Appendix A to the filing.

Texas Gas states that the instant filing is being made pursuant to Section 4 of the National Gas Act to modify Texas Gas's existing Form of Electronic Bulletin Board (EBB) Agreement in its tariff. The filing is a companion filing to Texas Gas's April 1, 1997 Order No. 587 compliance filing in Docket No. RP97–183 to implement the business standards issued by the Gas Industry Standards Board (GISB). Specifically, the modifications to the EBB and changes to the EBB Agreement will provide enhanced security for EBB access and interaction and will help make the EBB more user friendly as Texas Gas and its customers adapt to the GISB requirements. Texas Gas requests that the revised tariff sheets become effective June 1, 1997, which corresponds with the effective date of Texas Gas' implementation of the GISB Order No. 587 standards pursuant to Texas Gas Docket No. RP97–183.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10814 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–334–000]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

April 22, 1997.

Take notice that on April 17, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of June 1, 1997.

Texas Gas states that the instant filing is being made pursuant to Section 4 of the Natural Gas Act to incorporate into its tariff a new pro forma Electronic Data Interchange (EDI) Trading Partner Agreement. Such agreement will help facilitate compliance with the GISB electronic communication requirements. Texas Gas requests that the revised tariff sheets become effective June 1, 1997, which corresponds with the effective date of Texas Gas' implementation of the GISB Order No. 587 standards pursuant to Texas Gas Docket No. RP97–183.

In the instant filing, Texas Gas also requests a three-month waiver from June 1 to September 1, 1997, to fully complete its EDI electronic delivery mechanism strategy. The waiver request applies solely to use of the Internet electronic delivery mechanism for EDI and the granting of such waiver will not have a significant effect on its customers. Texas Gas otherwise anticipates being in full compliance with Order No. 587 and the effective GISB standards on June 1, 1997.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas' jurisdictional customers and interested state commissions, and all parties on the official service list in Docket No. RP97–183.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10815 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–331–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 22, 1997.

Take notice that on April 9, 1997, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box

1396, Houston, Texas 77251, filed in Docket No. CP97–331–000, an abbreviated application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Transco's 1998 Cherokee Expansion Project, an expansion of Transco's pipeline system to provide 87,070 dekatherms per day of new firm incremental transportation capacity for two shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to construct and operate the following facilities to create the firm transportation capacity for the Cherokee Expansion:

1. 11.22 miles of 48-inch pipeline loop from milepost 826.30 to milepost 837.52 on Transco's mainline in Marengo County, Alabama;
2. A new 15,000 HP compressor station, located at milepost 1007.65 on Transco's mainline in Coweta County, Georgia;
3. A new 8,000 HP compressor at Station 125, including a separate compressor building and an electrical substation, in Walton County, Georgia;
4. Uprate of Transco's existing ''Georgia Extension,'' consisting of approximately 27 miles of 16-inch pipeline in Walton and Gwinnett Counties, Georgia, from 780 psig to 960 psig; and
5. Other appurtenant facilities.

Transco also seeks authorization to abandon in place a 0.13 mile segment of the Georgia Extension, from milepost 26.96 to milepost 27.09. Transco states that after installation of the facilities proposed herein, the segment of pipe will no longer be needed. Transco estimates that the proposed facilities will cost $68,000,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 13, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Losi D. Cashell,

Secretary.

[FR Doc. 97–10805 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–168–001]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

April 22, 1997.

Take notice that on April 17, 1997, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective June 1, 1997:

First Revised Sheet No. 12
First Revised Sheet No. 13
First Revised Sheet No. 22
First Revised Sheet Nos. 32–37
Original Sheet No. 37A
Original Sheet No. 37B
First Revised Sheet No. 38
First Revised Sheet No. 42
Original Sheet No. 42A
Original Sheet No. 42B
First Revised Sheet No. 43
First Revised Sheet No. 44
First Revised Sheet No. 48
First Revised Sheet Nos. 57–58
Original Sheet No. 58A
First Revised Sheet Nos. 59–60
First Revised Sheet Nos. 68–69
Original Sheet No. 69A
First Revised Sheet Nos. 70–73
First Revised Sheet Nos. 77–79

Tuscarora asserts that the purpose of this filing is to comply with the Commission's order issued on March 14, 1997 in Docket No. RP97–168–000 and Order No. 587–B.

Tuscarora states that copies of this filing were mailed to all parties on the service list in this docket, all customers of Tuscarora and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10813 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–387–001]

Williams Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

April 22, 1997.

Take notice that on April 16, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective April 1, 1997:

Substitute Fourth Revised Sheet Nos. 227 and 228
Substitute Third Revised Sheet No. 229
Substitute First Revised Sheet Nos. 229A, 229B, and 229C
Original Sheet No. 229D
Substitute First Revised Sheet No. 235
Substitute Original Sheet No. 237A

WNG states that this filing is being made to comply with Commission Order issued March 27, 1997, in Docket No. RP96–387–000.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section

385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10808 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–35–000, et al.]

Aguaytia Energy Del Peru S.R. Ltda, et al.; Electric Rate and Corporate Regulation Filings

April 22, 1997.

Take notice that the following filings have been made with the Commission:

1. Aguaytia Energy del Peru S.R. Ltda.

[Docket No. EG97–35–000]

On April 11, 1997, Aguaytia Energy del Peru S.R. Ltda. filed with the Federal Energy Regulatory Commission a supplement to its February 27, 1997, application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. The supplemental material included clarifications sought by the Commission Staff.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration to those that concern the adequacy or accuracy of the application.

2. CNG Kauai, Inc.

[Docket No. EG97–37–000]

On April 15, 1997, CNG Kauai, Inc. (CNG Kauai), with its principal office located at One Park Ridge Center, P.O. Box 15746, Pittsburgh, PA 15244–0746, filed with the Federal Energy Regulatory Commission a supplement to its February 28, 1997 application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. The supplemental material included clarifications sought by the Commission Staff.

Comment date: May 9, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration to those that concern the adequacy or accuracy of the application.

3. Kauai Power Partners, L.P.

[Docket No. EG97–38–000]

On April 15, 1997, Kauai Power Partners, L.P. (KPP), with its principal office located at One Park Ridge Center, P.O. Box 15746, Pittsburgh, PA 15244–0746, filed with the Federal Energy Regulatory Commission a supplement to its February 28, 1997, application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. The supplemental material included clarifications sought by the Commission Staff.

Comment date: May 9, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration to those that concern the adequacy or accuracy of the application.

4. Cleveland Electric Illuminating Company

[Docket No. ER96–1471–003]

Take notice that on April 11, 1997, Cleveland Electric Illuminating Company tendered for filing its compliance report in the above-referenced docket.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Corporation

[Docket Nos. ER96–2912–000, ER97–907–000, ER97–1385–000, ER97–1520–000, ER97–1585–000, and ER97–1775–000]

Take notice that on April 21, 1997, the American Electric Power Service Corporation (AEPSC) submitted for filing with the Commission, an amendment in the above referenced dockets.

A copy of the filing was served upon the parties to this filing and the affected State Utility Regulatory Commissions.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Northwest Generating Cooperative

[Docket No. ER97–1708–000]

Take notice that on March 20, 1997, Pacific Northwest Generating Cooperative tendered for filing an amendment in the above-referenced docket.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power Company

[Docket No. ER97–1901–000]

Take notice that on March 28, 1997, Pennsylvania Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas and Electric Company

[Docket No. ER97–2406–000]

Take notice that Southern Indiana Gas and Electric Company (SIGECO) on April 4, 1997, tendered for filing four (4) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Western Power Services, Inc.
2. CMS Marketing, Services and Trading Company
3. NIPSCO Energy Services, Inc.
4. American Energy Solutions, Inc.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER97–2407–000]

Take notice that on April 4, 1997, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Plum Street Energy Marketing, Inc. (Plum Street Energy). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Plum Street Energy to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Plum Street Energy a Participant in the Pool. NEPOOL requests an effective date on or before April 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by Plum Street Energy.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER97–2408–000]

Take notice that PacifiCorp on April 4, 1997, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations,

Non-Firm Transmission Service Agreements with Arizona Public Service Company, Black Hills Power & Light and Bonneville Power Administration under, PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

[Docket No. ER97–2409–000]

Take notice that on April 4, 1997, Duke Power Company (Duke) tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Illinois Power Company, dated as of February 14, 1997 (TSA). The parties have not engaged in any transactions under the TSA as of the date of filing. Duke states that the TSA sets out the transmission arrangements under which Duke will provide Illinois Power Company firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of March 7, 1997.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER97–2410–000]

Take notice that on April 4, 1997, Duke Power Company (Duke) tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Louisville Gas and Electric Company, dated as of March 12, 1997 (TSA). The parties have not engaged in any transactions under the TSA as of the date of filing. Duke states that the TSA sets out the transmission arrangements under which Duke will provide Louisville Gas and Electric Company non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of March 12, 1997.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Western Resources, Inc.

[Docket No. ER97–2411–000]

Take notice that on April 3, 1997, Western Resources, Inc. tendered for filing non-firm transmission agreements between Western Resources and Kansas City Power and Light Company and Koch Energy Trading, Inc. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective December 18, 1996 and January 9, 1997, respectively.

Copies of the filing were served upon Kansas City Power and Light Company, Koch Energy Trading, Inc. and the Kansas Corporation Commission.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Western Resources, Inc.

[Docket No. ER97–2412–000]

Take notice that on April 3, 1997, Western Resources, Inc. tendered for filing a non-firm transmission agreement between Western Resources and KOCH Power Services, Inc. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective January 18, 1997.

Copies of the filing were served upon KOCH Power Services, Inc. and the Kansas Corporation Commission.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Fina Energy Services Company

[Docket No. ER97–2413–000]

On April 3, 1997, Fina Energy Services Company (Applicant), a Delaware corporation, filed a petition with the Federal Energy Regulatory Commission (Commission) for waivers, blanket approvals, and an order approving an initial rate schedule designated as Fina Energy Services Company Rate Schedule No. 1, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205.

Applicant intends to begin in the business of buying and selling electric energy and capacity at wholesale on transmission systems across the domestic electric transmission grid. The rates charged by Applicant for wholesales of energy and capacity will be mutually agreed upon by the parties to each particular transaction.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Lowell Cogeneration Company Limited Partnership

[Docket No. ER97–2414–000]

Take notice that on April 3, 1997, Lowell Cogeneration Company Limited Partnership (LCCLP) tendered for filing pursuant to Rules 205 and 207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective June 1, 1997.

In transactions where LCCLP will sell electric energy and/or power at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. LCCLP may engage in electric power and energy transactions as a marketer and a broker.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–2416–000]

Take notice that on April 4, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with AIG Trading Corporation under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas & Electric Company

[Docket No. ER97–2417–000]

Take notice that on April 4, 1997, Louisville Gas & Electric Company (LG&E) tendered for filing an executed Service Agreement between LG&E and Carolina Power and Light under LG&E's Rate Schedule GSS.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Portland General Electric Company

[Docket No. ER97–2418–000]

Take notice that on April 4, 1997, Portland General Electric Company (PGE) tendered for filing an amendment (Amendatory Agreement No. 1) to the Surplus Firm Capacity Sales Agreement (Bonneville Power Administration Contract No. DE–MS79–95BP94626) between PGE and the BPA under which PGE will return energy to the BPA.

Pursuant to 18 CFR 35.11, PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Amendment No. 1 to the Surplus Firm Capacity Sales Agreement to become effective April 1, 1997.

Copies of this filing were caused to be served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Dayton Power and Light Company

[Docket No. ER97–2419–000]

Take notice that on April 4, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing NIPSCO Energy Services, Inc., CNG Power Services Corporation, and Louisville Gas & Electric Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon NIPSCO Energy Services, Inc., CNG Power Services Corporation, Louisville Gas & Electric Company, and the Public Utilities Commission of Ohio.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. The Dayton Power and Light Company

[Docket No. ER97–2420–000]

Take notice that on April 4, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing WPS Energy Services, Inc., The Atlantic City Electric Company, and Power Company of America as customers under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon WPS Energy Services, Inc., The Atlantic City Electric Company, Power Company of America, and the Public Utilities Commission of Ohio.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Public Service Company of Colorado

[Docket No. ER97–2443–000]

Take notice that on April 8, 1997, Public Service Company of Colorado and Cheyenne Light, Fuel and Power Company tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and AIG Trading Corporation. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective March 25, 1997.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Central Illinois Public Service Company

[Docket No. ER97–2444–000]

Take notice that on April 8, 1997, Central Illinois Public Service Company (CIPS) submitted a Service Agreement, dated March 24, 1997, establishing Wisconsin Public Power Inc. as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of March 24, 1997 for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon Wisconsin Public Power Inc. and the Illinois Commerce Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Pennsylvania Power & Light Co.

[Docket No. ER97–2445–000]

Take notice that on April 8, 1997, Pennsylvania Power & Light Company (''PP&L'') filed a Service Agreement dated December 9, 1996, with The Power Company of America, LP (''PCA'') for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds PCA as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PCA and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Southwestern Public Service Company

[Docket No. ER97–2446–000]

Take notice that on April 8, 1997, Southwestern Public Service Company (''Southwestern'') submitted an executed service agreement under its open access transmission tariff with Public Service Company of Colorado. The service agreement is for umbrella non-firm point-to-point transmission service.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Pennsylvania Power & Light Company

[Docket No. ER97–2447–000]

Take Notice that on April 8, 1997, Pennsylvania Power & Light Company (''PP&L''), filed a Service Agreement dated February 19, 1997 with ConAgra Energy Services, Inc. (''ConAgra'') under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds ConAgra as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to ConAgra and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Pennsylvania Power & Light Co.

[Docket No. ER97–2448–000]

Take notice that on April 8, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated March 19, 1997, with Centerior Energy Corporation as Agent for Cleveland Electric Illuminating Company (Centerior) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Centerior as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Centerior and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Pennsylvania Power & Light Co.

[Docket No. ER97–2449–000]

Take Notice that on April 8, 1977, Pennsylvania Power& Light Company (PP&L), filed a Service Agreement dated

April 7, 1997 with Illinois Power (Illinois) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Illinois as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Illinois and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Pennsylvania Power & Light Co.

[Docket No. ER97–2450–000]

Take Notice that on April 8, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated March 18, 1997 with Connecticut Municipal Electric Cooperative (CMEEC) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds CMEEC as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CMEEC and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Pennsylvania Power & Light Co.

[Docket No. ER97–2451–000]

Take notice that on April 8, 1997, Pennsylvania Power & Light Company (PP&L) filed a Service Agreement dated March 19, 1997, with Centerior Energy Corporation as Agent for Toledo Edison Company (Centerior) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Centerior as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Centerior and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Southwestern Public Service Company

[Docket No. ER97–2452–000]

Take notice that on April 8, 1997, Southwestern Public Service Company (''Southwestern'') submitted an executed service agreement under its open access transmission tariff with Kansas City Power & Light Company. The service agreement is for umbrella non-firm point-to-point transmission service.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Pennsylvania Power & Light Company

[Docket No. ER97–2453–000]

Take Notice that on April 8, 1997, Pennsylvania Power& Light Company (PP&L), filed a Service Agreement dated February 19, 1997 with ConAgra Energy Services, Inc. (ConAgra) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds ConAgra as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to ConAgra and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Florida Power & Light Company

[Docket No. ER97–2454–000]

Take notice that on April 8, 1997, Florida Power & Light Company (''FPL''), tendered for filing proposed service agreements with Morgan Stanley Capital Group, Inc. for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on May 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Pennsylvania Power & Light Company

[Docket No. ER97–2455–000]

Take Notice that on April 8, 1997, Pennsylvania Power & Light Company (''PP&L''), filed a Service Agreement dated March 27, 1997 with Valero Power Services Company (''Valero'') under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Valero as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Valero and to the Pennsylvania Public Utility Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Union Electric Company

[Docket No. ER97–2456–000]

Take notice that on April 8, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and St. Joseph Light and Power Company and Cinergy Services, Inc., as Agent for The Cincinnati Gas & Electric Company and PSI Energy, Inc. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Interstate Power Company

[Docket No. ER97–2457–000]

Take notice that on April 8, 1997, Interstate Power Company (IPW) tendered for filing a Power Sales Service Agreement between IPW and L G & E Power Marketing, Inc. (LPM). Under the Agreement, IPW will sell Capacity & Energy to LPM as agreed to by both companies.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Arizona Public Service Company

[Docket No. ER97–2458–000]

Take notice that on April 9, 1997, Arizona Public Service Company (''APS''), tendered for filing Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS'' Open Access Transmission Tariff with Amoco Energy Trading Corporation (''Amoco'').

A copy of this filing has been served on Amoco and the Arizona Corporation Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Idaho Power Company

[Docket No. ER97–2459–000]

Take notice that on April 8, 1997, Idaho Power Company (IPCo), tendered for filing two Service Agreements under its FERC Electric Tariff, Original Volume No. 5, Open Access Transmission Tariff.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Unitil Power Corp.

[Docket No. ER97–2460–000]

Take notice that on April 8, 1997, Unitil Power Corp. (''UPC''), tendered for filing pursuant to Rules 205 and 207, a Petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule to be effective June 1, 1997.

In transactions where UPC will sell electric energy and/or power at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. UPC may engage in electric power and energy transactions as a marketer and a broker.

A copy of UPC's Petition was served on the New Hampshire Public Utilities Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Unitil Resources, Inc.

[Docket No. ER97–2462–000]

Take notice that on April 8, 1997, Unitil Resources, Inc. (''URI'') tendered for filing pursuant to Rules 205 and 207, a Petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule to be effective June 1, 1997.

In transactions where URI will sell electric energy and/or power at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. URI asserts that it may engage in electric power and energy transactions as a marketer and a broker.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. NP Energy Inc.

[Docket No. ER97–2485–000]

Take notice that NP Energy Inc., a broker and marketer of electric power, filed on March 27, 1997, a notice of change in status relating to an agreement to sell and issue to National Power of America, Inc. common stock constituting 50 percent of the issued and outstanding common stock of NP Energy, Inc., and to sell and issue to National Power of America, Inc. all of the preferred stock of NP Energy Inc.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. John M. Deutch

[Docket No. ID–2430–001]

Take notice that on April 1, 1997, John M. Deutch (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions: Director—Consumers Energy Company, Director—Citicorp.

Comment date: May 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 18 CFR 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10866 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2422–000, et al.]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Regulation Filings

April 21, 1997.

Take notice that the following filings have been made with the Commission:

1. South Carolina Electric & Gas Company

[Docket No. ER97–2422–000]

Take notice that on April 7, 1997, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Atlantic City Electric Company, (ACEC) as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon ACEC and the South Carolina Public Service Commission.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–2415–000]

Take notice that on April 4, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with Louisville Gas and Electric Company and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER97–2423–000]

Take notice that on April 7, 1997, Wisconsin Power and Light Company (WP&L) tendered for filing Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service establishing Morgan Stanley Capital Group Inc. as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of March 16,1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER97–2424–000]

Take notice that on April 7, 1997, Western Resources, Inc. tendered for filing firm transmission agreements between Western Resources and Duke/Louis Dreyfus L.L.C. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective June 1, 1996, July 1, 1996, August 1, 1996, September 1, 1996, October 1, 1996, November 1, 1996, January 1, 1997, February 1, 1997 and March 1, 1997, respectively.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C. and the Kansas Corporation Commission.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER97–2425–000]

Take notice that on April 7, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), a Peaking Capacity Agreement between Cinergy, CG&E, PSI and Northern California Power Agency (NCPA).

Cinergy and NCPA have requested an effective date of one day after this initial filing of the Peaking Capacity Agreement.

Copies of the filing were served on Northern California Power Agency, the Public Utilities Commission, State of California, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliSys Corporation

[Docket No. ER97–2426–000]

Take notice that on April 7, 1997, UtiliSys Corporation, tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective the earlier of May 30, 1997, or the date of a Commission order granting approval of this Rate Schedule.

UtiliSys Corporation intends to engage in electric power and energy transactions as a marketer and broker. In transactions where Utilisys Corporation purchases power producers, and resells such power to other purchasers, UtiliSys Corporation will be functioning as a marketer. In UtiliSys Corporation's marketing transactions, UtiliSys Corporation proposes to charge rates mutually agreed upon by the parties. In transactions where UtiliSys Corporation does not take title to the electric power and/or energy, UtiliSys Corporation will be limited to the role of a broker and will charge a fee for its service. UtiliSys Corporation is not in the business of producing or transmitting electric power. UtiliSys Corporation does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Rochester Gas and Electric Corporation

[Docket No. ER97–2427–000]

Take notice that on April 7, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the Cincinnati Gas & Electric Company (CG&E), an Ohio corporation, PSI Energy, Inc. (PSI), an Indiana corporation, (collectively Cinergy Operating Companies) and Cinergy Services, Inc. (Cinergy Services), a Delaware corporation, as agent for and on behalf of the Cinergy Operating Companies (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996 filing in Docket No. OA97–243–000 (pending).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 1, 1997 for the Cincinnati Gas & Electric Company (CG&E), an Ohio corporation, PSI Energy, Inc. (PSI), an Indiana corporation, (collectively Cinergy Operating Companies) and Cinergy Services, Inc. (Cinergy Services), a Delaware corporation, as agent for and on behalf of the Cinergy Operating Companies Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER97–2428–000]

Take notice that on April 7, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated April 2, 1997 with Carolina Power & Light Company under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Carolina Power & Light Company as a customer under the Tariff. DLC requests an effective date of April 2, 1997 for the Service Agreement.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER97–2429–000]

Take notice that on April 7, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Williams Energy Services Company.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective March 17, 1997.

A copy of this filing was caused to be served upon Williams Energy Services Company as noted in the filing letter.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER97–2430–000]

Take notice that on April 7, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated April 2, 1997 with Aquila Power Corporation under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Aquila Power Corporation as a customer under the Tariff. DLC requests an effective date of April 2, 1997 for the Service Agreement.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER97–2431–000]

Take notice that on April 7, 1997, Western Resources, Inc. tendered for filing a non-firm transmission agreement between Western Resources and Central and South West Services, Inc. (CSWS). Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective March 27, 1997.

Copies of the filing were served upon CSWS and the Kansas Corporation Commission.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER97–2432–000]

Take notice that on April 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Wisconsin Public Service Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 1, 1997.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Interstate Power Company

[Docket No. ER97–2433–000]

Take notice that on April 7, 1997, Interstate Power Company (IPW) tendered for filing a Transmission Service Agreement between IPW and Federal Energy Sales, Inc. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Federal Energy Sales, Inc.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Idaho Power Company

[Docket No. ER97–2434–000]

Take notice that on April 7, 1997, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission an Agreement for Load Following Services between IPC and Montana Power Company.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER97–2435–000]

Take notice that on April 7, 1997, New England Power Company (NEP) filed a service agreement with Ohio Edison Company for non-firm, point-to-point transmission service under NEP's open access transmission service, FERC Electric Tariff, Original Volume No. 9.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Company

[Docket No. ER97–2436–000]

Take notice that on April 7, 1997, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and NorAm Energy Services, Inc. (NorAm).

SDG&E requests that the Commission allow the Agreement to become effective on the 3rd of June 1997 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and NorAm.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER97–2437–000]

Take notice that on April 7, 1997, Commonwealth Edison Company (ComEd) submitted for filing two unexecuted firm Service Agreements with Koch Power Services, Inc. (Koch), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests effective dates of March 8, 1997, and March 9, 1997, to coincide with the dates of service, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Koch and the Illinois Commerce Commission.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Company Services, Inc.

[Docket No. ER97–2438–000]

Take notice that on April 8, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed three (3) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) Union Electric Company; (ii) New York State Electric and Gas; and (iii) American Electric Power Service Corporation. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with these entities.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of Mexico

[Docket No. ER97–2439–000]

Take notice that on April 8, 1997, Public Service Company of New Mexico (PNM) submitted for filing executed service agreements for service under the terms of PNM's Open Access Transmission Tariff with the following customers: Idaho Power Company, Equitable Power Services Company (2 agreements), and Central and Southwest Services, Inc. as agent for Public Service Company of Oklahoma and Southwestern Electric Power Company (2 agreements). PNM's filing also is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Company of Colorado

[Docket No. ER97–2440–000]

Take notice that on April 8, 1997, Public Service Company of Colorado tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and Idaho Power Company. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective March 25, 1997.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Company of Colorado

[Docket No. ER97–2441–000]

Take notice that on April 8, 1997, Public Service Company of Colorado tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and Coastal Electric Service Co. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective March 24, 1997.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Public Service Company of Colorado

[Docket No. ER97–2442–000]

Take notice that on April 8, 1997, Public Service Company of Colorado tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and USGen Power Services, L.P. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective March 26, 1997.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10865 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11291–001—Indiana]

Star Mill, Inc.; Notice of Availability of Final Environmental Assessment

April 22, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Star Milling and Electric Minor Water Power Project (project) and has prepared a Final Environmental Assessment (FEA) for the project. The project is located on the Fawn River near the town of Howe, in northeastern Indiana.

In the FEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E. Washington D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–10807 Filed 4–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

April 23, 1997.

The following notice of meeting is published pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 30, 1997, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*NOTE—Items Listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 674th Meeting—April 30, 1997, Regular Meeting, (10:00 a.m.)

CAH–1.
- DOCKET# P–10703, 005, City of Centralia Light Department

CAH–2.
- DOCKET# P–11446, 001, Mid-Atlantic Energy Engineers, Ltd.
- OTHER#S P–11481, 001, Cuffs Run Energy Partners

CAH–3.
- DOCKET# P–2402, 004, Upper Peninsula Power Company

CAH–4.
- DOCKET# P–2652, 005, Pacificorp
- OTHER#S DI96–8, 001, Pacificorp
- P–2652, 004, Pacificorp

CAH–5.
- DOCKET# P–10813, 033, City of Summersville, West Virginia

CAH–6. Omitted

CAH–7.
- DOCKET# P–2275, 001, Public Service Company of Colorado

Consent Agenda—Electric

CAE–1. Omitted

CAE–2.
- DOCKET# ER97–1719, 000, Ohio Edison Company and Pennsylvania Power Company
- OTHER#S OA96–197, 000, Ohio Edison Company and Pennsylvania Power Company

CAE–3.
- DOCKET# ER97–1978, 000, New York State Electric & Gas Corporation

CAE–4.
- DOCKET# EC97–23, 000, Morgan Stanley Capital Group, Inc.
- OTHER#S EC97–26, 000, Chi Power Marketing, Inc.
- EL97–32, 000, Morgan Stanley Capital Group, Inc.

CAE–5.
- DOCKET# ER97–1392, 000, Florida Keys Electric Cooperative, Association, Inc.

CAE–6.
- DOCKET# ER97–1543, 000, Duquesne Light Company

CAE–7.
- DOCKET# ER97–905, 000, Pacific Gas and Electric Company
- OTHER#S OA97–494, 000, Pacific Gas and Electric Company

CAE–8.
- DOCKET# OA97–501, 000, Public Service Company of Colorado
- OTHER#S ER97–1062, 000, Public Service Company of Colorado

CAE–9.
- DOCKET# OA96–30, 000, Texas-New Mexico Power Company

CAE–10.
- DOCKET# ER96–1618, 000, Progress Power Marketing, Inc.
- OTHER#S ER96–1618, 001, Progress Power Marketing, Inc.
- ER96–1618, 002, Progress Power Marketing, Inc.

CAE–11.
- DOCKET# FA91–65, 001, Kentucky Utilities Company

CAE–12.
- DOCKET# ER97–624 001 Delmarva Power & Light Company

OTHER#S ER97–781, 001, Delmarva Power & Light Company

ER97–782, 001, Delmarva Power & Light Company

CAE–13.
- DOCKET# ER97–960, 001, The Washington Water Power Company

CAE–14.
- DOCKET# EC95–16, 001, Wisconsin Electric Power Pompany and Northern States Power Company (Minnesota), et al.
- OTHER#S ER95–1357, 001, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
- ER95–1358, 001, Wisconsin Energy Company and Northern States Power Company

Consent Agenda—Gas and Oil

CAG–1.
- DOCKET# RP97–296, 000, Florida Gas Transmission Company
- OTHER#S RP97–297, 000, Florida Gas Transmission Company

CAG–2.
- DOCKET# RP97–303, 000, Tennessee Gas Pipeline Company

OTHER#S RP93–151, 025, Tennessee Gas Pipeline Company
CAG–3.
DOCKET# RP97–307, 000, ANR Pipeline Company
CAG–4.
DOCKET# RP97–312, 000, Transcontinental Gas Pipe Line Corporation
Other#S RP97–71, 000, Transcontinental Gas Pipe Line Corporation
CAG–5.
DOCKET# RP96–320, 010, Koch Gateway Pipeline Company
CAG–6.
DOCKET# RP97–64, 002, Natural Gas Pipeline Company of America
OTHER#S RP97–64, 003, Natural Gas Pipeline Company of America
RP97–64, 004, Natural Gas Pipeline Company of America
CAG–7.
DOCKET# RP97–250, 000, Noram Gas Transmission Company
CAG–8.
DOCKET# RP97–258, 000, Williams Natural Gas Company
CAG–9.
DOCKET# RP97–298, 000, Mississippi River Transmission Corporation
OTHER#S RP97–298, 001, Mississippi River Transmission Corporation
CAG–10.
DOCKET# RP97–301, 000, Overthrust Pipeline Company
CAG–11.
DOCKET# RP97–306, 000, Williams Natural Gas Company
OTHER#S RP97–317, 000, Williams Natural Gas Company
CAG–12.
DOCKET# RP97–313, 000, OZARK GAS TRANSMISSION SYSTEM
CAG–13.
DOCKET# RP97–319, 000, WILLIAMS NATURAL GAS COMPANY
OTHER#S RP89–183, 073, WILLIAMS NATURAL GAS COMPANY
CAG–14. OMITTED
CAG–15.
DOCKET# PR97–3, 000, OLYMPIC PIPELINE COMPANY
CAG–16.
DOCKET# RP97–174, 001, GULF STATES TRANSMISSION CORPORATION
OTHER#S RP97–264, 000, SHELL GAS PIPELINE COMPANY
RP97–271, 000, SOUTHERN NATURAL GAS COMPANY, SEA ROBIN PIPELINE COMPANY AND SOUTH GEORGIA NATURAL GAS COMPANY
RP97–272, 000, WESTGAS INTERSTATE, INC.
RP97–273, 000, TEXAS-OHIO PIPELINE, INC.
RP97–277, 000, RICHFIELD GAS STORAGE SYSTEM
RP97–278, 000, ALABAMA-TENNESSEE NATURAL GAS COMPANY
RP97–292, 000, LOUISIANA-NEVADA TRANSIT COMPANY
RP97–295, 000, GASDEL PIPELINE SYSTEM, INC.
RP97–323, 000, NORTENO PIPELINE COMPANY
RP97–324, 000, WESTGAS INTERSTATE, INC.
RP97–325, 000, TEXAS-OHIO PIPELINE, INC.
RP97–326, 000, ARKANSAS WESTERN PIPELINE COMPANY
CAG–17. OMITTED
CAG–18.
DOCKET# RP97–57, 000, NORAM GAS TRANSMISSION COMPANY
CAG–19.
DOCKET# RP97–115, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–20.
DOCKET# RP97–203, 001, QUESTAR PIPELINE COMPANY
CAG–21.
DOCKET# RP97–239, 003, NORTHWEST PIPELINE CORPORATION
CAG–22.
DOCKET# IS97–10, 000, PHILLIPS ALASKA PIPELINE CORPORATION
CAG–23.
DOCKET# IS97–12, 000, GAVIOTA TERMINAL COMPANY
CAG–24.
DOCKET# IS97–14, 000, SUN PIPE LINE COMPANY
CAG–25.
DOCKET# IS97–13, 000, YELLOWSTONE PIPE LINE COMPANY
CAG–26.
DOCKET# RM96–1, 005 STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
OTHER#S RP97–276, 000, OZARK GAS TRANSMISSION SYSTEM
CAG–27.
DOCKET# RP97–248, 002, NORTHERN NATURAL GAS COMPANY
CAG–28.
DOCKET# RP96–341, 004, KOCH GATEWAY PIPELINE COMPANY
CAG–29.
DOCKET# RP97–116, 002, KOCH GATEWAY PIPELINE COMPANY
CAG–30.
DOCKET# OR97–1, 001, RIO GRANDE PIPELINE COMPANY
CAG–31.
DOCKET# RP97–34, 002, EAST TENNESSEE NATURAL GAS COMPANY
OTHER#S RP97–34, 003, EAST TENNESSEE NATURAL GAS COMPANY
CAG–32.
DOCKET# MG97–6, 001, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–33.
DOCKET# MG97–11, 000, TEXAS GAS TRANSMISSION CORPORATION
CAG–34.
DOCKET# CP96–221, 001, FLORIDA GAS TRANSMISSION COMPANY
CAG–35.
DOCKET# CP97–19, 001, LOMEX OIL & GAS COMPANY, MR. JERRY LUTZ, MR. & MRS. EARL COON AND MR. AND MRS. CARL MEYERS V. ANR PIPELINE CO.
CAG–36. OMITTED
CAG–37.
DOCKET# CP97–93, 000, VIKING GAS TRANSMISSION COMPANY
CAG–38.
DOCKET# CP96–572, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–39.
DOCKET# CP93–672, 002, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–40.
DOCKET# CP96–517, 000, ALGONQUIN LNG, INC.
CAG–41.
DOCKET# CP97–85, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–42.
DOCKET# CP97–49, 000, QUESTAR PIPELINE COMPANY
CAG–43.
DOCKET# RP97–165, 002, ALABAMA-TENNESSEE NATURAL GAS COMPANY
CAG–44.
DOCKET# RP96–132, 003, SOUTHERN NATURAL GAS COMPANY
CAG–45. OMITTED
CAG–46.
DOCKET# RP97–107, 001, KOCH GATEWAY PIPELINE COMPANY

HYDRO AGENDA

H–1. RESERVED

ELECTRIC AGENDA

E–1.
DOCKET# EC95–16, 000, WISCONSIN ELECTRIC POWER COMPANY AND NORTHERN STATES POWER COMPANY (MINNESOTA), ET AL.
OTHER#S ER95–1357, 000, WISCONSIN ELECTRIC POWER COMPANY AND NORTHERN STATES POWER COMPANY (MINNESOTA), ET AL.
ER95–1358, 000, WISCONSIN ENERGY COMPANY AND NORTHERN STATES POWER COMPANY ORDER AND OPINION ON PROPOSED MERGER AND ON PROPOSED TRANSMISSION AND INTERCHANGE AGREEMENTS.
E–2.
DOCKET# EL97–15, 000, ENOVA CORPORATION AND PACIFIC ENTERPRISES DECLARATORY ORDER ON JURISDICTION.
E–3.
DOCKET# EL97–25, 000, NORAM ENERGY SERVICES, INC. DECLARATORY ORDER ON JURISDICTION.

OIL AND GAS AGENDA

I. PIPELINE RATE MATTERS
PR–1A.
DOCKET# RM97–3, 000, RESEARCH, DEVELOPMENT AND DEMONSTRATION FUNDING NOTICE OF PROPOSED RULEMAKING.
PR–1B.
DOCKET# RP97–149, 000, GAS RESEARCH INSTITUTE ORDER ON FUNDING MECHANISM.
PR–1C. OMITTED
II. PIPELINE CERTIFICATE MATTERS
PC–1. RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–10988 Filed 4–24–97; 11:55 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of February 3 Through February 7, 1997

During the Week of February 3 through February 7, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: March 3, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 3 through February 7, 1997]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 3, 1997	C. Lawrence Cornett, Seattle, WA	VWX–0010	Supplemental Order. If granted: C. Lawrence Cornett would receive compensation pursuant to his Part 708 complaint.
Do	Oivind Lorentzen Shipping AS, Memphis, TN.	RR272–281	Request for modification/rescission in the Crude Oil Refund Proceeding. If granted: The January 27, 1997 Decision and Order, Case No. RG272–613, issued to Oivind Lorentzen Shipping AS would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
Do	Peoria County Service Company, Edwards, IL.	RR272–282	Request for modification/rescission in the Crude Oil Refund Proceeding. If granted: The December 3, 1996 Dismissal, Case No. RG272–1022, issued to Peoria County Service Company would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
Feb. 4, 1997	J. Richard Quirk, Seattle, WA	VFA–0266	Appeal of an information request denial. If granted: The January 3, 1997 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded, and J. Richard Quirk would receive access to certain DOE information.
Feb. 6, 1997	Bounds Oil Co., Roanoke Rapids, NC	RR300–289	Request for modification/rescission in the Gulf Oil Refund Proceeding. If granted: The December 19, 1996 Dismissal, Case No. RF300–16969, issued to Bounds Oil Co. would be modified regarding the firm's Application for Refund submitted in the Gulf Oil refund proceeding.
Do	Chain Oil Co., Washington, DC	RR321–197	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The February 21, 1996 Decision and Order, Case No. RR321–194, issued to Chain Oil Co. would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
Do	James D. Hunsberger, Berlin, Germany	VFA–0267	Appeal of an information request denial. If granted: The December 30, 1996 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and James D. Hunsberger would receive access to certain DOE information.

[FR Doc. 97–10855 Filed 4–25–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

[DOE/EIS–0232]

Record of Decision for the Sierra Nevada Customer Service Region 2004 Power Marketing Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), has decided to develop and implement a marketing program for marketing Federal electric power resources from the Central Valley Project (CVP) after year 2004 that is within the range of the actions defined in Western's preferred alternative described in the 2004 Power Marketing Program Final Environmental Impact Statement (final 2004 EIS). In making this decision, Western has considered all comments received on its alternatives and the analysis contained in the 2004 Power Marketing Program Draft and Final Environmental Impact Statements (2004 EIS) issued for the project (DOE/EIS–0232) in May 1996 and March 1997, respectively. The program for marketing Federal electric power resources from the CVP is being developed through a public process now underway pursuant to the Administrative Procedure Act (APA). Although the marketing of Federal power from the Washoe Project (Washoe) may change, operations of Stampede Reservoir and generating facilities will not, so no environmental effects are expected from marketing program changes at this facility.

Western's 2004 EIS evaluated alternatives that cover the reasonable range of options for marketing CVP and Washoe power. The analyses of the environmental effects of these alternatives bracket the greatest possible range of potential impacts which could occur. The 2004 Power Marketing Program Draft Environmental Impact Statement (draft 2004 EIS) analyzed four alternatives: (1) no action (continue present approach of marketing CVP

power), (2) maximize CVP hydropower peaking capability, (3) operate CVP in a base-loaded mode (relatively constant power output), and (4) a renewable case involving the purchase of 50 megawatts (MW) of power from renewable resource generation sources. In the baseload and peaking alternatives, the effects of various levels of power purchases from 0 to 900 MW were also analyzed for potential environmental effects. Western's final 2004 EIS analyzed a fifth alternative identified as Western's preferred alternative. It addressed CVP operations similar to the maximized peaking alternative, except in Western's preferred alternative CVP hydropower resources and Federal power customers' resources are dispatched together in an integrated (economically optimized) fashion, and each customer is allowed to choose the level of firming purchases they would like Western to make to supplement the hydropower generation.

The 2004 EIS did not identify any environmental effects associated with Western's preferred alternative. Therefore, a monitoring program or mitigation measures is not warranted.

DATES: Decision is effective April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Toenyes, 2004 EIS Project Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4455.

SUPPLEMENTARY INFORMATION: The hydroelectric generation facilities of the CVP are operated by the Bureau of Reclamation (Reclamation). Reclamation manages and releases water in accordance with the various acts authorizing specific projects and with other laws, permits, and enabling legislation. The authority to market Federal electric power, set rates for the power, and construct and operate transmission facilities was transferred from the Department of the Interior (DOI) to DOE through enactment of the Department of Energy Organization Act of 1977 (Public Law 95–91). Western is a power marketing administration within DOE created to carry out Federal power marketing responsibilities. Western's power marketing responsibility includes managing the Federal power transmission system, scheduling power production, and marketing the power produced. The Sierra Nevada Region (SNR), with a marketing area covering most of northern and central California and Nevada, currently markets approximately 1,480 MW of power from the CVP in California and other sources, and available nonfirm energy from Washoe.

All existing long-term CVP sales contracts expire on December 31, 2004. SNR has examined the environmental effects of alternative ways to fulfill its responsibilities to market CVP and Washoe hydropower in its 2004 EIS. The 2004 EIS examined the impacts of alternatives related to (1) The level and character of capacity, energy, and other services to be marketed beyond 2004; and (2) establishment of eligibility and allocation criteria for the allocations of electric power resources to be marketed under contracts that will replace those expiring in 2004. In implementing its proposed action, SNR desires to achieve a balanced mix of purposes. The purposes of the proposed 2004 power marketing plan are listed below:

- To be consistent with SNR's statutory and other legal constraints,
- To provide long-term resource and contractual stability for SNR and for customers contracting with SNR,
- To provide the greatest practical value of the power resource to SNR and to customers contracting with SNR,
- To protect the human and natural environment,
- To be responsive to future changes in the CVP, Washoe, and the utility industry.

Western prepared its 2004 EIS in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 USC 4321, *et seq.*), the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500–1508), and the DOE regulations for compliance with NEPA (10 CFR Part 1021) to describe the potential environmental consequences of the range of reasonable marketing program alternatives.

Public Involvement

SNR developed a public involvement plan early in the evolution of the 2004 EIS process. The public involvement plan was designed to guide SNR through a collaborative and systematic decision-making process and facilitate input from the public and interested parties and agencies. The primary purposes of public involvement, as set out in the public involvement plan, were to:

- Inform the public,
- Gather information from the public to identify public concerns and values, and
- Responsibly address stakeholder input regarding environmental and allocation concerns and consider such input in decision making.

Through SNR's public involvement process, an extensive effort was made to notify all potentially interested parties about the 2004 EIS and opportunities for involvement. Approximately 25 prescoping stakeholder meetings (involving customers, agencies, interested groups, and individuals) were informally held during the summer of 1993 to provide information and to discuss issues and concerns related to the project. An interested parties mailing list was used to keep track of those showing an interest in the project. The list was expanded to include any new interested parties as they were identified. The **Federal Register** notice of the scoping period was published on August 10 and 13, 1993 (58 FR 42536 and 58 FR 43105). In conjunction with the notice, a news release was sent to local newspapers, and scoping invitation letters were mailed to those on the interested parties mailing list. Three public scoping meetings were held in August and September 1993 to receive written and verbal comments on environmental and marketing-related issues. SNR held two more public meetings to facilitate information sharing and to obtain further public comment: an Issues and Alternatives Public Workshop on May 18, 1994, and an Alternatives Workshop on January 18, 1995. The draft 2004 EIS was distributed to interested parties and agencies for public review and comment. Notice of availability of the draft 2004 EIS was published in the **Federal Register** on May 24, 1996 (61 FR 26174 and 61 FR 26177). A public hearing concerning the draft 2004 EIS was held on June 13, 1996. The public comment period for the draft 2004 EIS closed on July 31, 1996. Additionally, public information and involvement opportunities were supplemented by 12 separate mailings of the project informational bulletin, *the 2004 EIS Update*, designed to keep all interested groups and individuals apprised of project details and scheduled events.

The final 2004 EIS was distributed to the public beginning in late February 1997. The Environmental Protection Agency (EPA) notice of availability was published on March 7, 1997 (62 FR 10559).

Description of Alternatives

In developing alternatives for the 2004 EIS, SNR focused on six key component groups—key elements of the marketing program—that vary across the alternatives. SNR's intent in establishing the ranges for the variable components was to use a ''tent stakes'' approach to constructing alternatives. Using this approach, the alternatives were designed to cover the range of reasonable options and thus the

analyses of their environmental effects would bracket the range of potential impacts. Although the final marketing plan, after completion of the public process, may not be identical with any one of the 2004 EIS alternatives, the values for the final plan and its components will be within the range considered and its impacts will fall within the range of impacts assessed.

The six key component groups that are varied in the analysis of alternatives include the following:

(1) *Baseload Operations*—Within the operational constraints established by DOI, this refers to releasing water from hydroelectric facilities to generate electricity at a relatively constant rate. This approach would emphasize a steady water release rate from dams above regulating reservoirs.

(2) *Peaking Operations*—Within the operational constraints established by DOI, this refers to storing and releasing water from hydroelectric facilities to generate electricity during the relatively short period of maximum demand. This approach would emphasize periodic water releases from dams above regulating reservoirs timed to produce electricity when it is most needed.

(3) *Power Purchases*—These refer to SNR power purchases used to supplement the Federal hydroelectric resource. Purchases were assumed to be made from markets in California, the Pacific Northwest, and the Desert Southwest. For purposes of modeling and analysis in the 2004 EIS, purchase levels of 0 MW, 450 MW, and 900 MW, each at capacity factors up to 15 percent and 85 percent, are assumed. The no-action alternative has an approximate average monthly purchase level of about 478 MW assuming average hydrologic conditions and no contractual interchanges or exchanges.

(4) *Renewable Resources*—These resource types are emphasized in one alternative and could be acquired through either selective purchases or allocations of Federal resources to SNR's customers active in developing renewable resources.

(5) *Power Cost Analysis*—This refers to analyzing cost impacts to SNR's customers from combining the costs for purchases with SNR's hydropower resources (aggregated), or treating these resources individually, each with its own cost (disaggregated).

(6) *Allocation to Customer Groups*—This refers to assessing the impacts of changing the quantities of power that customer groups currently receive from the SNR. For 2004 EIS analysis purposes, customers were divided into the following three groups, with the customers in each group having similar load characteristics: utilities, agriculture, and other (such as State and Federal agencies).

Nonvariable and independent components were identified which do not vary across alternatives; therefore, the environmental effects attributable to these components are constant under all alternatives. Nonvariable and independent components include eligibility criteria, first preference, preference, marketing area, delivery conditions, transmission requirements, minimum load requirements, executed contract requirements, alternative financing arrangements, termination provisions, and standard provisions. Such components may be included in the proposed 2004 power marketing plan. Because they are already included in SNR's present activities, they represent no change from the no-action alternative. Environmental impact analyses in the 2004 EIS focus on those components that vary across the alternatives. Constant effects associated with nonvariable and independent components were included in the overall impact assessment.

Components that were analyzed in the Western's 1995 Energy Planning and Management Program (EPAMP) EIS (Record of Decision for EPAMP EIS was published October 12, 1995, 60 FR 53181) were not analyzed in the 2004 EIS. These components include contract length, power planning requirements (such as integrated resource planning for customers), withdrawal provisions, and contract adjustment provisions.

An analysis of allocations to customer groups was done to characterize the impacts that may result from changing the quantity of resources available to different customer groups. Such changes may result if SNR emphasizes sales to a particular type of customer (utility, agricultural, or other) or encourages special actions, such as acquiring renewable resources, or customer allocations change due to resource availability or marketing options. In the analysis, customer allocations are both increased and decreased for each customer group. This approach captures the range of beneficial and negative impacts that may result from changes affecting a particular customer group.

Four alternatives structured around operations of the CVP hydroelectric system were developed for analysis in the draft 2004 EIS. The alternatives were refined following completion of the draft 2004 EIS and receipt of public comments. The key change from the draft 2004 EIS affecting alternative structure is the treatment of the energy market assumed for 2005. In the draft 2004 EIS, each of the alternatives incorporated varying levels of firm capacity purchases at different capacity factors. In these types of contracts, Western would be required to purchase the energy and capacity even if it were not needed or if it were not the most economic purchase available at any given time.

Description of Draft 2004 EIS Alternatives

The four original alternatives include the following:

- The no-action alternative refers to a continuation of SNR's present approach to marketing power, meeting 2005 loads that are comparable to SNR's 1996 load patterns. Within operating constraints, hydropower facilities are operated close to maximum peaking. For modeling purposes the no-action alternative includes an average monthly purchase of about 478 MW assuming average hydrologic conditions and no contractual interchanges or exchanges.
- Maximize hydropower peaking (the peaking alternative) refers to operating the CVP hydropower facilities to maximize power generation during peak load periods within operating constraints. Federal CVP hydropower is dispatched first, before any customer hydropower resources. Five purchase cases were considered including no power purchases, 450 MW at 15-percent capacity factor, 450 MW at 85-percent capacity factor, 900 MW up to a 15-percent capacity factor, and 900 MW up to an 85-percent capacity factor.
- The baseload alternative refers to operating the CVP hydropower facilities for relatively constant power output within operating constraints. The same five purchase cases were examined as with the peaking alternative described above.
- Renewable resource acquisition (the renewables alternative) refers to operating the CVP hydropower facilities to maximize power generation during peak load periods within operating constraints, and power purchases were set at 50 MW of capacity to support the use of renewable resources. Generation was assumed to be equally distributed among biomass, wind, solar and geothermal facilities. A sensitivity test was run without biomass in the resource mix for purposes of analyzing air quality and non-CVP impacts of land use, water quality, and wastes.

Changes to Alternatives in the Final 2004 EIS

Because of utility industry restructuring presently taking shape nationally and in California, in the final 2004 EIS the energy market is assumed to operate with open access for both

wholesale and retail customers. Further, power could be purchased on an hourly basis, as needed. Because of this flexibility, when Western makes purchases, it is unlikely that customers would make a similar purchase to meet the same need. In addition, because both Western and its customers would have equal access to the market, purchases would be under similar terms and conditions. Thus, a purchase by Western would be offset by purchases foregone by Western's customers and vice versa. The results of these assumptions about equal access and hourly pricing include the following:

- Purchase levels described in the alternatives would be the maximum purchased in any 1 hour by the SNR.
- SNR could purchase up to the maximum capacity factor noted but need not purchase more than it requires.
- All purchases in the final 2004 EIS are assumed to be made from power markets. The SNR's market costs would be passed on to its customers, meaning there would be no difference between an SNR purchase and a customer's direct market purchase. The no purchase option represents the effects of SNR disaggregating costs associated with any purchases. Purchase options were also analyzed on an aggregated basis.

For renewable resources, the final 2004 EIS assumed that prices incorporating technological advancements will be available in 20 percent of the renewable resources that would be available in 2005. This assumption was based on the Western System Coordinating Council 1995 Summary of Estimated Loads and Resources. The final 2004 EIS analyses placed the amount of capacity from renewable resources that could be economically supported at 50 MW.

Western's Preferred Alternative

In the final 2004 EIS, Western's preferred alternative was described and analyzed. The preferred alternative is similar to the maximum peaking alternative. In this alternative additional power will be purchased if requested by customers to meet their load requirements. This alternative was chosen to provide the greatest flexibility to meet customer needs in making purchases and to economically optimize the operation of Western's and its customers' power resources.

Environmentally Preferred Alternative

The maximum peaking alternative was also determined to be the environmentally preferred alternative. This alternative was so designated because it would provide the greatest load-carrying capacity and best offset the need for additional powerplants. This alternative generally results in the greatest benefits or least impacts to the environment when impacts are quantified. Peaking with no purchases results in the greatest environmental benefits.

Environmental Consequences

The impact analyses followed three basic steps. Historic hydrological conditions were analyzed using the PROSIM (CVP simulation model) model. The PROSIM outputs (in the form of monthly water flows and available hydropower capacity and energy) were input to the PROSYM model, a production cost simulation model of electric utility operations. PROSYM outputs (in the form of estimated levels of electric generation, production costs, and hourly water flows in the CVP) were used to assess the environmental impacts.

The manner in which hydropower generating plants would be operated is one of the fundamental differences across the alternatives. The PROSYM analyses show that, when operated to provide electricity at peak times (the peaking alternative), the hydropower system can offset up to 317 MW of electric generating capacity from other sources when compared to the no-action alternative. The replacement capacity needed to offset the difference between the baseload and no-action alternatives is 581 MW of load-carrying capacity. The amount of replacement capacity needed to offset capacity losses from any alternative when compared to the no action alternative is an important vector identified in the analyses for determining the extent of possible impacts. Building new capacity causes land-use impacts and uses physical, natural, and financial resources needed to build the powerplant and connect it with the interconnected transmission grid. Western is not presently planning to build such a powerplant, but Western's actions could cause such a powerplant to be constructed if the baseload alternative were selected.

The CVP hydropower system does not require additional facilities or modifications to change from baseload to peaking operations or vice versa. Thus, the lost load-carrying capacity from baseload operations would be retrievable for CVP operations if a decision to subsequently implement peaking operations was made. However, if the baseload alternative is implemented and replacement capacity is built, replacement capacity is expected to remain in place. If this occurs, a potential shift from baseload back to peaking CVP operations would likely result in temporary surplus capacity in the region.

Impacts resulting from CVP water releases within SNR's discretion are limited. In comparison to the no-action alternative, the peaking alternative results in only slightly greater pool-level fluctuation in regulating reservoirs. Impacts are restricted to the regulating reservoirs at Lewiston, Keswick, Lake Natoma, and Tulloch because the regulating dams are operated to control releases downstream. The baseload alternative would result in constant water releases from the main dams that would avoid pool-level fluctuation and potentially improve recreation and resident fisheries slightly in the regulating reservoirs.

The hourly water releases from the main dams, whether operating for peaking or baseload, affect temperature fluctuation a very minor amount. The temperature differences are so small that, although they can be calculated, they could not be measured in the regulating reservoirs or the rivers downstream.

Given these findings about pool-level and temperature fluctuations, in comparison with the no-action alternative, no alternative would result in adverse impacts to fisheries, threatened and endangered species, recreation, the terrestrial environment, or cultural resources.

The more constant flows of the baseload alternative may result in minor beneficial effects to fisheries, recreation, and cultural resources associated with the regulating reservoirs. A reduction in pool-level fluctuation may improve habitat for resident fish and improve boating conditions. Stable pool elevations could also reduce erosion at shoreline cultural resource sites, but may increase exposure to other sources of erosion such as wave action.

Impacts to air quality, solid waste, and wastewater would be related to the generation of electricity at powerplants apart from the CVP. The variation across the alternatives comes from changes in operation of combustion turbines (CTs) and combined-cycle combustion turbines that may be located throughout northern and central California, the Pacific Northwest, or the Desert Southwest. The most substantial air quality impacts would come from changes in hourly operations of other nonhydropowerplants in response to the manner in which the CVP hydroelectric facilities are scheduled (peaking or baseload). Generally, compared to the no-action alternative, scheduling the hydropower system as a baseload system would result in an increase of

emissions from other powerplants during the day when ambient levels are high because thermal generation would be needed for peaking. Peaking the hydropower system offsets daytime thermal production and reduces daytime emissions, but increases nighttime thermal production and emissions, when ambient levels are less. This can be important for areas having problems meeting air quality standards during summer afternoons when industrial, utility, and transportation emissions are at their peak. During summer afternoons, the difference in oxides of nitrogen emissions between the peaking and baseload alternatives would reach over 400 pounds per hour. These emissions are equivalent to those from a 400-MW combustion turbine plant.

Without biomass, the renewables alternative results in the most beneficial effects on annual air emissions. Including biomass with the other renewables sources in the renewables alternative would produce the greatest levels of annual air emissions.

In comparison with the no-action alternative, all of the other alternatives would result in beneficial effects on wastewater production. As with annual air emissions, the renewables alternative without biomass would result in the greatest benefit in reducing wastewater production. Renewables with biomass would produce the least benefit but would still result in a reduction in wastewater production in comparison with the no-action alternative.

Solid waste production also would be most changed by the renewables alternative. Biomass-fueled plants that burn municipal solid waste produce a great deal of ash as solid waste but also reduce the quantity of solid waste requiring disposal in a landfill. For every pound of ash produced by biomass combustion, municipal solid waste is reduced by about 5 pounds. When this reduction is taken into account, solid waste would be reduced by nearly 40,000 tons with the renewables alternative. In comparison, the other alternatives (including renewables without biomass) are very similar to the no-action alternative.

The baseload alternative results in about 90 acres of land needed for replacement capacity. The renewables alternative would result in land-use impacts. Renewables, such as solar photovoltaic and wind, may require up to about 30 times the land area per megawatt of capacity of thermal resources such as CTs. In comparison to the no-action alternative, the renewables alternative would require an additional 70 to 90 acres of land for powerplants.

SNR's 2004 power marketing plan would influence the overall power costs of its customers. The alternatives were structured to determine the maximum range of impacts to gauge socioeconomic effects in the areas of output, employment, and labor income. When compared to the economy of northern and central California, or of any one of four economic regions analyzed within northern and central California, the estimated impacts are very small. Based on results from the power production cost analysis described in Section 4.2 of the 2004 EIS, the associated economic impacts of the alternatives are nearly indistinguishable in all cases and in all regions. The economic effects of the preferred alternative and all other alternatives are not significant; however, some indication of their positive or negative direction is possible. Western's preferred alternative results in economic impacts that are slightly positive in comparison to the no-action and the peaking alternatives.

All of these socioeconomic effects reflect averaging across regions and customer groups and do not capture the effects on individual customers. Economic effects on SNR's customers who lose or gain allocations may be substantial in individual cases but cannot be determined because specific allocations have not been made. In general, however, customers who lose allocations would be balanced by other customers who gain equivalent allocations. Specific allocations will be made in a separate public process under the APA.

Across the alternatives and the affected economic regions, economic impacts are minimal, and are not disproportional across income or race groupings of the population. In the case of agriculture customers, low-income and minority groups make up a larger proportion of the employment in that sector. The impacts identified do not affect agricultural gross revenues or production levels. Thus, employment levels are not affected, and the impacts of alternatives do not disproportionately affect low-income or minority groups.

The effects of emphasizing the use of renewable resources (assuming technological improvements) in the generation mix have a negative economic impact compared to the same quantity of thermal purchases. Improvements in technology should occur prior to 2005 that reduce the cost of the renewable resources. The amount of renewables to be included in the renewables alternative was determined by melding the anticipated cost of renewables in 2004 together with the anticipated 2004 hydropower cost. The renewables share of the mix was increased until the combined rate for SNR energy equaled the anticipated market rate in 2004. This resulted in melding the CVP hydropower operated to maximize peaking with 50 MW of renewable resource purchases.

Summary of Public Comments

A number of comments were provided by agencies, stakeholders, and the public during the public review period of the draft 2004 EIS. Some customers suggested that SNR may have underestimated the future cost of energy generated from renewable resources and overestimated the market price of power in post-2004 projections in the draft 2004 EIS. It was also suggested this may have resulted in SNR's projections of unrealistically high amounts of renewable resource power in its future resource mix. Comments also noted a concern to reflect the most current industry developments. Western revised these estimates in the final 2004 EIS, provided updated model assumptions and the analysis of alternatives to more accurately represent these developments. The resulting decision takes these factors into account.

More information was requested on how alternatives would be formed into a cohesive power product, including purchase levels and capacity factors that are specifically tailored to customer needs. Western will be able to better identify these products as they are addressed within the APA process. The final 2004 EIS focused on the environmental impacts from the resources needed to develop products and services. The final 2004 EIS identified the most aggressive range of actions possible to determine the potential boundaries of environmental effects and to establish a high degree of flexibility for Western's decisions.

Another comment requested that referenced documents, such as the EPAMP EIS, be summarized in the final 2004 EIS. Western added information to better describe the findings of referenced documents.

Some comments pointed out errors and differences of perception in the descriptions of various CVP facilities and operations. These errors and differences were corrected or explained in the final 2004 EIS.

Concerns were raised about the level of detail given to the analysis of customer group allocations and to results for the utility customer group. Refinements in modeling to better reflect the changing utility industry addressed these issues.

Decision

Western has decided to develop and implement a marketing program for marketing Federal electric power resources from the CVP and Washoe that is within the range of actions defined in Western's preferred alternative described in the 2004 EIS, to replace power contracts expiring in the year 2004. This alternative is based on peaking the hydropower system in an integrated (economically optimized) fashion with Western's customer's hydropower resources. In addition, each customer can choose the level of firming purchases it would like Western to make on its behalf to supplement the CVP hydropower generation. Although the marketing of Federal power from Washoe may change, operation of the Stampede Reservoir and generation facilities will not, so no environmental effects are expected. The modified program for CVP power will apply to power marketing contracts superseding those that expire December 31, 2004. Western's preferred alternative falls within the tent stakes established in the 2004 EIS, and is the alternative selected in the development of Western's proposed 2004 power marketing plan.

Rationale

Western's decision considered comments received from customers and stakeholders throughout the processes and the analyses related to the draft and final 2004 EIS that were issued for the project (DOE/EIS–0232) in May 1996 and March 1997, respectively. This decision is within the scope of the alternatives discussed in the final 2004 EIS and addresses concerns by customers and stakeholders in those documents. The environmental effects of the environmentally preferred and the agency preferred alternatives are nearly identical, although the selected alternative provides economic advantages over the environmentally preferred alternative.

A 2004 Power Marketing Plan is needed to fulfill Western's Federal power marketing responsibilities to market Federal CVP power beyond the year 2004.

In addition, the purpose and need for the 2004 EIS provides factors which were used to gauge the alternatives. The purposes and their relationship with the alternatives and other analyses are described in the following sections and summarized in Table 1.

Legal Obligations

The first of the listed purposes was met by all of the alternatives. This first purpose reads as follows: to be consistent with SNR's statutory and other legal obligations. This purpose does not favor any one alternative and is met by the decision.

Resource and Contractual Stability

The second purpose to provide long-term resource and contractual stability for SNR and for customers contracting with SNR applies to contract length and the quantity of resources that are allocated to customers. Both issues were analyzed in the EPAMP EIS. The EPAMP EIS analysis found that longer-term contracts reduced uncertainty in power planning and were of greater value to Western's customers. All of the alternatives could have been implemented with different contract lengths.

The 2004 EIS analyzed impacts from extreme changes in allocations to customer groups. The 2004 EIS analysis found that the most adverse effects on cost and socioeconomic effects come from reducing allocations to the utility customer group. Reducing the allocation to the utility customer group to nothing results in adverse socioeconomic effects.

The EPAMP EIS also analyzed reducing allocations of available resources in order to create resource pools. These pools could be used for allocations to new customers or to support desired policies, such as customers who are willing to implement conservation or develop renewable resources. The manner in which the resource pool is used was not assessed because allocations have not yet been determined.

TABLE 1

	Preferred	Peaking*	Baseload	Renewables	No action
Alternative Description	Peaking optimized with customer operations—customers choose purchases.	Peaking operations with purchase options.	Baseload operations with purchase options.	Peaking operations coupled with a 50 MW purchase from renewables.	Existing operations—similar to peaking—478 MW average monthly purchases.
Legal Obligations	Met by all alternatives				
Resource and Contractual Stability	Analyzed in the EPAMP EIS and the analysis of allocation to customer groups within the 2004 EIS may be applied to all alternatives				
Greatest Practical Value.	Lowest cost Federal resource, available load-carrying CVP customer capacity similar to peaking.	Low cost but does not economically optimize resources-greatest CVP customer load-carrying capacity.	High costs—least available CVP customer load-carrying capacity.	Greatest costs—CVP customer capacity same as peaking.	Costs similar to baseload—midlevel CVP customer load-carrying capacity.
Protect the Human and Natural Environment.	Similar to peaking—most beneficial socioeconomic effects.	Most beneficial or least adverse physical effects—socioeconomic effects depend on purchase levels—no purchase similar to preferred alternative.	Adverse effects except for least pool fluctuation in reregulating reservoirs—some adverse socioeconomic effects.	Same as peaking for pool fluctuation—physical effects range from least to most depending on presence of biomass in resource mix—Least favorable socioeconomic effect.	Similar to peaking physical effects—unfavorable socioeconomic effects.
Responsiveness	Greatest flexibility for customers.	Less flexibility	Less flexibility	Less flexibility	Less flexibility.

*Environmentally Preferred Alternative.

Greatest Practical Value

The third purpose was to provide the greatest practical value of the power resource to SNR and to customers contracting with SNR. The 2004 EIS analysis found that Federal hydropower is a good value on the power market. However, the structure and cost of supplemental purchases can change the cost of the Federal resource and result in very small socioeconomic effects. The baseload alternative was considered and not selected because it represented the least-effective use of the CVP hydropower resource in the overall energy market. The preferred alternative was found to result in the lowest costs and most beneficial socioeconomic effects.

Protect the Human and Natural Environment

The fourth purpose was to protect the human and natural environment. The baseload alternative was considered but not selected because of the adverse environmental effects of constructing and operating necessary replacement capacity to maintain existing load-carrying capability in the northern and central California region. In addition, no significant positive benefits were identified to environmental resources that would offset the negative impacts of construction and operation of new generation capacity.

Although designated as environmentally preferred, the peaking alternative was not selected because it does not economically optimize integrated scheduling of Western's hydropower generation with the generation of its customers. The preferred alternative provides nearly identical environmental benefits as the peaking alternative, but provides greater economic benefits, and has no major negative environmental impacts.

The no-action alternative was not selected because it is not consistent with customers' needs in a restructured utility industry environment. Many of Western's customers have indicated they would like the hydropower priced separately from purchases, and would like to make their own purchases without incurring economic penalties. The no-action alternative includes substantial firming purchases with the purchased power cost melded with the hydropower cost, contrary to these customers' preference and to price optimization in a restructured utility environment.

The renewables alternative was not selected because it does not economically optimize the use of CVP power resources and because the preferred alternative allows purchases of power generated from renewable resources. In the preferred alternative, Western can make power purchases on behalf of customers at the customers' request, and these purchases can be from renewable resource generation if costs are competitive or if the customer is willing to pay the added cost. The renewables alternative is based on costs of hydropower and purchases being melded, while the preferred alternative is based on the hydropower and purchased power costs being disaggregated, allowing more freedom of choice among customers whether to take delivery of purchased power. The latter approach is considered to be more compatible with the developing competitive marketplace resulting from electric industry restructuring.

Responsiveness

Regarding responsiveness to future changes in CVP, Washoe, and the utility industry, the preferred alternative provides the greatest flexibility to customers and keeps the Federal resources at their highest, practical economic value while having no measurable impact on the environment.

Mitigation Action Plan

No Mitigation Action Plan will be prepared, as the 2004 EIS did not identify any significant environmental effects associated with Western's selected alternative that warrant the adoption of a monitoring program or mitigation measures.

Documents Available

For a copy of this Record of Decision or a copy of the final 2004 EIS and supporting documents, write to the 2004 EIS Project Manager at the address listed in the **FOR FURTHER INFORMATION CONTACT** Section.

Dated: April 11, 1997.

J.M. Shafer,

Administrator.

[FR Doc. 97–10859 Filed 4–25–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5818–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Evaluation Studies on Water and Wastewater Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Performance Evaluation Studies on Water and Wastewater Laboratories, EPA #234.06, OMB #2080–0021, current expiration date is 7/31/97. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 27, 1997.

ADDRESSES: National Exposure Research Laboratory, 26 W. Martin L. King Drive, Cincinnati, OH 45268.

FOR FURTHER INFORMATION CONTACT: Paul Britton, (513) 569–7216, FAX to (513) 569–7115 or Email to BRITTON.PAUL@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: Entities potentially affected by this action are laboratories which produce official/required drinking water or wastewater analyses.

Title: Performance Evaluation Studies on Water and Wastewater Laboratories (OMB Control No. 2080–0021; EPA ICR No. 234.06) currently expiring 7/31/97. This is a request for extension of a currently approved collection.

Abstract: The U.S.EPA receives analytical results on drinking waters and wastewaters from a variety of laboratories and must rely on these data as a primary basis for many of its regulatory decisions. As a consequence, it has become very important to have an objective demonstration that the contributing laboratories are capable of producing valid data. The Laboratory Performance Evaluation Studies are designed to fulfill this need to document and improve the quality of analytical data for certain critical analyses within drinking water, major point-source discharge and ambient water quality samples. Participation in Water Pollution (WP) studies that relate to wastewater analyses, and Water Supply (WS) studies that relate to drinking water analyses, is only mandated *by the U.S.EPA* for those laboratories that are receiving federal funds to do such analyses, however successful participation in these studies is often required by states that certify laboratories for water and wastewater analyses. Participation in the Discharge Monitoring Report—Quality Assurance (DMR–QA) studies is mandatory for those designated wastewater dischargers who are doing self-monitoring analyses

required under a National Pollutant Discharge Elimination System (NPDES) permit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

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

Burden statement/type of study	Studies/year	Resp./study	Ave. burden hours/resp.	Total annual respondent burden hours
Water Pollution Studies	2	3,262.5	6.10	39,802
DMR–QA Studies (chemistry data)	1	6,112	4.37	26,710
DMR–QA Studies (toxicity data)	1	300	66.2	19,860
Water Supply Studies (chemistry data)	2	2,202.5	7.87	34,667
Water Supply Studies (micro. data)	2	300	5.34	3,204
Total				124,243

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 16, 1997.

T.A. Clark,

Acting Director, NERL, ORD.

[FR Doc. 97–10884 Filed 4–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42192; FRL–5714–6]

Endocrine Disruptors; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is announcing the third meeting of the Endocrine Disruptors Screening and Testing Advisory Committee (EDSTAC), a committee established under the provisions of the Federal Advisory Committee Act (FACA) to advise EPA on a strategy for screening chemicals and pesticides for their potential to disrupt endocrine function in humans and wildlife.

DATES: The meeting will begin on April 29 at 9 a.m. and adjourn April 30 at 12:30 p.m.

ADDRESSES: The meeting will be held at the Cross Keys Inn, 5100 Fall Road, Baltimore, MD. The telephone number at the hotel is 410–532–6900. The fax number is 410–532–2403.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Anthony Maciorowski (telephone: 202–260–3048; e-mail: maciorowski.tony@epamail.epa.gov) or Mr. Gary Timm (telephone 202–260–1859; e-mail: timm.gary@epamail.epa.gov) at EPA. To obtain additional information please contact the contractor assisting EPA with meeting facilitation and logistics: Ms. Tutti Otteson, The Keystone Center, P.O. Box 8606, Keystone, CO 80435; telephone: 970–468–5822; fax: 970–262–0152; e-mail: totteson@keystone.org.

SUPPLEMENTARY INFORMATION: EPA's Office of Prevention, Pesticides and Toxic Substances is taking the lead for the Agency on endocrine disruption screening and testing required by recent legislation (i.e., reauthorization of the Safe Drinking Water Act and passage of the Food Quality Protection Act) and has formed an advisory committee (EDSTAC) to provide advice and counsel to the Agency on a strategy to screen and test endocrine disrupting chemicals and pesticides in humans, fish and wildlife. The first EDSTAC meeting was held on December 12–13, 1996 (61 FR 60280, November 27, 1996)(FRL–5575–7) and the second meeting was held on February 5–6, 1997 (62 FR 3894, January 27, 1997) (FR–5585–2).

It is proposed that the agenda for this meeting includes the following topics:

Tuesday, April 29

1. Overview of Activities Since the Houston Meeting—Principles Work Group Report, Screening and Testing Work Group Report, Communication and Outreach Work Group Report, and the Priority Setting Work Group Report.

2. Opening Comments Clarifying the Charge to the EDSTAC and Perspective on Progress to Date—Dr. Lynn Goldman.

3. Opportunity for Full Committee Dialogue and Questions and Answers on Dr. Goldman's Clarifications to the EDSTAC Charge.

4. Presentation of Revised Draft Conceptual Framework Developed by the Principles Work Group.

5. Discuss and Attempt to Come to Consensus on the Definition of ''Endocrine Disruption'' that will be used by the EDSTAC.

6. Public Comment—Members of the public will be given an opportunity to comment on any aspect of the convening of the EDSTAC. The precise amount of time that will be given to each individual will depend on the number of people wishing to provide comment during this time period.

Wednesday, April 30

1. Discuss Implications of the EDSTAC Conceptual Framework to the

Priority Setting, Screening and Testing, and Communication and Outreach Work Groups; Develop Agreements on the Terms of Reference/Mission of these Work Groups.

2. Discuss and Agree Upon Overall Schedule for Completing the EDSTAC Charge, and Specific Next Steps in the EDSTAC Process.

Dated: April 22, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–10897 Filed 4–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5819–1]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The theme of the next meeting of the Local Government Advisory Committee is partnerships and members will hear presentations on Federal/State/Local partnerships from two panels, one presenting the experiences of Henrietta, Oklahoma and one presenting the experiences New Orleans, Louisiana. The Roles and Responsibilities and the Tools for Local Decision-Makers Subcommittees will meet in subcommittee sessions to continue work on their recommendations to the Agency.

From 3:00–3:15 p.m. on the 12th, the Committee will hear comments from the public. Each individual or organization wishing to address the Committee will be allowed three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 8:30 a.m. on Monday, May 12th and conclude at 4:00 p.m. on the 13th.

ADDRESSES: The meeting will be held at the Doubletree New Orleans Hotel located at 300 Canal Street on May 12 and in the Riverwalk Aquarium Meeting Room on May 13.

Requests for Minutes and other information can be obtained by writing to 401 M Street, SW. (1502), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419.

Dated: 24 April, 1997.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 97–11074 Filed 4–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5818–3]

Greenhouse Gas Emissions From Municipal Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: In support of the Source Reduction and Recycling Initiative under the President's Climate Change Action Plan, EPA's Office of Solid Waste and Office of Economy and Environment are releasing for public review a draft contractor report estimating the greenhouse gas emissions and sinks associated with managing ten materials in municipal solid waste in a variety of ways. The ten materials examined are newspaper, office paper, corrugated cardboard, aluminum, steel, HDPE plastic, LDPE plastic, PET plastic, food scraps, and yard trimmings. Together, these materials constitute roughly 50 percent of the municipal solid waste stream. The municipal solid waste management strategies addressed are source reduction, recycling, composting, combustion, and landfilling.

The report employs a streamlined life cycle inventory methodology to calculate the greenhouse gas emissions and sinks associated with managing these materials in specific ways. This methodology includes assessments of the following: (1) Process and transportation greenhouse gas emissions from raw materials acquisition and manufacturing; (2) carbon storage in forests; (3) soil carbon storage; and (4) greenhouse gas emissions and emissions offsets associated with combustion and landfilling. Greenhouse gas emissions estimates are made for each material and management strategy on the basis of metric tons of carbon equivalents per ton of material managed in a specific way.

Preliminary results indicate that municipal solid waste management strategies to reduce greenhouse gas emissions are generally consistent with the municipal solid waste management hierarchy of preferred waste management methods. That is to say, source reduction yields the greatest reductions in greenhouse gas emissions, followed, in order, by recycling (including composting), and disposal (whether combustion or landfilling results in lower greenhouse gas emissions depends on the specific material).

The Agency is providing a 90-day comment period for this draft contractor report. Information on how to submit comments is provided below.

DATES: Submit comments on or before July 28, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–97–GGEA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–97–GGEA–FFFFF. All electronic comments must be submitted as an ASCII file; please avoid the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 AM to 4 PM, Monday through Friday, excluding Federal Holidays. To review docket materials, the Agency recommends making an appointment by calling (703) 603–9230. Persons may copy a maximum of 100 pages from any

regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD 412–3323.

For a paper copy of the report, ''Greenhouse Gas Emissions From Municipal Waste Management,'' please contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. The document number is EPA 530–R–97–010. The report is also available in electronic format on the Internet at the following address: http://www.epa.gov/epaoswer/non-hw/muncpl/.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''Addresses'' section above.

EPA responses to comments, whether the comments are written or electronic, will be contained in a notice in the **Federal Register** or in a response to comments document placed in the official record for this Notice of Data Availability. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Finally, for detailed questions regarding the report or to schedule a report review meeting during the comment period, please E-Mail Eugene Lee at lee.eugene@epamail.epa.gov or Clare Lindsay at lindsay.clare@epamail.epa.gov and insert in the subject line of the message only the term ''ghg.'' Organizations interested in meeting with EPA to discuss the draft report should submit a list of questions or issues to Eugene Lee or Clare Lindsay by E-Mail at least one week prior to the scheduled meeting.

SUPPLEMENTARY INFORMATION: In October 1993, President Clinton announced the U.S. Climate Change Action Plan (CCAP). The primary goal of the CCAP is to return U.S. greenhouse gas emissions to their 1990 levels by the year 2000. The plan's programs are voluntary public/private partnerships between federal agencies and organizations that want to protect the environment and operate more efficiently. Throughout the country, CCAP program participants increase the energy efficiency of their operations; conserve resources and promote renewable energy technologies; nd improve industrial, agricultural, and forest productivity as they relate to atmospheric pollution.

Among the 50 some initiatives outlined in the CCAP is Initiative # 16—the Source Reduction, Pollution Prevention and Recycling Initiative. The purpose of this Initiative is to promote reduction and recycling of municipal solid waste (MSW) as a means to help reduce greenhouse gas emissions.

In an effort to estimate the potential for source reduction and recycling of MSW to help reduce greenhouse gas emissions, EPA's Office of Solid Waste and Office of Economy and the Environment jointly launched a research effort to quantify the greenhouse gas emissions associated with reducing, recycling, composting, combusting, and landfilling ten materials commonly found in MSW. The draft contractor report noticed for public review today is the product of this initial research.

While this draft contractor report has been reviewed by EPA and other government agencies as well as a number of academic peer reviewers, the report has not yet been reviewed by industry, state and local governments, or non-governmental organizations. The Agency is looking forward to detailed input from these sectors to help in improving the methodology and data used in this draft report. EPA expects this review process to result in changes and improvements to the estimates contained in the draft that will make it more useful for the applications outlined below.

The Agency anticipates four potential applications for the greenhouse gas emission factors provided in this draft report. First, organizations that are interested in quantifying greenhouse gas emission reductions associated with managing a waste in a particular way may use these estimates for that purpose. Second, the estimates of greenhouse gas emissions and sinks may be useful to solid waste decision-makers when evaluating specific municipal solid waste management options. Third, EPA plans to use the estimates to evaluate the extent to which its efforts to promote source reduction and recycling (through such programs as WasteWi$e and Pay-As-You-Throw) may be contributing to reductions in greenhouse gas emissions. Finally, this analysis may assist other countries in estimating the extent to which waste management offers opportunities for greenhouse gas reduction.

The Agency is providing a 90-day comment period for this draft contractor report. Comments can be submitted to the RCRA Docket either electronically or by hard copy. See **ADDRESSES** section above for information on submitting comments. For information on how to schedule a meeting, please see the **FURTHER INFORMATION** section above.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 97–10887 Filed 4–25–97; 8:45 am]

BILLING CODE: 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5818–1]

Lake Hartwell No Discharge Zone Determination

The Environmental Protection Agency (EPA) Region 4 Regional Administrator concurs with the determinations of the States of South Carolina and Georgia that adequate and reasonably available pump out facilities exist at Lake Hartwell. A petition was received from the State of South Carolina and concurred with by the State of Georgia requesting a determination by the Regional Administrator, Environmental Protection Agency, pursuant to Section 312(f)(3) of Pub. L. 92–500 as amended by Pub. L. 95–217 and Pub. L. 100–4, that adequate facilities for the safe and sanitary removal of sewage from all vessels are reasonably available for Hartwell Lake to qualify as a ''No Discharge Zone'' (NDZ).

The proposed action was previously noticed in the **Federal Register**, Vol. 60, No. 91, Thursday May 11, 1995. Since that time, 16 letters supporting NDZ designation and 4 letters opposing NDZ designation have been received. Questions were raised concerning the availability of pump out facilities in the letters which opposed NDZ designation.

On May 22, 1996, representatives from the US Army Corps of Engineers (COE), Region 4 EPA, and South Carolina Department of Health and Environmental Control participated in an on site investigation of Lake Hartwell to determine the availability of pump out facilities and address the concerns raised in the dissenting letters. Based upon the field data collected, it was determined at a November 26, 1996 meeting at the COE Lake Hartwell Office to proceed with NDZ designation, since adequate pump out facilities are available and the addition of future pump out facilities is very probable.

This action is taken under Section 312 (f)(3) of the Clean Water Act which states:

After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

EPA's action allows prohibition regarding discharge from vessels to be applied by the State of South Carolina and Georgia for Lake Hartwell. EPA found the following existing facilities available for pumping out vessel holding tanks in Lake Hartwell. Their address, telephone number, hours of operation and draught are as follows:

A. Hartwell Marina; 1500 North Forest Avenue, Hartwell, Georgia 30643; 706–376–5441; 9 AM–5 PM; seven days a week; 15–18 foot draught.

B. Portman Shoals Marina; Route 11, Anderson, South Carolina 29624; 864–226–3339; 24 hours year round; 25 foot draught.

C. Western Carolina Sailing Club; 5200 Westwind Way, Anderson, South Carolina 29624; 864–226–6561 private club; 8 foot draught.

The marinas proposing to add pump out facilities in the near future are:

A. Seneca Marina; Box 1591, Clemson, South Carolina 29631; 864–653–6900; April 15—October 15 8–6, otherwise 9–3, 30 foot draught.

B. Big Water Marina; Route 2, Box 133A, Big Water Road, Star, South Carolina 29684; 864–226–3339; 9–5, closed on Tuesday, 60 foot draught.

The number of boats with marine sanitation devices (MSD's) using the lake has been estimated to be 580. The ratio of boats with MSD's to pump out facilities is therefore 193 boats per pump out facility.

The petition from South Carolina and Georgia notes that each of the three marinas with existing pump out facilities have waste treatment systems that comply with federal law. Hartwell Marina and Portman Marina pump out facilities discharge into State approved and regulated septic tanks. Western Carolina's facilities discharge into a large holding tank which is collected by a privately owned septage hauler and transported to an Anderson County waste water treatment plant.

Comments concerning this action may be filed on or before (30 days from this notice). Such communications should be addressed to Wesley B. Crum, Chief, Coastal Programs and Surface Water Quality Grants Section, USEPA, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–3104. Telephone 404–562–9352.

Approved by:

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–10886 Filed 4–25–97; 8:45 am]

BILLING CODE: 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council Meeting

April 22, 1997.

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, this notice advises interested persons of a meeting of the Network Reliability and Interoperability Council (''Council'') to be held at the Federal Communications Commission in Washington, DC.

DATES: Tuesday, May 20, 1997 at 1:30 p.m.

ADDRESSES: Federal Communications Commission, Room 856, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Keegan, Federal Officer, at (202) 418–2323.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from consumer and other organizations to explore and recommend measures that will assure optimal reliability and interoperability of, and accessibility and interconnectivity to, the public telecommunications networks.

The agenda for the meeting is as follows: the Council will consider adoption of the final recommendations of focus groups 1 and 2 addressing the issues assigned to them by the Council. The Council also will hear a report on network reliability from the Network Reliability Steering Committee. The Council may discuss other matters brought to its attention.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Members of the public may submit written comments to the Council's designated Federal Officer before the meeting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–10782 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 18353, April 15, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m. Wednesday, April 23, 1997.

CANCELLATION OF THE MEETING: Notice is hereby given of the cancellation of the Board of Directors meeting scheduled for April 23, 1997.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 97–11040 Filed 4–24–97; 1:42 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act.

Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1997.

A. Federal Reserve Bank of Cleveland (Jeffrey Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. FirstFederal Financial Services Corp., Wooster, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of FirstFederal Bank, N.A., Wooster, Ohio (formerly known as First Federal Savings and Loan Assocation of Wooster).

In connection with this application, Applicant also has applied to acquire Mobile Consultants, Inc., Wooster, Ohio, and thereby engage in the origination of consumer, non-mortgage loans to the manufactured home industry, pursuant to § 225.28(b)(1) of the Board's Regulation Y, and in the collection and recovery of troubled loans for financial institutions that originate loans to manufactured home loans, pursuant to § 225.28(b)(2) of the Board's Regulation Y.

2. First Federal Financial Services Corp., Wooster, Ohio; to merge with Summit Bancorp, Inc., Akron, Ohio, and thereby indirectly acquire Summit Bank, Akron, Ohio.

In connection with this application, Applicant also has applied to acquire Summit Banc Investment Corporation, Akron, Ohio, and thereby engage in investment advisory and securities brokerage activities, including the sale of annuities pursuant to a dual employee arrangement, pursuant to §§ 225.28(b)(6) and (15) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First Security Corporation Employee Stock Ownership Plan, Norcross, Georgia; to become a bank holding company by acquiring an additional 6.7 percent, for a a total of 31.6 percent of the voting shares of First Security Corporation, Norcross, Georgia, and thereby indirectly acquire First Security National Bank, Norcross, Georgia.

Board of Governors of the Federal Reserve System, April 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–10843 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Commerzbank AG, Frankfurt, (Main), Federal Republic of Germany; to acquire through Commerzbank Asset Management USA Corporation and CAM Acquisitions, LLC, Montgomery Asset Management, LLC, San Francisco, California, and thereby indirectly engage in financial and investment advisory activities, pursuant to § 225.28(b)6) of the Board's Regulation Y; in agency transactional services for customer investments, including securities brokerage services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and in the provision of certain administrative services for investment companies, including those previously found to be permissible by Board order. With respect to administrative services for mutual funds, *see The Governor and Company of the Bank of Ireland*, 83 Fed. Res. Bull. 1129 (1996); *Dresdner Bank AG*, 83 Fed. Res. Bull. 676 (1996); *Barclays Banks PLC*, 82 Fed. Res. Bull. 158 91996); *Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993). With respect to mutual fund transfer agency services, *see* 12 CFR 225.125(i).

2. Deutsche Bank, AG (Main), Federal Republic of Germany; to acquire through Deutsche Financial Services Corporation, St. Louis, Missouri, Ganis Credit Corporation, Newport Beach, California, and thereby engage in the making and servicing of loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

3. The Industrial Bank of Japan, Ltd., Tokyo, Japan, to engage *de novo* through its subsidiary, Aubrey G. Lanston & Co., Inc., New York, New York, in securities brokerage, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y; in riskless principal transactions, pursuant to § 225.28(b)(7)(ii) of the Board's Regulation Y; in private placement services, pursuant to § 225.28(b)(7)(iii) of the Board's Regulation Y; in other transactional services, pursuant to § 225.28(b)(7)(v); in data processing, pursuant to § 225.28(b)(14) of the Board's Regulation Y; in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in futures commission merchant activities, pursuant to § 225.28(b)(7)(iv) of the Board's Regulation Y; in underwriting and dealing in government obligations and money market instruments, pursuant to § 225.28(b)(8)(i) of the Board's Regulation Y; in investing and trading in (a) foreign exchange, and in (b) forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanged or not, based on any rate, price, financial asset, nonfinancial asset, or group of assets, pursuant to § 225.28(b)(8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–10842 Filed 4-25-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Comment and Hearings on Joint Venture Project

AGENCY: Federal Trade Commission.

ACTION: Notice of opportunity for comment and public hearing.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is requesting public comment about issues to be addressed in the Joint Venture Project that the Commission has authorized. The Project is being

undertaken by the Commission in collaboration with the Department of Justice. Comments may be provided to the Commission in writing as specified below. In addition, the Commission will hold public hearings concerning these issues beginning June 2, 1997. The Commission is likely to provide another opportunity for public comment in the fall of 1997 on additional issues to be addressed in connection with the Joint Venture Project.

The Joint Venture Project grows out of public hearings held by the FTC in the fall of 1995, at which businesses reported that global and innovation-based competition is driving firms toward ever more complex collaborative agreements that sometimes raise new competition issues. Some commenters at those hearings also requested clarification and updating of current antitrust policy toward business collaborations among competitors.

The Joint Venture Project will address whether antitrust guidance to the business community can be improved through clarifying and updating antitrust policies regarding joint ventures and other forms of competitor collaborations. As has been generally noted, businesses may find it desirable to collaborate with rivals in order to achieve a large variety of goals: Attain economies of scale; increase capacity and market access; minimize risk; avoid duplication; transfer, commercialize, or distribute technology efficiently; combine complementary or co-specialized capabilities; or better appropriate the returns of innovation. Some competitor collaborations, however, raise antitrust concerns about the degree to which competition among rivals has been curtailed. In such cases, antitrust enforcers must assess whether and to what extent competition is harmed.

Issues relevant to why and how competitors wish to collaborate with their rivals, and the impact those arrangements have on competition, are of interest to the Commission in connection with the Joint Venture Project. Specifically, the FTC is seeking comment at this time on the following issues:

Factual Questions Relating to Recent Trends in Collaborations Among Competitors

The Commission is interested in better understanding the current use of competitor collaborations [1]—including new types of competitor collaborations, their business purposes, and any business reasons why they may have become more frequent. As an aid to understanding, the Commission has included the following questions as examples of the kinds of factual information in which the Commission is interested. Those who respond should neither feel constrained by those questions nor compelled to answer each one, however. The most informative responses will aid the Commission in better understanding new types of, and possibly more frequent, competitor collaborations.

Because real-world examples are usually the most informative, the Commission would prefer descriptions of competitor collaborations that actually have been undertaken. However, recognizing that businesses may wish to protect confidential information about some collaborations, the Commission also encourages the use of hypothetical fact patterns to describe the types of business situations that are prompting new types of and more frequent collaborations among competitors.

Questions

During the past few years, in what types of collaborations with competitors have businesses engaged and what have been the business purposes of those collaborations?

What types of legal arrangements have been used (e.g., traditional forms of joint ventures, strategic alliances, contractual arrangements, etc.) and why? In what ways, if any, did those legal arrangements differ from traditional forms of joint ventures?

To what extent have competitor collaborations involved an integration of operations or facilities as opposed to other types of contractual arrangements?

What types of business activities have been most often involved in recent competitor collaborations—e.g., production, information-sharing, marketing, selling, buying, etc.? Why were collaborations with competitors, rather than single-firm activity, preferred as the means used to accomplish them? What were the perceived advantages and possible disadvantages of competitor collaborations as opposed to independent activity or merger? To what extent, if any, have the business activities covered by recent competitor collaborations differed from business activities covered by earlier competitor collaborations?

Under what circumstances have competitor collaborations involved more than one type of business activity—e.g., joint product development plus joint production plus joint marketing? What are the business reasons that have prompted such collaborations? Would the collaborations still have taken place in the absence of one or more of the business activities—e.g., if joint selling was not achievable? If not, why not? For collaborations that included joint marketing, why was it necessary to use joint, rather than independent, marketing (e.g., advertising, distribution, sales, etc.)?

Under what circumstances have competitor collaborations involved more than two firms? What are the business reasons that have prompted such collaborations?

What have been the primary business goals of such arrangements—e.g., entering into new markets, sharing costs, sharing and managing the risk associated with large capital investments and uncertain future earnings streams, etc.? Why were competitor collaborations rather than independent activity or merger preferred as the means to achieve those goals? To what extent, if any, did the business goals of recent competitor collaborations differ from business goals on which earlier competitor collaborations were based? To what extent, if any, did the goals of the members of the competitor collaborations differ from each other?

In what ways (if any) do competitor collaborations typically vary by type of industry? In what ways (if any) do competitor collaborations typically vary when their primary customer is a government agency?

What are the business issues relevant to determining with which firm or firms to collaborate? Once a collaboration is formed, what are the business issues relevant to determining whether to admit additional members or to confer partial access to non-member competitors? What mechanisms are used in making such decisions? What are the terms on which access is granted, and how are they determined?

What are the mechanisms for determining price and output levels? Are these determinations made independently by individual members or jointly? Through what mechanism is joint control exercised? What business factors govern these choices?

What mechanisms are used for allocating costs and sharing profits among the participants in a competitor collaboration? How are internal transfer prices set?

[1] For purposes of this notice, ''competitor collaborations'' should be understood as including all collaborations, short of a merger, between or among entities that would have been actual or likely potential competitors in a relevant market absent that collaboration.

What factors affect the incentive or the ability of a participant to invest significant assets and efforts in a competitor collaboration? What types of arrangements are necessary to prevent opportunistic conduct by participants?

In general, competitor collaborations may be ''exclusive'' (that is, members of the collaboration are *not* permitted to compete against it independently) or ''non-exclusive'' (that is, members of the collaboration *are* permitted to compete against it independently). Have recent competitor collaborations most often been ''exclusive'' or ''non-exclusive''? What were the business reasons for choosing between exclusivity or non-exclusivity? What factors affect the incentive or the ability of a member to compete with the collaboration?

For competitor collaborations involving the possibility of investment and expansion by the venture, what mechanisms are used to make such decisions? By whom are such decisions made? Can such decisions be made unilaterally by individual members?

What has been the typical duration of competitor collaborations? Why have they been of such duration? When no limit is placed on duration, what mechanisms govern termination? Is there any difference between the typical duration of recent competitor collaborations as opposed to earlier competitor collaborations? If so, why?

What limitations are placed on competition from former members after withdrawal from or termination of competitor collaborations?

Have competitor collaborations typically involved business activities in countries other than the U.S. or in other countries and the U.S.; if so, why was a competitor collaboration used for such international activity? In what ways (if any) do competitor collaborations typically vary when they involve conduct in foreign countries?

In general, have competitor collaborations worked well to achieve their business purposes? Why or why not?

Policy and Legal Questions Relating to Competitor Collaborations

The Commission also is interested in better understanding the extent to which antitrust law and the antitrust agencies' current policy guidelines and advice mechanisms are useful to businesses, and how the usefulness of antitrust guidance might be improved. The following questions are suggestive of issues that would be of interest in responses, but, again, the questions are not intended to constrain or to require responses.

Questions

The State of Antitrust Law

What aspects of antitrust law regarding joint ventures or other collaborations among competitors require clarification?

For the following competitive issues, in what circumstances are competitor collaborations more or less likely to cause competitive harm? What are the factors critical to an accurate assessment of whether competitor collaborations will likely harm competition in those circumstances? Are there any of the following issues on which the agencies should *not* focus in analyzing the permissibility of competitor collaborations under antitrust law? Which are why?

—Whether the price- or output-related decisions of competitor collaborations may harm competition

—Whether restrictions on competition between or among the members of a competitor collaboration, or between the collaboration and another entity, may harm competition

—Whether the competitor collaboration increases the likelihood of collusion outside the joint venture as a result of sharing confidential, competitively sensitive information or other mechanisms

—Whether the competitor collaboration may raise rivals' cost

—Whether a denial of membership in or access to a competitor collaboration may harm competition

—Whether a competitor collaboration that lacks market power in any relevant market may still harm competition in a relevant market

How can a collaboration among rivals be structured and implemented to reduce the likelihood of anticompetitive harm from any of the above-listed competitive issues? For example, what mechanisms should be included in joint venture agreements to prevent the inappropriate sharing of competitive, confidential information among venture participants? What types of procedural or structural mechanisms can a competitor collaboration use to lessen the likelihood of anticompetitive harm from any of the above-listed competitive issues? Which of those mechanisms, if any, may be undesirable from a business perspective? Why and in what ways?

What are the benefits and harms of treating certain types of conduct as per se unlawful? How might current articulations of the dividing lines between per se and rule of reason analysis, or between quick-look or full-blown rule of reason analysis, be clarified? Are there new articulations of those dividing lines that are worth consideration by the antitrust agencies and the courts?

What factors should be used to determine whether price or non-price restrictions are related to the procompetitive purpose of a competitor collaboration? What factors should be used to determine whether price or non-price restrictions are reasonably necessary for achieving the procompetitive purpose of a competitor collaboration?

What are the factors that should be included in a rule of reason analysis of a competitor collaboration? Are there particular factors whose early examination could simplify rule of reason analysis? If so, what are they, and why and how could they simplify the analysis? In what ways could reliance on such factors reduce the ability of antitrust enforcers to discern anticompetitive effects?

Are there any circumstances in which forms of competitor collaboration that could have enhanced competition have been deterred due to uncertainty about antitrust rules or possible costs of antitrust investigation or litigation? What were the circumstances, and what was the uncertainty?

Are there any circumstances in which parties have failed to challenge arguably anticompetitive competitor collaborations due to uncertainty about antitrust rules or possible costs of antitrust investigation or litigation? What were the circumstances, and what was the uncertainty?

How has the National Cooperative Research and Production Act of 1993 (''NCRPA'')[2] affected competitor collaboration? In what circumstances has the Act's notification procedure been used? Are there any factors that prevent this procedure from achieving its full potential benefits?

FTC/DOJ Guidelines

Which set of agency guidelines—e.g., Statements of Antitrust Enforcement Policy in Health Care, Antitrust Guidelines for the Licensing of Intellectual Property, Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission—is used most frequently in providing guidance regarding permissible competitor collaborations and collateral agreements? Why?

[2] The NCRPA, Pub. L. 103–42, 107 Stat. 117 (1993) (current version at 15 U.S.C.A. 4301–4306), provides for rule-of-reason treatment and limitation of damages for certain research and development and production joint ventures for which notification is filed with the Department of Justice and the Federal Trade Commission.

To what extent, if any, do any of the current agency guidelines constrain competitor collaborations so as to prevent firms from adopting new ways to compete more effectively? How? To what extent, if any, do agency guidelines affect the strategic decisions of companies? How?

In what areas, if any, is agency guidance through guidelines inadequate for the current needs of business? What are those areas, and what are the perceived inadequacies? To what extent could such inadequacies be remedied through changes in or additions to the current guidelines, and to what extent would effective remedies require more targeted fact-specific advice in the form of advisory opinions?

FTC Advisory Opinions

How often do you ask for Commission or staff advisory opinions regarding new types of competitor collaborations? In what types of circumstance do you use those procedures? Are these circumstance in which you do not use them? Why?

What are the advantages and disadvantages, from a business viewpoint, of obtaining a Commission or staff advisory opinion about the antitrust legality of a proposed or current collaboration among competitors?

DATES: Any interested person may submit written comments by August 1, 1997. Request to participate in public hearings should be submitted by May 16, 1997, or earlier if at all possible. Such request should identify the requesting party and briefly state the matter that the party wishes to address at the hearings. Public hearing will be held beginning June 2, 1997, at the Federal Trade Commission, Room 332, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

ADDRESSES: To facilitate efficient review of public comments, all comments should be submitted in written and electronic form. Electronic submissions may be made in one of two ways. They may be filed on either a 5¼ or 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the work processing program used to create the document. (Programs based on DOS or Windows 3.1 are acceptable. Files from other operating systems should be submitted in ASCII text format.) Alternatively, electronic submission may be sent by electronic mail to jventures@ftc.gov. Submission should be captioned ''Comment on Issues relating to Joint Venture Project'' and addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Notice of interest in participating in the hearings also should be addressed in writing to the Office of the Secretary at the above address.

FOR FURTHER INFORMATION CONTACT: Policy Planning staff at (202) 326–3712.

SUPPLEMENTARY INFORMATION: The Commission is examining its role in enforcing antitrust laws in light of the above issues. Public comments and hearings are expected to provide information relevant to determining what, if any, actions may be desirable. The Commission has general authority under the FTC Act to interpret its substantive laws through guidelines, advisory opinions, and policy statements.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–10853 Filed 4–25–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 033197 AND 041197

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Reilly Family Limited Partnership, Appleton, Inc., Penn Advertising, Inc	97–1286	03/31/97
SunGard Data Systems, Inc., Safeguard Scientifics, Inc., Premier Solutions, Inc	97–1454	03/31/97
Ford Motor Company, American Federal Bank, FSB, Finance South, Inc	97–1461	03/31/97
Fiserv, Inc., BHC Financial, Inc., BHC Financial, Inc	97–1462	03/31/97
Ford Motor Company, General Acceptance Corporation, General Acceptance Corporation	97–1478	03/31/97
Vital Signs, Inc., Mr. Robert P. Scherer, Jr., Marquest Medical Products, Inc; Scherer Healthcare, Inc.	97–1568	03/31/97
Metal Management, Inc., Bank of Boston Corporation, Reserve Iron & Metal Limited Partnership	97–1591	03/31/97
Trinity Industries, Inc., Thomas C. Weller, Jr., Maritime Holdings, Inc	97–1435	04/01/97
Dennis C. Hayes, Paul G. Allen, Cardinal Technologies, Inc	97–1541	04/01/97
TransTechnology Corporation, Robert H. Bradley, TCR Corporation	97–1590	04/01/97
Telco Communication Group, Inc., International Business Machine Corporation, Advantis	97–1598	04/01/97
Morgan Stanley Capital Partners III, L.P., Plymouth Rock Company Incorporated, Direct Response Corporation	97–1599	04/01/97
Highlands Insurance Group,Inc., Alexander M. Vik, Vik Brothers Insurance Inc	97–1603	04/01/97
Cable Design Technologies Corporation, Dearborn Wire & Cable, L.P., Dearborn Wire & Cable, L.P. and Affiliates	97–1606	04/01/97
Swiss Reinsurance Company, Societe Anonyme Francaise de Reassurances, Societe Anonyme Francaise de Reassurances	97–1612	04/01/97
InaCom Corp., Elizabeth A. Heddens, Bethco, Inc	97–1619	04/01/97
Cyrk, Inc., Dwight J. Drake, Tonkin, Inc	97–1626	04/01/97
Parfinance, Nord Resources Corporation, Nord Kaolin Company	97–1494	04/02/97
BCE Inc., BCE Inc., Bell Atlantic Meridian Systems	97–1569	04/02/97
Golder, Thoma, Cressey, Rauner Fund IV, L.P., The KB Mezzanine Fund, L.P., Reliable Holding Corporation	97–1627	04/03/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 033197 AND 041197—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
BJC Health System, Coventry Corporation, Group Health Plan, Inc	97–1558	04/04/97
Jefferson-Pilot Corporation, The Chubb Corporation, Chubb Life Insurance Company of American	97–1607	04/04/97
Lawrence H. Miller and Karen G. Miller, Graye H. Wolfe, Sr. and Timbre Wolfe, Wolfe Automotive, Inc	97–1625	04/04/97
American Standard Companies, Inc., Fiat S.p.A. (an Italian company), INCSTAR Corporation	97–1636	04/04/97
Metropolitan Life Insurance Company, Skoog Family Limited Partnership (The), American Bumper Manufacturing Company	97–1640	04/04/97
Equilease Holding Corp, General Aquatics, Inc., General Aquatics, Inc	97–1645	04/04/97
I.C.H. Corporation, Harold C. Simmons Family Trust No. 2, Sybra, Inc	97–1647	04/04/97
Tultex Corporation, California Shirt Sales, Inc., California Shirt Sales, Inc	97–1651	04/04/97
Rental Service Corporation, Roy B. Bush, Comtect, Inc	97–1652	04/04/97
Pharmacia & Upjohn, Inc. (a British company), Geron Corporation, Geron Corporation	97–1654	04/04/97
Blyth Industries, Inc., Mr. and Mrs. Ennio V. Racinelli, Endar Corporation	97–1655	04/04/97
Mr. & Mrs. Ennio V. Racinelli, Blyth Industries, Blyth Industries	97–1656	04/04/97
Bunzl plc, WBT Holdings, LLC, Americana Filtrona Corporation	97–1658	04/04/97
Metropolitan Life Insurance Company, DSV Partners IV Limited Partnership, Pressure Systems, Inc	97–1659	04/04/97
Lewis B. Cullman, Day Dream, Inc., Day Dream, Inc	97–1660	04/04/97
Corning Incorporated, Optical Corporation of America, Optical Corporation of America	97–1664	04/04/97
Bayard Drilling Technologies, Inc., Harold G. Hamm, Trustee/H.G.H. Revocable Inter Vivos, Trend Drilling Company	97–1666	04/04/97
Marsh & McLennan Companies, Inc., Albert H. Wholers & Co., Albert H. Wohlers & Co	97–1669	04/04/97
Beckman Instruments, Inc., Elf Aquitaine, Sanofi Diagnostics Pasteur, Inc	97–1670	04/04/97
Marubeni Corporation, Michael L. Lazarus, The Lazarus Auto Group, Inc	97–1673	04/04/97
Marubeni Corporation, Bryan A. Lazarus, The Lazarus Auto Group, Inc	97–1674	04/04/97
United Auto Group, Inc., Alan K. Arnold, Wade Ford, Inc. and Wade Ford Buford, Inc	97–1677	04/04/97
United Auto Group, Inc., Marshal D. Mize, Marshal D. Mize Ford, Inc	97–1678	04/04/97
Carondelet Health System, Inc., St. Joseph's Health System, Inc., St. Joseph's Health System, Inc	97–1679	04/04/97
NUI Corporation, James N. Greiff, T.I.C. Enterprises, L.L.C.	97–1681	04/04/97
Solvay S.A., The Dexter Corporation, D&S Plastics International	97–1687	04/04/97
United States Filter Corporation, DQE, Inc., Chester Engineers, Inc	97–1693	04/04/97
DEL–LPL Limited Partnership, The Galbreath Company, The Galbreath Company	97–1709	04/04/97
Philip Environmental Inc., Ferrex Trading Corporation, Ferrex Trading Corporation	97–1483	04/07/97
Philip Environmental Inc., The Issac Corporation, The Issac Corporation	97–1484	04/07/97
Quantum Fund N.V., WMX Technologies, Inc., WMX Technologies, Inc	97–1542	04/07/97
ReliaStar Financial Corporation, Security-Connecticut Corporation, Security-Connecticut Corporation	97–1588	04/07/97
PennCorp Financial Group, Inc., Knightsbridge Capital Fund I, L.P., Southwestern Financial Corporation	97–1641	04/07/97
The First American Financial Corporation, Welsh, Carson, Anderson & Stowe V. L.P., Strategic Mortgage Services, Inc. (Ohio)	97–1667	04/07/97
Computer Sciences Corporation, E.I. Du Pont de Nemours and Company, Conoco, Inc	97–1672	04/07/97
ABRY Broadcast Partners II, L.P., ML Media Opportunity Partners, L.P., Fabri Development Corporation	97–1680	04/07/97
Applied Industrial Technologies, Inc., James T. Moore, II, Invetech Company	97–1685	04/07/97
Chesterman Company, Rodney P. Burwell, Chippewa Springs, Ltd	97–1688	04/07/97
Solvay S.A., Solvay S.A., D&S Plastics International	97–1690	04/07/97
Molten Metal Technology, Inc., Lockheed Martin Corporation, M4 Environmental L.P., M4 Environmental Management, Inc	97–1696	04/07/97
Norwest Corporation, Dean A. Sundquist, Command Tooling Systems Inc	97–1703	04/07/97
Applied Industrial Technologies, Inc., J. Michael Moore, Invetech Company	97–1707	04/07/97
Lockheed Martin Corporation, Molten Metal Technology, Inc., Retech Division of M4 Environmental, L.P	97–1712	04/07/97
American Express Company, Checkers, Simon & Rosner LLP, Checkers, Simon & Rosner LLP	97–1578	04/08/97
Glaxo Wellcome plc, Mayo Foundation, Mayo Foundation for Medical Education and Research	97–1613	04/08/97
Nabors Industries, Inc., Charles Schusterman, Samson Rig Company & Rig Properties, Inc	97–1633	04/08/97
Motorola, Inc., Bracebridge International Limited, Celcom, Inc	97–1637	04/08/97
Southwest Securities Group, Inc., Nathan Newman, Equity Securities Trading Company, Inc	97–1623	04/09/97
Hoyts Cinemas America Limited (A Barbados company), William J. Hanney, East Bridgwater Cinema Corp., Sharon Cinema Corp	97–1624	04/09/97
H.I.G. Investment Group, L.P., Michael G. Sanderson, TABJAA, Inc.; Milliken & Michaels of Louisiana, Inc	97–1665	04/09/97
Robert H. Chapman, Bemis Company, Inc., Hayssen Manufacturing Co. & Accraply, Inc	97–1671	04/09/97
Lincoln Equity Fund, L.P., The Cerplex Group, Inc., Peripheral Computer Support, Inc	97–1704	04/09/97
The Montana Power Company, VOG Partners, L.P., Vessels Hydrocarbons, Inc	97–1551	04/10/97
Ralcorp Holdings, Inc., Wortz Company, Wortz Company	97–1585	04/10/97
Sybron International Corporation, Riverside Fund I, L.P., Remel Limited Partnership	97–1609	04/10/97
Calpine Corporation, Dominion Resources, Inc., Enron/Dominion Cogen Corporation	97–1587	04/11/97
Charter, plc, Howden Group plc, Howden Group plc	97–1635	04/11/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–10852 Filed 4–25–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Weidong Sun, M.D., Ph.D., Medical College of Pennsylvania and Hahnemann University: Based upon a report forwarded to the Office of Research Integrity (ORI) by the Medical College of Pennsylvania and Hahnemann University as well as information obtained by ORI during its oversight review, ORI found that Dr. Sun, a former graduate student in the Department of Physiology, Medical College of Pennsylvania and Hahnemann University, engaged in scientific misconduct by falsifying data in conducting and reporting research supported by a grant from the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), National Institutes of Health (NIH). The research also was reported in applications requesting funding from NIAMS and the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH.

Specifically, Dr. Sun falsified data by misrepresenting cloned DNA sequences from chicken non-muscle myosin as an isoform of neuronal myosin II from rat brain. The falsified cDNA was included in the following publications and nucleotide sequences in GenBank and EMBL databases:

- Sun, W.D., & Chantler, P.D. ''Cloning of the cDNA encoding a neuronal myosin heavy chain from mammalian brand and its differential expression within the central nervous system.'' Journal of Molecular Biology 224(4):1185–1193, 1992;
- Sun, W.D., & Chantler, P.D. ''A unique cellular myosin II exhibiting differential expression in the cerebral cortex.'' Biochemical and Biophysical Research Communications 175(1):244–249, 1991;
- Sun, W., Chen, X., & Chantler, P.D. ''Inhibition of neuritogenesis by antisense arrest of the expression of a specific isoform of brain myosin II.'' Journal of Muscle Research and Cell Motility 15:184–185, 1994;
- M64596, ''Rat myosin II mRNA, 3' end.'' [RETMYOSII];
- M80591, ''Rat neuronal myosin heavy chain mRNA, 3' end.'' [RATMYOH3E];
- M94962, ''Rattus rattus neuronal myosin heavy chain gene promoter sequence.'' [RATMYOPRO]; and
- X62659, S98128, ''R.rattus MRNA for brain neuronal myosin heavy chain.'' [RRNMYOHC].

Retractions of the publications and deletions from the public data banks have been requested.

Dr. Sun has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning April 17, 1997:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations); and

(2) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–10908 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of May 1997:

Name: Subcommittee on Evidence-based Practice Centers (EPCS).

Date and Time: May 5–7, 1997, 8:00 a.m.–5:00 p.m.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advise and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals regarding EPCs that was published in the Commerce Business Daily on November 22, 1996.

The purpose of this contract is to establish EPCs to produce evidence reports and technology assessments that may be used as a scientific foundation for development and implementation of clinical practice guidelines and other clinical quality improvement tools, and for making decisions related to the effectiveness or appropriateness of specific health care technologies.

Agenda: The session of the Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. It is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Al Deal, Office of Management, Contracts Management Staff, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, suite 601, Rockville, Maryland 20852, 301/594–1445.

Dated: April 16, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–10833 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–97–10]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. A Survey to Assess The Knowledge, Attitudes And Practices of Health Care Providers Serving Pregnant Women Regarding HIV Counseling and Testing and the Use Of Zidovudine (ZDV) During Pregnancy—New—This is a new data collection. The purpose of this survey is to assess the knowledge, attitudes, and practices of health care providers serving pregnant women regarding HIV counseling and testing and use of ZDV during pregnancy. Data will be collected and reported to CDC to describe: (1) Providers' current practices in providing prenatal care to HIV-infected women, offering HIV counseling and testing to pregnant women, and offering ZDV to HIV-infected pregnant women; (2) providers' knowledge of the ACTG 076 results and PHS perinatal transmission guidelines; (3) providers' attitudes regarding HIV counseling and testing of pregnant women; and, (4) providers' knowledge and experience in the use of ZDV in treating HIV-infected pregnant women.

The intended population to be studied is physicians and nurse-midwives providing prenatal care in four areas (State of Connecticut, potential population approximately 685; State of North Carolina, potential population approximately 1,500; Dade County, FL, potential population approximately 500; Brooklyn, NY, potential population approximately 260) where institutions are currently conducting a CDC-funded study related to implementation of the PHS guidelines to prevent perinatal transmission of HIV. The total estimated cost to respondents is $40,370.

Respondents	Number of respondents	Number of responses/respondent (in hrs.)	Total burden (in hrs.)
Census: Secretaries	2,800	1	46
Census: Midwives	350	1	6
Pilot: Midwives	15	1	2.5
Pilot: Doctors	240	1	40
Survey: Midwives	350	1	58.3
Survey: Doctors	2,000	1	333.3
Total			486.1

Dated: April 22, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–10826 Filed 4–25–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–7–97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Information Collection Procedures for Requesting Public Health Assessments—(0923–0002)—Extension—The Agency for Toxic Substances and Disease Registry is announcing the request for a 3-year extension of the OMB approval for the Information Collection Procedures for Requesting Public Health Assessments. ATSDR is authorized to accept and respond to petitions from the public that request public health assessments of sites where there is a threat of exposure to hazardous substances (42 USC 9604(i)(6)(B)). The Agency conducts public health assessments of releases or facilities for which individuals provide information that people have been exposed to a hazardous substance, and for which the source of such exposure is a release, as defined under CERCLA. The general administrative procedures for conducting public health assessments, including the information that must be submitted with each request, is described at 42 CFR 90.3, 90.4, and 90.5. Procedures for responding to petitions, decision criteria, and methodology for determining priorities may be found at 57 FR 37382–89.

ATSDR anticipates approximately 36 requests will be received each year. This estimate is based on the number of requests received since the enabling legislation was enacted and the expressions of interest (via telephone, letter, etc.) from members of the public, attorneys, and industry representatives. The total annual burden hours are 18.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
General Public	36	1	.50

Dated: April 22, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–10827 Filed 4–25–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 733]

Year-Long Estimation of the Frequency of Bacterial Contamination of Blood Products in the United States

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1997 for a cooperative agreement program to conduct a year-long study to estimate the frequency of bacterial contamination of blood and blood products in the United States (U.S.).

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Immunization and Infectious Diseases and HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

In addition, the Public Health Service (PHS) in Addressing Emerging Infectious Disease Threats: A Prevention Strategy for the United States, emphasizes the need for identification and prevention of new and emerging infections. Some of these newly identified infections have been associated with the transfusion of blood and blood products. This announcement is related to the national identification of bacterially contaminated blood products in the U.S. blood supply and to ensuring the safety of the U.S. blood supply.

Authority

This program is authorized by Section 301(a) of the Public Health Service Act, as amended [42 U.S.C. 241(a)]. Applicable program regulations are found in 42 CFR Part 52, Grants for Research Projects.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Assistance will be provided only to national nonprofit organizations that coordinate multiple blood collection sites for the purpose of collecting and distributing blood and blood products nationwide. Status as a national organization will be determined if the organization coordinates blood collection sites in a majority of the States in the U.S. The applicant must indicate the number of States in which they coordinate blood collection sites. For nonprofit organizations, 501(c)(3) status is required. For-profit organizations are *not* eligible for this program.

Only national nonprofit organizations that coordinate the collection and distribution blood and blood products nationwide will be considered eligible applicants because of the need to generalize data to the entire nation and to ensure that no duplication of data occur. Only these organizations have the capability to initiate a nationwide study to develop standardized definitions of adverse transfusion reactions, to increase clinical nursing and medical staff awareness of these reactions and of bacterial contamination as a mechanism for these reactions, and to prospectively determine the rates of bacterial contamination of blood products (RBC, whole blood, and platelets) in the U.S.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in Lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

Approximately $150,000 will be available in FY 1997 to fund approximately two to three awards. It is expected that awards will range from $40,000 to $75,000 with an average award of $50,000. It is expected that awards will begin on or about August 1, 1997, and will be made for a 12-month budget period within a one year project period. Funding estimates may vary and are subject to change. No specific matching funds are required.

Use of Funds

Cooperative agreement funds shall *not* be used for the collection or delivery of blood or blood products. They will be used for developing: (1) educational materials, and (2) data collection materials and systems.

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

Each year over 20 million units of blood products are transfused in the United States. Although safety has improved through improved donor screening and testing by the blood product industry in response to the human immunodeficiency virus (HIV)

epidemic, residual risk remains for the transmission of HIV and other emerging infectious pathogens. Some of these transfusion-associated pathogens and affected blood products include the transmission of *Trypanosoma cruzi*, the cause of Chagas' disease, by red blood cell (RBC) transfusion and hepatitis C virus by intravenous immunoglobulin product. Other emerging infectious pathogens, i.e., bacteria, also have been associated with transfusions and adverse reactions.

Approximately one death per million units transfused occurs due to transfusion-associated sepsis, a newly recognized and emerging problem (CDC, unpublished data). From 1986 through 1991, 16 percent (29/182) of transfusion-associated fatalities reported to the FDA were associated with bacterial contamination of blood products, including red blood cells (RBCs), whole blood, and platelets. Reports of sepsis and death after transfusion of blood products, platelets, and RBCs contaminated by bacteria have been increasing over the past decade. Since 1987, CDC has received anecdotal reports, from community sources and conversations with transfusion service personnel and clinical nursing and medical staff, regarding the bacterial contamination of blood products. These reports include 20 episodes of *Yersinia enterocolitica*-contaminated red blood cells (RBCs), including 12 deaths.

The Code of Federal Regulations (Title 21, Section 606.170[b]) requires only that fatal complications of blood collection or transfusion be reported to the Food and Drug Administration (FDA); thus, when non-fatal events are considered, the true incidence of infectious complications associated with the receipt of blood and blood products may be substantially underestimated. Lack of knowledge concerning the mechanisms of adverse transfusion reactions and transfusion-associated bacterial infection may be another reason for under-reporting. If blood products are not cultured after an adverse reaction, bacterial contamination of the product as a cause of the reaction cannot be definitely established. After a cluster of bacterial contamination of platelets occurred at one university hospital, medical staff were educated about adverse transfusion reactions and active surveillance for bacterial contamination of platelets was initiated; subsequently the number of platelet transfusion reactions reported monthly and the reported rate of bacterial contamination of platelets increased 31 (2.3/1000 to 72.4/1000 platelet pools) and 23 (0.3% to 7.7%) fold, respectively, in the following 22 month period.

A recent study from Germany estimated RBC bacterial contamination at approximately 0.5 percent and random donor platelet contamination at approximately 2.5 percent. Since the rates of bacterial contamination of different blood products in the U.S. is unknown, how the German rates compare with the bacterial contamination rates of blood products in the U.S. is unclear.

The existence of a significant number of transfusion-associated bacterial infectious events reported to CDC, the lack of known incidence of bacterial contamination of blood products in the U.S., and likely current underestimation of morbidity and mortality from these events, demonstrate the need to determine the incidence of transfusion-associated bacterial contamination of blood and blood products in the U.S. Therefore, this cooperative agreement is being established to initiate a study to develop standardized definitions of adverse transfusion reactions, to increase clinical nursing and medical staff awareness of these reactions and of bacterial contamination as a mechanism for these reactions, and to prospectively determine the rates of bacterial contamination of blood products (RBC, whole blood, and platelets) in the U.S. These results will aid in the study of the etiologic agents, risk factors, and outcomes associated with transfusion-associated bacterial contamination.

Purpose

The purpose of this cooperative agreement is to develop a pilot study with the national non-profit organizations that coordinate multiple blood collection sites to: (1) Determine the bacterial contamination rate of blood products; (2) identify donor risk factors for bacterial contamination of these blood products; and (3) determine the impact of transfusion of these bacterially contaminated blood products on the recipients.

The objectives of the cooperative agreement are:

1. To determine the rates of bacterial contamination of blood products, i.e., RBCs, pooled and apheresis platelets, and whole blood.
2. To describe risk factors of donors of bacterially contaminated blood products, i.e., prior or past medical history and prior exposures significantly associated with bacteremia at time of donation.
3. To determine health outcomes in recipients receiving bacterially contaminated blood products.
4. To describe underlying medical conditions of recipients that are significantly associated with death following receipt of bacterially contaminated blood products.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipients will be responsible for the activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Coordinate the collection of denominator data to include the number and types of blood products collected by the transfusion services, the number and types of blood products distributed by transfusion services, the number and types of blood products subsequently transfused.
2. Develop standardized definitions to include a microbiologic description of bacterially contaminated blood products and the clinical indicators to differentiate significant and insignificant transfusion reactions.
3. Collect numerator data to determine the bacterial contamination rate of blood products, to identify donor risk factors for bacterial contamination of these products; and, to determine the impact of transfusion of these bacterially contaminated blood products on the recipients.
4. Develop educational materials to increase clinical nursing and medical staff awareness of transfusion reactions.
5. Publish the study outcomes.

B. CDC Activities

1. Assist in the conduct of the study, including:
   a. Collaboration in the development of study design.
   b. Support recipients as a reference laboratory in confirmation of contaminating organisms, endotoxin and antibody testing.
2. Assist in the development of data management systems.
3. Collaborate in the coordination of data analysis, dissemination, and presentation of aggregated data from all recipients.
4. Collaborate in the publication of the study outcomes.

Technical Reporting Requirements

A narrative progress report is required semiannually. An original and two copies of all progress reports are due within 30 days after each semiannual reporting period. Progress reports should address the status of projects and progress toward project objectives and the goals of this cooperative agreement

as represented in the Purpose and Recipient Activities sections of this announcement.

An original and two copies of the financial status report (FSR) are required no later than 90 days after the end of the budget period. A final FSR is due no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC. Please address all reports or other correspondence to: Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 300, Atlanta, Georgia 30305.

Application Content

Format

Pages must be clearly numbered, and a complete index to the application and its appendices must be included. Please begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single-spaced, with unreduced type on 8½″ by 11″ paper, with at least 1″ margins, headings and footers, and printed on one side only.

Application Narrative

All applicants must develop their applications in accordance with the PHS Form 5161–1 (revised 7/92, OMB Number 0937–0189), information contained in this announcement, and the instructions outlined below. Also, the narrative must be limited to 10 pages excluding appendices and should include the following:

1. The background and feasibility, need for funding, and willingness to collaborate with CDC in the conduct of the study.

2. The objectives of the proposed study which are consistent with the purposes of the cooperative agreement and are measurable and time-phased. The applicant should establish a specific and realistic plan of operation and timetable for all activities including development of methodology, development and dissemination of educational material, development and implementation of data collection instruments, collection of potentially contaminated blood products, laboratory identification of bacterial contamination of blood products, and data analysis.

3. The methods which will be used to accomplish the objectives of the study. Describe activities and methods already in place or planned, including capacity and experience to coordinate study efforts; assess quality of the project coordinators, facilities, and supporting resources; plan, coordinate, and maintain data collection and analysis; and disseminate information.

4. A budget which is reasonable and consistent with the purpose and objectives of the cooperative agreement funds. Please use standard form 424A, ''Budget Information'', provided with the PHS 5161–1 application. All budget categories should be itemized and individually justified.

5. A description of the project's principal investigator's role and responsibilities.

6. Documentation of eligibility status including: the number of States in which blood collection sites are coordinated; and, 501(c)(3) documentation of nonprofit status.

7. Establish a specific and realistic plan of operation and timetable for all activities.

8. Any other information that will support the request for technical and funding assistance.

9. Human Subjects: Whether or not exempt from the Department of Health and Human Services (DHHS) regulations, if the proposed project involves human subjects, describe adequate procedures for the protection of human subjects. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria: (Total 100 points)

1. The applicant's understanding of the purpose and objectives of the cooperative agreement and willingness to cooperate with CDC in the design, implementation, and analysis of the project. (20 Points)

2. The quality of the plans to coordinate and conduct the project with multiple blood collection sites, including a description of techniques for educational material, data collection, and data management. (20 Points)

3. The quality and feasibility of methods to accomplish objectives and required activities, including the provision of numerator and denominator data for the generalization of results nationally. The degree to which the applicant has met CDC requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (b) The proposed justification when representation is limited or absent. (c) A statement as to whether the design of the study is adequate to measure differences when warranted. (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented. (30 Points)

4. How the study will be administered, including duties and responsibilities and time allocation of the proposed staff; and a schedule for accomplishing the program activities, including time frames. (15 Points)

5. A statement of the applicant's demonstrated capabilities and experience in conducting such a project. (15 Points)

6. The extent to which the budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds. (Not scored)

7. Human Subjects (not scored): If the proposed project involves human subjects, whether or not exempt from the DHHS regulations, the extent to which adequate procedures are described for the protection of human subjects. Recommendations on the adequacy of protections include: (a) Protections appear adequate and there are no comments to make or concerns to raise, (b) protections appear adequate, but there are comments regarding the protocol, (c) protections appear inadequate and the ORG has concerns related to human subjects, (d) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable, or (e) protections appear adequate that women, racial and ethnic minority populations are appropriately represented in applications involving human research.

Executive Order 12372 Review

This program is not subject to review by Executive Order 12372.

Public Health Systems Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283, Centers for

Disease Control and Prevention (CDC)—Investigations and Technical Assistance.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreements will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the completed application PHS Form 5161–1 (revised 7/92, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 300, Atlanta, Georgia 30305, on or before May 30, 1997.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailings.)

2. Late Applications

Applications which do not meet the criteria in either 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 300, Atlanta, GA 30305, telephone (404) 842–6595 or through the Internet or CDC WONDER electronic mail at: lxt1@cdc.gov. Programmatic technical assistance may be obtained from Matthew J. Kuehnert, M.D. or Marsha A. Jones, Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop E–69, Atlanta, GA 30333, telephone (404) 639–6413 or through the Internet or CDC WONDER electronic mail at: mgk8@cdc.gov.

You may obtain this announcement from one of two Internet sites: CDC's homepage at: http://www.cdc.gov or the Government Printing Office homepage (including free on-line access to the **Federal Register**) at: http://www.access.gpo.gov.

Please refer to Announcement Number 733 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: April 22, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–10829 Filed 4–25–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 720]

Epidemiology and Laboratory Capacity for Infectious Diseases

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement program to ensure adequate capacity of local, State, and national efforts to conduct epidemiology and laboratory surveillance and response for infectious diseases.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 317 [42 U.S.C. 247b] of the Public Health Service Act, as amended. Applicable program regulations are found in 42 CFR Part 51b, Project Grants for Preventive Health Services and 42 CFR Part 52, Grants for Research Projects.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are limited to the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. In addition, official public health agencies of county or city governments with jurisdictional populations greater than 2,500,000 (based on 1990 census data) are eligible to apply.

This announcement is an expansion of the State Epidemiology and Laboratory Surveillance and Response Program that was implemented in FY 1995 and FY 1996 with awards to 15 State and local public health agencies under Program Announcement 543. The intention of this announcement is to add new recipients to the 15 that are currently funded. Thus, the 15 recipients under Program Announcement 543 are ineligible to apply for funds provided through this announcement. The 15 State or local public health agencies currently funded are: Washington, Maine, Massachusetts, New York City, New York, New Jersey, West Virginia, Pennsylvania, Florida, Georgia, Louisiana, Kansas, Colorado, Hawaii, and County of Los Angeles.

Availability of Funds

Approximately $1,800,000 is available in FY 1997 to fund five to ten awards. It is expected that the average annual award amount (for both direct and indirect costs) will be approximately $200,000, ranging from $70,000 to $250,000. It is expected that the awards will begin on or about September 1, 1997, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Although a requirement for matching funds is not a condition for receiving an award under this cooperative agreement program, applicants must document the non-Federal human and fiscal resources that will be available to conduct proposed activities. Federal funds cannot be used to replace or supplant existing State and local support. See APPLICATION CONTENT AND EVALUATION CRITERIA (section G: Budget) for additional information.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

> Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.
>
> (b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

Once expected to be eliminated as a public health problem, infectious diseases remain the leading cause of death worldwide. In the United States and elsewhere, infectious diseases increasingly threaten public health and contribute significantly to the escalating costs of health care.

Despite the continued threat of infectious diseases and the emergence of new, re-emergent and drug-resistant diseases, the public health infrastructure of the United States is often inadequately prepared to support the surveillance necessary for early detection and response to public health threats from infectious diseases. These deficiencies were made clear in a series of National Academy of Science, Institute of Medicine, reports published between 1987 and 1992. *Emerging Infections, Microbial Threats to Health in the United States,* published in 1992, provided specific recommendations to address these deficiencies and emphasized a critical leadership role for both CDC and State health departments in a national effort to detect and control infectious disease threats.

In partnership with other Federal agencies, State and local health departments, academic institutions, and others, CDC has developed a plan for revitalizing the nation's ability to identify, contain, and prevent illness from emerging infectious diseases. The plan, *Addressing Emerging Infectious Disease Threats; A Prevention Strategy for the United States,* identifies objectives in four major areas: surveillance; applied research; prevention and control; and infrastructure. The plan proposes three major domestic surveillance activities: (1) Strengthening the local and State public health infrastructures for infectious disease surveillance and response; (2) Establishing provider-based sentinel surveillance networks; and, (3) Establishing population-based emerging infections programs to conduct surveillance and applied epidemiologic, laboratory, and prevention research. This announcement addresses the first objective—strengthening the local and State public health infrastructure for infectious disease surveillance.

Concern about the quality of surveillance data and its ability to support good public health decision-making has led to a reevaluation of public health surveillance by the Council of State and Territorial Epidemiologists (CSTE) and the CDC. CSTE and CDC are working to improve public health surveillance by such approaches as utilization of laboratories as sources of surveillance information and development of sentinel surveillance methodology to complement the traditional ''notifiable diseases'' approach. These goals are consistent with directions outlined by CDC's new Health Information Surveillance Systems (HISS) Board.

Purpose

The purpose of this cooperative agreement is to assist State and eligible local public health agencies in strengthening and enhancing basic capacity for public health surveillance and response for infectious diseases. Awards are intended to support the development or enhancement of existing basic surveillance and response capacity with a focus on notifiable diseases; food-, water- and vector-borne diseases; vaccine-preventable diseases; and drug-resistant infections. In this regard, strengthening collaboration between laboratory and epidemiology practice is seen as a crucial component. Additional epidemiologic or laboratory components addressing infectious diseases problems of particular State or local importance may also be supported.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for addressing activities A.1 through A.3 below (including A.4 if that is a described program activity for that State or eligible official public health agency of county or city government), and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop public health capacity for surveillance and response for infectious diseases, including flexible surveillance and response capability to meet the challenges of new and emerging infectious diseases.

2. Strengthen the collection and use of surveillance information from clinical, epidemiologic, and laboratory sources to improve early response and disease intervention activities.

3. Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program. Prepare reports and publications to disseminate scientific and programmatic findings.

4. Develop and implement long- and short-term training for epidemiology and laboratory staff that is consistent with the purpose of this announcement.

B. CDC Activities

1. Provide consultation and assistance in establishing enhanced reporting from laboratories and health care practitioners and in developing response capability.

2. Assist in monitoring and evaluating scientific and operational accomplishments and progress in achieving the purpose of this program.

Technical Reporting Requirements

Narrative progress reports are required semiannually. The first semiannual report is required with each year's non-competing continuation application and should cover program activities from date of the previous report (or date of award for reporting in the first year of the project). The second semiannual report is due with the Financial Status Report (FSR) 90 days after the end of each budget period and should cover activities from the date of previous report. All progress reports should address the following: (1) Status of each recipient activity; (2) Impact of recipient activities in addressing gaps in surveillance and response capacity; and (3) Progress toward overall objectives as related to the PURPOSE and Recipient Activities sections of this announcement. An original and two copies of all reports are required.

An original and two copies of the FSR are required no later than 90 days after the end of each budget period.

The final performance report and FSR are due no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Officer, CDC. (See section on APPLICATION SUBMISSION AND DEADLINE for address.)

Notification of Intent to Apply

In order to assist CDC in planning and executing the evaluation of applications submitted under this program announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so not later than 10 working days prior to the application due date. Notification can be provided by facsimile, postal mail, or E-mail to Greg Jones, M.P.A., Funding Resources Specialist, Office of Administrative Services, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, Georgia 30333, facsimile: (404) 639–4195, E-mail address: gjj1@cdc.gov.

Application Content and Evaluation Criteria

The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC based upon information contained in this announcement and the instructions outlined below.

All pages must be clearly numbered and a complete index to the application and its appendices must be included. To facilitate photocopying, do not bind, staple, or paper clip any pages of any copy of the application, including appendices. Do not include any bound documents in the appendices. Do not include cardboard, plastic, or other page separators between sections. The entire application must be typewritten, single spaced, and in unreduced type on 8½″ by 11″ white paper, with at least 1″ margins, including headers and footers, and printed on one side only.

Provide a brief abstract (no more than two pages) of the application. The application narrative should be limited to 12 pages (excluding abstract and appendices) and must contain the following sections in the order presented. The narrative must stand by itself; it should not refer the reader to the appendices for any details essential to understanding the application. For each section the criteria by which the applications will be reviewed and evaluated are listed:

A. Understanding the objectives of the State Epidemiology and Laboratory Capacity Building Program: Evaluation criteria: (10 points).

The extent to which the applicant demonstrates a clear understanding of the background and objectives of this program.

B. Description of the population under surveillance, either the State or other appropriate jurisdiction (if an applicant is a county, city, or other agency): Evaluation criteria: (5 points).

The extent to which the applicant clearly describes the population size, demographic characteristics, population, geographic distribution, racial/ethnic makeup, and health care delivery systems for Medicaid and Medicare patients.

C. Description of existing public health infectious disease epidemiology and laboratory capacity: Evaluation criteria: (15 points).

1. The extent to which the applicant describes the scope of its existing surveillance and response activities in infectious diseases with respect to epidemiology and laboratory activities. Extent to which the applicant includes descriptions of reporting requirements, spectrum of laboratory specimen testing performed, degree of automation of laboratory and epidemiologic information management, and public health response capacity.

2. The extent to which the applicant describes existing staffing, management, material and equipment investment, training, space, and financial support of laboratory and epidemiologic capacity for public health surveillance and response for infectious diseases.

3. The extent to which the applicant:

a. Describes current collaboration between its epidemiology and laboratory programs in laboratory-based

surveillance and health care practitioner surveillance, including the existence of, or potential for, integrated uses of surveillance data;

b. Describes current or previous collaborative relationships with clinical laboratories, local health agencies, academic medicine groups, and health care practitioners, including HMOs or managed care providers;

c. Demonstrates the potential of these relationships for enhanced surveillance and public health response activities; and

d. Demonstrates an understanding of the interaction between public health, managed care, and the health care delivery system.

D. Identification of areas of need in public health surveillance and response for infectious diseases: Evaluation criteria: (20 points).

The extent to which the applicant:

1. Identifies State and local needs in epidemiology and laboratory capacity for public health surveillance and response for infectious diseases.

2. Describes steps to be taken to facilitate and strengthen collaboration between epidemiology and laboratory practice, utilizing recent developments in laboratory and computer technologies (e.g., molecular characterization of pathogens, electronic reporting, and computer networks with database systems that facilitate sharing of information).

3. Identifies specific important diseases or conditions (e.g., notifiable diseases, foodborne and waterborne diseases, vaccine-preventable diseases and drug-resistant infections) which will be addressed.

E. Operational Plan (Note: Provide a detailed description of first year activities only and briefly describe future year activities): Evaluation criteria: (40 points).

The extent to which the applicant presents a plan for addressing the identified needs which:

1. Clearly describes the proposed organizational and operating structure/procedures, staffing plan, participating agencies, organizations, institutions, and key individuals;

2. Outlines a clear plan of activities that will be undertaken to address the identified needs in capacity;

3. Outlines a clear plan of activities that will be undertaken to address the specific diseases for conditions to be addressed;

4. Provides current letters of support from participating agencies, institutions, and organizations indicating their willingness to participate in major surveillance and public health response initiatives; and

5. Is consistent with, and adequate to achieve, the needs identified and the purpose and objectives of this program.

F. Plan for monitoring and evaluation: Evaluation criteria: (10 points).

The extent to which the applicant describes a detailed plan both for how they will monitor the implementation of the project and how they will evaluate the impact of the project.

G. Provide a detailed budget with a line-item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of this cooperative agreement program. Although matching funds is not a condition for receiving an award under this program, include in the budget, a separate line-item accounting of non-Federal contributions (funding, personnel, and other resources) that will be directly allocated to the proposed activities. Identify any non-applicant sources of these contributions. Evaluation criteria: (Not Scored).

The extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds. The extent to which the applicant provides detailed information on non-Federal contributions.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact(SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If SPOCs or tribal governments have any process recommendations on applications submitted to CDC, they should forward them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 314, Atlanta, Georgia 30305. The due date for State process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application Form PHS–5161–1 (OMB Number 0937–0189, Revised 7/92) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before Monday, June 16, 1997. No applications or additional materials will be accepted after the deadline.

1. Deadline

Applications will be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You

will be asked to leave your name, address, and telephone number and will need to refer to Announcement 720. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone: (404) 842–6546, facsimile: (404) 842–6513, E-mail: oxb3@cdc.gov.

Programmatic technical assistance may be obtained from Pat McConnon, M.P.H., National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–12, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone: (404) 639–2175, E-mail: pjm2@cdc.gov.

Please refer to Announcement 720 when requesting information regarding this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, telephone (202) 512–1800.

Dated: April 22, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–10830 Filed 4–25–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC), announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and Dates: 8:30 a.m.–5 p.m., May 15, 1997, 8:30 a.m.–12 noon, May 16, 1997.

Place: Holiday Inn Select, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities and the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: April 22, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office,Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–10828 Filed 4–25–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0143]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by May 28, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507) FDA has submitted the following proposed collection of information to OMB for review and clearance.

Citizen Petition—21 CFR Part 10.30—(OMB Control Number 0910–0183—Reinstatement)

The Administrative Procedure Act (5 U.S.C. 553(e)) provides that every agency shall accord any interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) provides that any person may submit to the agency a citizen petition requesting the Commissioner of Food and Drugs to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The information is used by the agency to determine the need for, or desirability of, the requested action and also to determine if the submitted information is sufficient to support the action. FDA determines whether or not to grant the petition based on the information submitted.

The affected respondents are individuals or households, State or local governments, not-for-profit institutions and businesses, or other for-profit institutions or groups.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	120	1	120	12	1,440

There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency bases this estimate of burden on fiscal year 1995 data in which there were 120 petitions filed that each took an estimated 12 hours to complete.

Dated: April 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–10779 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0138]

Environmental Assessments and Findings of No Significant Impact

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has reviewed environmental assessments (EA's) and issued findings of no significant impact (FONSI's) relating to the 141 new drug applications (NDA's), abbreviated new drug applications (ANDA's), and supplemental applications listed in this document. FDA is publishing this notice because Federal regulations require public notice of the availability of environmental documents.

ADDRESSES: The EA's and FONSI's may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, or a copy may be requested by writing the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5721.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act of 1969 (NEPA), Congress declared that it will be the continuing policy of the Federal Government to ''use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans.'' (See 42 U.S.C. 4331(a).) NEPA requires all Federal agencies to include in every proposal for major Federal actions significantly affecting the quality of the human environment, a detailed statement assessing the environmental impact of, and alternatives to, the proposed action and to make available to the public such statements. (See 42 U.S.C. 4332, 40 CFR 1506.6, and 21 CFR 25.41(b).)

FDA implements NEPA through its regulations in part 25 (21 CFR part 25). Under those regulations, actions to approve NDA's, ANDA's, and supplements to existing approvals ordinarily require the preparation of an EA. (See § 25.22(a)(8) and (a)(14).)

FDA approved 141 NDA's, ANDA's, and supplemental NDA's for the products listed in the following table:

Drug	Application Number
Coumadin (warfarin sodium) for Injection.	09–218/S–077 and S–078
Tavist-1 (clemastine fumarate) Tablets.	17–661/S–048
Tavist-D (clemastine fumarate/phenylpropanolamine hydrochloride) Tablets.	18–298/S–024
Eulexin (flutamide) Capsules.	18–554/S–014
Nicorette (nicotine) Chewing Gum.	18–612/S–022, 20–066/S–004
Depakote (divalproex sodium) Tablets.	18–723/S–020
Calcijex (calcitriol) Injection.	18–874/S–007
Etodolac (lodine) Capsules.	18–922/S–013
Heparin Sodium in 5% Dextrose I.V. Infusion.	19–339/S–011, S–012, S–013, and S–014
Prinivil (lisinopril) Tablets.	19–558/S–027
Depakote (divalproex sodium) Sprinkle Capsules.	19–680/S–008
Saizen (somatropin) for Injection.	19–764
Zestril (lisinopril) Tablets.	19–777/S–023
Nasacort (triamcinolone acetonide) Inhalation Aerosol.	19–798/S–006
Prilosec (omeprazole) Capsules.	19–810/S–033 and S–037
Pro-amatine (midodrine hydrochloride) Tablets.	19–815
Renova (tretinoin) Cream.	19–963
Aredia (pamidronate disodium) for Injection.	20–036/S–011
Lioresal (baclofen) Injection.	20–075/S–004
Imitrex (sumatriptan succinate) Injection.	20–080/S–004
Zofran (ondansetron hydrochloride) Tablets.	20–103/S–004
Acthrel (corticorelin ovine triflutate) for Injection.	20–162
Nilandron (nilutamide) Tablets.	20–169
Elmiron (pentosan polysulfate sodium) Capsules.	20–193
Zinecard (dexrazoxane) for Injection.	20–212
Ethyol (amifostine) for Injection.	20–221 and 20–221/S–002
Luvox (fluvoxamine maleate) Tablets.	20–243/S–004

Drug	Application Number
Intralipid (fat emulsion) I.V. Infusion.	20–248
Voltaren XR (diclofenac sodium) Tablets.	20–254
Monpril HCT (fosinopril sodium/hydrochlorthiazide) Tablets.	20–286
Zyloprim (allopurinol sodium) for Injection.	20–298
Fludeoxyglucose F–18 Injection.	20–306
Oxilan (ioxilan) Injection.	20–316
Zyrtec (cetirizine hydrochloride) Syrup.	20–346
Visipaque (iodixanol) Injection.	20–351
Wellbutrin (bupropion hydrochloride) Tablets.	20–358
Myoview (technetium TC99M tetrofosmin) Injection.	20–372
Cordarone (amiodarone hydrochloride) Injection.	20–377
Nicotrol (nicotine) Nasal Spray.	20–385
Tiazac (diltiazem hydrochloride) Capsules.	20–401
Zerit (stavudine) Oral Solution.	20–413
Remeron (mirtazapine) Tablets.	20–415
Feridex (ferumoxides) Injection.	20–416
Femstat (butoconazole nitrate) Vaginal Cream.	20–421
Azelex (azelaic acid) Cream.	20–428
Vesanoid (tretinoin) Capsules.	20–438
Timolol Ophthalmic Solution.	20–439
Flolan (epoprostenol sodium) for Injection.	20–444
Cerebyx (fosphenytoin sodium) Injection.	20–450
Cytovene (ganciclovir) Capsules.	20–460/S–005
Azulfidine (sulfasalazine) Tablets.	20–465
Nasacort AQ (triamcinolone acetonide) Nasal Spray.	20–468
Claritin-D (loratadine/pseudoephedrine sulfate) Tablets.	20–470
Tagamet HB (cimetidine hydrochloride) Tablets.	20–473
Ultane (sevoflurane) Inhalation.	20–478
Valtrex (valacyclovir hydrochloride) Caplets.	20–487
Corvert (ibutilide fumarate) Injection.	20–491
Amaryl (glimepriride) Tablets.	20–496
Actron (ketoprofen) Tablets/Caplets.	20–499
Proventil HFA (albuterol sulfate) Inhalation Aerosol.	20–503
Tiamate (diltiazem malate) Tablets.	20–506
Teczem (diltiazem malate/enalapril maleate) Tablets.	20–507
Lac-Hydrin (ammonium lactate) Cream.	20–508
Gemzar (gemcitabine hydrochloride) Injection.	20–509
Zantac (ranitidine hydrochloride) Tablets.	20–520
Mentax (butenafine hydrochloride) Cream.	20–524
Gyne-Lotrimin 3 (clotimazole) Vaginal Inserts.	20–525
Conjugated estrogens/Medroxyprogesterone acetate Tablets.	20–527
Mavik (trandolapril) Tablets.	20–528
Iontocaine (lidocaine/epinephrine) Topical Solution.	20–530
Metrocream (metronidazole) Cream.	20–531
Ivy-Block (quaternium-18 bentonite) Lotion.	20–532
Naropin (ropivacaine hydrochloride) Injection.	20–533
Nicotrol (nicotine) Transdermal System.	20–536
Arimidex (anastrozole) Tablets.	20–541
Dopamine hydrochloride in 5% Dextrose Injection.	20–542
Accolate (zafirlukast) Tablets.	20–547
Flovent (fluticasone propionate) Inhalation Aerosol.	20–548
Nimbex (cisatracurium besylate) Injection.	20–551
Oxycontin (oxycodone hydrochloride) Tablets.	20–553
Dovonex (calcipotriene) Cream.	20–554
Axid AR (nizatidine) Tablets.	20–555
Tritec (ranitidine bismuth citrate) Tablets.	20–559
Humalog (insulin lispro) Injection.	20–563
Epivir (lamivudine) Tablets.	20–564
Vitrasert (ganciclovir) Implant.	20–569
Camptosar (irinotecan hydrochloride) Injection.	20–571
Buphenyl (phenylbutyrate sodium) Tablets.	20–572
Buphenyl (phenylbutyrate sodium) Oral Powder.	20–573
Lidocaine Transoral Delivery System.	20–575
Cystadane (betaine) Oral Powder.	20–576
Elliotts B Solution	20–577
Zoladex (goserelin acetate) Implant.	20–578
Lodine (etodolac) Tablets.	20–584
Risperdal (risperidone) Oral Solution.	20–588
Children's Advil (ibuprofen) Oral Suspension.	20–589
Tarka (trandolapril/verapamil hydrochloride) Tablets.	20–591
Zyprexa (olanzapine) Tablets.	20–592
Epivir (lamivudine) Oral Solution.	20–596
Xalatan (latanoprost) Ophthalmic Solution.	20–597
Rilutek (riluzole) Tablets.	20–599
Jr. Strength Motrin (ibuprofen) Caplets.	20–602
Children's Motrin (ibuprofen) Oral Drops.	20–603
Serostim (somatropin) for Injection.	20–604
Alphagan (brimonidine tartrate) Ophthalmic Solution.	20–613
Clonidine hydrochloride Injection.	20–615
Kadian (morphine sulfate) Capsules.	20–616
Allegra (fexofenadine hydrochloride) Capsules.	20–625
Invirase (saquinavir) Capsules.	20–628
Denavir (penciclovir) Cream.	20–629

Drug	Application Number
Ultiva (remifentanil hydrochloride) Injection.	20–630
Morphine Sulfate Injection.	20–631
Viramune (nevirapine) Tablets.	20–636
Gliadel Wafer (polifeprosan 20 with carmustine) Implant.	20–637
Tavist-D (clemastine fumerate/phenylpropanolamine hydrochloride) Tablets.	20–640
Claritin (loratadine) Syrup.	20–641
Eldepryl (selegiline hydrochloride) Capsules.	20–647
Norvir (ritonavir) Oral Solution.	20–659
Albenza (albendazole) Tablets.	20–666
Hycamtin (topotecan hydrochloride) Injection.	20–671
Norvir (ritonavir) Capsules.	20–680
Crixivan (indinavir sulfate) Capsules.	20–685
Dexferrum (iron dextran) Injection.	40–024
Blenoxane (bleomycin sulfate) for Injection.	50–443/S–025
Maxipime (cefepime hydrochloride) for Injection.	50–679
Daunoxome (liposomal daunorubicin) Injection.	50–704
Merrem (meropenem) Injection.	50–706
Doxil (liposomal doxorubicin) Injection.	50–718
Augmentin (amoxicillin/clavulanic acid) Tablet.	50–720
Biaxin (clarithromycin) Tablets.	50–721
Abelcet (amphotericin B lipid complex) Injection.	50–724/S–002
Augmentin (amoxicillin/clavulanate potassium) Oral Suspension.	50–725
Augmentin (amoxicillin/clavulanate potassium) Tablets.	50–726
Zithromax (azithromycin) Tablets.	50–730

As part of its review of each of the NDA's, ANDA's, and supplements listed in this table, FDA reviewed an EA. In each instance, FDA found that the approval of the NDA, ANDA, or supplement will not significantly affect the human environment. In accordance with the Council on Environmental Quality regulations in 40 CFR 1501.4(e) and FDA regulations in § 25.32, FDA prepared a FONSI for each NDA, ANDA, and supplement. This notice announces that the EA's and FONSI's for these human drug products may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. For a fee, copies of these EA's and FONSI's may be obtained by writing the Freedom of Information Staff (address above). The request should identify by the application number the EA's and FONSI's requested. Separate requests should be submitted for each application number. For additional information regarding the submission of freedom of information requests, call 301–443–6310.

Dated: April 21, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–10911 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Now What Software, San Francisco, California. The purpose of the CRADA is to jointly research and develop earth-science related mapping products for commercial distribution. Any other organization interested in pursing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet ''ebrunson@usgs.gov''.

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: April 14, 1997.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 97–10789 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[HE–952–9911–01–24 1A; OMB Approval Number 1004–NEW]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On December 19, 1996, BLM published a notice in the **Federal Register** (61 FR 67059) requesting comments on this proposed collection. The comment period ended on February 18, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Helium distribution contracts. (30 CFR 602).

OMB approval number: 1004–NEW.

Abstract: The Bureau of Land Management is proposing to reinstate, with changes, the approval of an information collection for the regulations at 30 CFR 602 dealing with helium distribution contracts and two forms connected with collecting information from holders of Federal helium distribution contracts. That rule describes the requirements for distributing helium and for reporting sales and other distribution of helium. Form 6–1575–A, Stocks, Receipts and Distribution, requires helium distributors to disclose information about their stocks of helium, and Form 6–1580–A, Certificates of Resale of BLM Helium, requires that helium distributors certify the resale of helium.

Bureau Form Number: Form 6–1575–A, Stocks, Receipts and Distribution.

Frequency: Annual.

Description of Respondents: Respondents are holders of approved helium distribution contracts. These contracts allow qualified entities to store and to resell federal helium. Estimated completion time: 15 minutes per response.

Annual Responses: 75.

Annual Burden Hours: 18.5.

Bureau Form Number: Form 6–1580–1, Certificates of Resale of BLM Helium.

Frequency of Collection: Annual.

Description of Respondents: Respondents are holders of approved helium distribution contracts, which allow qualified entities to store and resell Federal helium. Estimated completion time: 15 minutes per response.

Annual Responses: 75.

Annual Burden Hours: 18.5.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: April 9, 1997.

Carole Smith,

Information Collection Officer.

[FR Doc. 97–10790 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–02–24 A; OMB Approval Number 1004–0165]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below on behalf of the Department of the Interior to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction act (44 U.S.C. 3501 *et seq.*) On April 2, 1996, BLM published a notice in the **Federal Register** (61 FR 14576) requesting comment on this proposed collection. The comment period ended on June 3, 1996. BLM received no comment(s) from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0165), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Department of the Interior land management agencies, including whether the information will have practical utility;

2. The accuracy of the estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Cave Management (43 CFR 37).

OMB approval number: 1004–0165 (combines expired information collection numbers 1004–0165 and 1004–0166).

Abstract: The Bureau of Land Management, on behalf of the Department of the Interior, is proposing to renew the approval of an information collection for a existing rule at 43 CFR 37. That rule implements the Federal Cave Resources Protection Act of 1988 (102 Stat. 4546, 16 U.S.C. 4301) which requires identification, protection, and maintenance, to the extent practical, of significant caves on lands managed by the Department of the Interior.

Bureau Form Number: None.

Frequency: Once.

Description of Respondents: Respondents are generally limited to individual cavers or caving and speleological organizations. Response is voluntary.

Estimated Completion Time: 3 hours for cave nominations and one-half hour for confidential information requests.

Annual Responses: 50 cave nominations and 10 confidential information requests.

Annual Burden Hours: 155 hours.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: April 9, 1997.

Carole Smith,

Information Collection Officer.

[FR Doc. 97–10791 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–1020–00]

Notice of Meeting of the Lewistown District Resource Advisory Council

SUMMARY: The Lewistown District Resource Advisory Council will meet May 15 and 16, 1997 in Havre, Montana.

The May 15 portion of the meeting will begin at 7:30 a.m. and consist of a tour of various recreation sites along the Upper Missouri National Wild and Scenic River. The council should return to Havre by about 7:30 p.m.

The May 16 portion of the meeting will begin at 8 a.m. in the meeting room of the First Bank, at 235 1st Street, in Havre. The council will hear updates concerning several topics of old business including the BLM law enforcement regulations, the Sweet Grass Hills withdrawal, and re-submitted revisions to the council charter. The council will also discuss the RAC nomination process, standards and guidelines revisions, off-road

vehicle regulations, a proposed land exchange, proposed range improvements, and the Mixed Grass Prairie ACEC nomination.

There will be a public comment period at 11:30 a.m. during the May 16 meeting.

The meeting should adjourn around 4 p.m.

DATES: May 15 and 16, 1997.

LOCATION: First Bank, 235 1st Street, Havre, Montana.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District Office, Bureau of Land Management, P.O. Box 1160, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The May 16 portion of this meeting is open to the public and there will be a public comment period as detailed above.

Dated: April 18, 1997.

David L. Mari,

District Manager.

[FR Doc. 97–10797 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 82330]

Withdrawal of Public Mineral Estate Within the Sweet Grass Hills Area of Critical Environmental Concern and Surrounding Areas; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects information in Public Land Order No. 7254 published in FR Doc. 97–9222, April 10, 1997, page 17634, as follows:

1. The legal description in the first column, line 19, which reads ''Sec. 2, lots 5 to 8, inclusive, and S½SE¼'', is corrected to read, ''Sec. 2, lots 5 and 6, and S½SE¼'';

2. The legal description in the second column under T. 36 N., R. 5 E., ''Sec. 20, lots 1 to 5, inclusive, N½, and N½SE¼'', is corrected to read, ''Sec. 20, lot 1, lots 5 to 8, inclusive, N½, and N½SE¼''; and

3. Due to the lot adjustments in paragraph 2, the acreage under **SUMMARY** and at the top of column 3 shown as ''19,685'', is corrected to read, ''19,687''.

The adjustments to these lot numbers and the acreage are due to a resurvey to restore mineral survey corners.

Dated: April 18, 1997.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 97–10801 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1430–01; NVN 062268]

Notice of Realty Action; Termination of Recreation and Public Purposes Act Classification; Lyon County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purposes (R&PP) Classification N 062268 in its entirety. The land will be opened to the public land laws, including the mining laws.

EFFECTIVE DATE: The land will be open to entry effective 10 a.m. on May 28, 1997.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Bureau of Land Management, Carson City District, 1535 Hot Springs Road, Carson City, Nevada 89706, 702–885–6000.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, R&PP Classification N 062268 is hereby terminated in its entirety on the following described public land:

Mount Diablo Meridian, Nevada

T. 14 N., R. 26 E.,
Sec. 36, S½NW¼NE¼, N½SW¼NE¼.
Containing 40.00 acres.

The classification made pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. The land was previously leased to Lyon County for a sanitary landfill. The lease has expired and the classification no longer serves any purpose.

At 10 a.m. on May 28, 1997, the land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on May 28, 1997, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on May 28, 1997, the land will also be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: April 15, 1997.

Daniel L. Jacquet,

Acting Assistant District Manager, Non-Renewable Resources.

[FR Doc. 97–10798 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Minerals Management Service Public Meeting on New Royalty-In-Kind Project

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Minerals Management Service (MMS) will hold a one-day public meeting to discuss new ways to further utilize Federal royalty-in-kind (RIK) gas programs onshore. The meetings will be open to the public without advance registration. Public attendance may be limited to the space available.

DATES: The meeting will be held on May 14, 1997, 9:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the following location: Holiday Inn—Animas Room, 600 E. Broadway, Farmington, NM 87401, (505)327–9811.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Smith, Minerals Management Service, P.O. Box 25165, Mail Stop 9130, Denver, CO, 80401, telephone number (303) 275–7102, fax (303) 275–7124; e-mail Greg__Smith@.MMS.GOV or contact Mr. Jim McNamee at the same address and fax, telephone number (303) 275–7126, e-mail James__McNamee@.MMS.GOV.

COMMENTS: Written comments on the meetings or the issues discussed below should be addressed to Mr. Greg Smith at the address given in the **FURTHER INFORMATION** section.

SUPPLEMENTARY INFORMATION: MMS conducted a Royalty Gas Marketing Pilot in 1995 in the Gulf of Mexico. The MMS sold its royalty gas to competitively selected gas marketers. The MMS had two objectives in conducting the pilot: (1) Streamline royalty collections, and (2) Test a process which could result in increased efficiency and greater certainty in valuation.

MMS' assessment of the gas RIK pilot indicated that it was an operational success, proving that the concept of MMS taking and selling royalty gas in-kind is feasible. However, MMS' analysis of the gas RIK revenues, as compared to in-value royalties paid and administrative savings realized, was not favorable to MMS.

Congress has directed MMS to consider additional projects for taking oil and/or gas in-kind. MMS is currently considering a variety of RIK scenarios that would build on lessons learned from the 1995 Royalty Gas Marketing Pilot. Any further RIK projects undertaken by MMS would be intended to address specific operational and revenue issues necessary before any longer-term implementation. The objectives of the proposed RIK options are to:

- Simplify the royalty collection process;
- Decrease administrative costs for both MMS and industry;
- Realize fair and equitable market value for the products;
- Provide certainty in royalty valuation; and
- Decrease administrative burdens and litigation.

At the public meeting, MMS will present several specific options for taking RIK on a project/test basis. MMS will solicit public input at the meetings on the workability of these option(s). The issues that MMS would like to discuss at the meetings are presented below. The listing of issues in not necessarily complete but will be used as a starting point for the meetings.

1. Mandatory or voluntary participation;
2. Areas/leases to be selected for RIK projects;
3. Types of gas to be taken in-kind (e.g., conventional, coalbed methane);
4. Aggregation of royalty volumes;
5. Delivery points for RIK production: at the lease or various points away from the lease (e.g., first mainline interconnect, gas plant inlet, gas plant tailgate);
6. Transportation responsibility away from the lease (e.g., MMS, marketer, or lessee);
7. Pricing indicators to be used to assure a fair and equitable price for RIK production as well as certainty of price to industry;
8. Requirements to be placed on lessees (e.g., marketable condition, data submitted to MMS, coordination with purchasers); and
9. Requirements to be placed on purchasers (e.g., transportation of product away from the lease, data required by MMS, coordination with lessees, balancing, contract provisions concerning breach, payment terms).

MMS will more fully develop the RIK option(s) before the public meeting. Interested parties may request this information from the contacts listed in the **FURTHER INFORMATION** section.

Dated: April 21, 1997.

Robert E. Brown,

Acting Associate Director, Policy and Management Improvement.

[FR Doc. 97–10784 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on February 10, 1997. The February 10, 1997, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–236–1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954*, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in *47 FR 7763*, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1997. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.
2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.
3. Written correspondence regarding proposed contracts may be made

available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(R&B) Rehabilitation and Betterment
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(NEPA) National Environmental Policy Act
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

The following contract actions are either new, modified, discontinued, or completed in the Bureau of Reclamation since the February 10, 1997, **Federal Register** notice.

Pacific Northwest Region

Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

New Contract Actions

27. The Dalles ID, The Dalles Project, Oregon: Amendatory SRPA loan repayment contract to modify the repayment schedule, including extension of repayment period from 30 to 34 years.

Modified Contract Actions

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

10. U. S. Fish and Wildlife Service and Boise-Kuna ID, Boise Project, Idaho: Memorandum of Agreement for the use of approximately 400 acre-feet of storage space annually in Anderson Ranch Reservoir. Water to be used for wildlife mitigation purposes (ponds and wetlands).

12. Willamette Basin Water Users, Willamette Basin Project, Oregon: One water service contract for the exchange of up to 112 acre-feet of water for diversion above project reservoirs. (Executed one exchange contract on January 16, 1997).

24. J. R. Simplot Company and Micron Technology, Inc., Boise Project, Idaho: Long-term contract for 3,000 acre-feet of Anderson Ranch Reservoir storage for M&I use.

25. Eagle Island Water Users Association, Inc., Boise Project, Idaho: Amendment and partial recision of water service contract to reduce the Association's spaceholding in Lucky Peak Reservoir by approximately 5,300 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

Contract Actions Discontinued

6. Ochoco ID and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Arthur R. Bowman Dam.

Contract Actions Completed

12. Willamette Basin Water Users, Willamette Basin Project, Oregon: One water service contract for the exchange of up to 112 acre-feet of water for diversion above project reservoirs. (Executed one exchange contract on January 16, 1997).

22. Burley ID, Minidoka Project, Idaho: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–979–2401.

New Contract Actions

23. East Bay Municipal Utility District, CVP, California: Amendment to the long-term water service contract No. 14–06–200–5183A, to change the points of diversion.

24. Madera ID, Lindsay-Strathmore ID, and Delta Lands Reclamation District No. 770, CVP, California: Execution of 2- to 3-year Warren Act contracts for conveyance of nonproject water in the Friant-Kern and/or Madera Canals when excess capacity exists.

25. Solano County Water Agency, Solano Project, California: Renewal of water service contract No. 14–06–200–4090, which expires February 28, 1999.

26. Reno, Sparks, and Washoe County; Washoe and Truckee Storage Projects; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and consistent with the terms and conditions of the Truckee River Water Quality Settlement Agreement.

27. Sierra Pacific Power Company; Washoe and Truckee Storage Projects; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and consistent with the terms and conditions of the proposed Truckee River Operating Agreement.

Contract Actions Modified

8. El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contracts to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Pub. L. 101–514.

18. Santa Clara Valley WD, CVP, California: Agreement for the conditional reallocation of a portion of Santa Clara Valley WD's annual CVP contract water supply to San Luis and Delta-Mendota Water Authority members. The purpose of the conditional reallocation is to improve overall management and establish more reliable water supplies without imposing additional demands or operational changes upon the CVP.

20. Santa Barbara County Water Agency, Cachuma Project, California: Contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units.

21. Stony Creek WD, Black Butte Dam and Lake, Sacramento River Division, CVP, California: A proposed amendment of Stony Creek WD's water service contract No. 2–07–20-W0261, to allow the Contractor to change from paying for all Project water, whether used or not, to paying only for Project water scheduled or delivered and to add another month to the irrigation period.

22. M&T, Inc., Sacramento River Division, CVP, California: A proposed exchange agreement with M&T, Inc., to take its Butte Creek water rights water from the Sacramento River in exchange for CVP water.

Contract Actions Completed

13. Napa County Flood Control and Water Conservation District, Solano Project, California: Amend water service contract to decrease quantity.

Action: Contract No. 14–06–200–1290A executed on February 25, 1997.

Lower Colorado Region

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New Contract Actions

57. Berneil Water Co., CAP, Arizona: Subcontracts associated with partial assignment of water service to the City of Scottsdale and Cave Creek Water Company.

58. Tohono O'odham Nation, CAP, Arizona: Repayment contract for construction costs associated with distribution system on Central Arizona Irrigation and Drainage District.

59. Tohono O'odham Nation, Arizona: Contracts for Schuk Toak and San Xavier Districts for repayment of Federal expenditures for construction of distribution systems.

60. Arizona State Land Department, Arizona: Water delivery contract for delivery of up to 9,000 acre-feet per year of unused apportionment and surplus Colorado River water.

61. Mr. Don Schuler, BCP, California: Proposed short-term delivery contract for surplus and/or unused apportionment Colorado River water for domestic and industrial use on 18 lots of recreational homes in California.

Contract Actions Modified

10. Holpal Miscellaneous Perfected Right, BCP, Arizona: Assign a portion of the PPR to McNulty et. al., for PPR water entitlement on Decree-described lands previously owned by Hopal.

34. San Diego County Water Authority, San Diego, California, San Diego Project: Title transfer to Barrel 1 of the San Diego Aqueduct composed of over 70 miles from its connection with the Colorado River Aqueduct near the west portal of the San Jacinto Tunnel in Riverside County, and Barrel 2 of the San Diego Aqueduct, composed of over 154 miles of pipeline, 94 miles of which extends from the Colorado River Aqueduct near Hemet, in Riverside County to Lower Otay Reservoir, and approximately 59.7 miles of which extends from the Colorado River Aqueduct near Hemet to Alvarado Treatment Plant near Lake Murray.

42. Salt River Project Inc., Salt River Project, Arizona: Change funding agreement to repayment contract for SOD construction activities at Horse Mesa Dam and Mormon Flat Dam.

Contract Actions Completed

28. City of Scottsdale and other M&I water subcontractors, CAP, Arizona: Subcontract amendments associated with assignment of M&I water service subcontracts from Camp Verde Water System, Inc., Cottonwood Water Works, Inc., Mayer Domestic Water Improvement District, City of Nogales, Rio and Rico Utilities', Inc., to provide the City of Scottsdale with an additional 17,823 acre-feet of CAP water.

31. Chandler Heights Citrus ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30–W0119 to increase the repayment obligation approximately $114,000.

33. Arizona Sierra Utility Company, CAP, Arizona: Assignment to the Town of Florence of 407 acre-feet of CAP M&I water allocation under subcontract from Central Arizona Water Conservation District.

45. Arizona State Land Department/City of Scottsdale, CAP, Arizona: Amend ASLD's CAP water service subcontract to decrease CAP water entitlement by 530 acre-feet.

46. Brooke Water Co., LLC, CAP Arizona: Assignment of subcontract for M&I water service to City of Apache Junction.

47. Canada Hills Water Co., CAP, Arizona: Assignment of subcontract for M&I water service to Town of Oro Valley.

Upper Colorado Region

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New Contract Actions

1.(c) Dr. Henry Estess: Wayne N. Aspinall Unit, CRSP, Colorado: Contract for 30 acre-feet of M&I water from Blue Mesa Reservoir for augmentation to replace evaporative losses from a fishery/wildlife area on his property.

1.(d) Crested Butte South Metropolitan District: Aspinall Unit, CRSP, Colorado: Contract for 13 acre-feet for domestic, municipal, and irrigation (including irrigation of lawns and golf course).

21. Country Aire Estates, Forrest Groves Estates, and Los Ranchitos, Florida Project, Colorado: Water service contracts for a total of 86 acre-feet annually of domestic water as replacement water in State of Colorado approved augmentation plans. The water supply for these contracts are flow rights purchased and owned by the United States for project development and are not specifically a part of the project water supply.

Contract Actions Completed

1.(a) Castle Mountain Ranches L.L.C., Wayne N. Aspinall Unit, CRSP, Colorado: Contract for 30 acre-feet of M&I water from Blue Mesa Reservoir for domestic, municipal, and irrigation (including irrigation of laws and golf courses).

1.(b) VanDeHey, Vernon and Linda, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot for augmentation plan to replace the consumptive use of water for domestic and industrial use only.

12. Salt Lake County Water Conservancy District and Central Utah Water Conservancy District, CUP, Utah: Contract to provide the Bureau of Reclamation with perpetual use of 7,900 acre-feet of water annually for storage in the Jordanelle Reservoir.

Great Plains Region

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

New Contract Actions

27. Lower Marias Unit, P–SMBP, Montana: Water service contract expires June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres.

28. Lower Marias Unit, P–SMBP, Montana: Initiating 25-year water service contract for up to 750 acre-feet of storage from Tiber Reservoir to irrigate 250 acres.

Contract Actions Modified

1. Individual Irrigators, M&I, and Miscellaneous Water Users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term up to 1 year.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Negotiation of water service and repayment contracts for approximately 17,000 acre-feet annually for M&I use; contract with Colorado Water Conservation Board for remaining 21,650 acre-feet of marketable yield for interim use by U.S. Fish and Wildlife Service for benefit of endangered fishes in the Upper Colorado River Basin.

12. Enders Dam, Frenchman-Cambridge Division, Frenchman Unit, Nebraska: Repayment contract for proposed SOD modifications to Enders Dam for repair of seeping drainage features. Estimated cost of the repairs is $632,000. Approval has been obtained to modify the repayment period of the SOD costs for up to 10 years.

17. Canyon Ferry Unit, P–SMBP, Montana: Water service contract with Montana Tunnels Mining, Inc., expires June 1997.

Contract Actions Discontinued

11. Angostura ID, Angostura Unit, P–SMBP, South Dakota: The District's current contract for water service expired on December 31, 1995. An interim 3-year contract provides for the District to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the District and the District's continued O&M of the facility.

Dated: April 21, 1997.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 97–10880 Filed 4–25–97; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–26]

Leonel Tano, M.D.; Revocation of Registration

On March 7, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, (DEA), issued an Order to Show Cause to Leonel Tano, M.D., (Respondent) of San Antonio, Texas, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AT7513282, and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for reason that his continued registration would be inconsistent with the pubic interest pursuant to 21 U.S.C. 824(a)(4). The Order to Show Cause also asserted as a basis for the proposed action pursuant to 21 USC 824(a)(1), Respondent's material falsification of an application for registration.

By letter dated May 3, 1995, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Austin, Texas on December 12 and 13, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Ultimately, the alleged falsification was not pursued as an independent basis for revocation and instead was considered as part of the overall public interest issue. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On September 17, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on October 18, 1996, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent is a physician who has maintained a general practice in San Antonio, Texas since 1978. Respondent testified that he practices in a low income neighborhood and that ninety percent of his patients has been seeing him for sixteen or seventeen years.

In 1987, DEA conducted a routine inspection of a local narcotic treatment program. During that inspection, it was learned that some of the clients in the program had tested positive for controlled substances, other than methadone, including Valium, Darvon, Xanax, and Phenephan with codeine, and that they admitted receiving the prescriptions for those substances from Respondent.

Subsequently, in August 1990, the Texas State Board of Medical Examiners (Board) entered an Order, which was agreed to by Respondent, that found that Respondent prescribed controlled substances, including Xanax, Halcion, Darvocet N-100, Restoril and Valium to two individuals who were in a methadone treatment program. The Board found that as a result, Respondent was subject to disciplinary action pursuant to Texas Health & Safety Code Art. 4495b, section 3.08(4)(C) for ''writing prescriptions for a dispensing to a person known to be a habitual user of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was a habitual user of the narcotic drugs, controlled substances or dangerous drugs.'' It should be noted that the statute also provides that the section ''does not apply to those persons being treated by the physician for their narcotic use after the physician notifies the board in writing of the name and address of the person so treated.'' Respondent apparently did not provide such notice to the Board. Therefore, the Board ordered, among other things, that Respondent ''shall not prescribe or dispense controlled substances to any known drug abuser, including methadone patients.''

At the hearing in this matter, Respondent testified that his problems with the Board began when ''somebody'' came to his office and asked if he was treating any patients who were taking methadone. According to Respondent, he told the person that for the last two or three years he had been treating two patients he knew were on methadone. Respondent testified that he did not believe that his actions warranted restrictions being placed on his medical license by the Board, but instead, he should have been reprimanded or advised about the limitations on prescribing to methadone patients.

In September 1990, DEA conducted a routine inspection of a local narcotic treatment program. During the course of the inspection, the program's director noted that several of the program's patients had tested positive for controlled substances other than methadone, and that some of the

patients stated that they had received the prescriptions for the controlled substances from Respondent.

Thereafter, in January 1992, DEA initiated an undercover investigation of Respondent's controlled substance handling practices. On January 9, 1992, a cooperating individual introduced an undercover DEA task force officer to K.B. who had obtained controlled substances from Respondent in the past. The officer's true identity was not revealed to K.B. The officer and K.B. then went to Respondent's office. K.B. filled out a form, telling the officer that she knew what to put down on the form in order to get Xanax, however that form is not in evidence in this proceeding. When he saw Respondent, the officer asked for Xanax, but it is unclear from the officer's testimony what reason, if any, was given for wanting the drug. Respondent asked the officer whether he was an alcoholic or drug abuser, and whether he knew that Xanax was addictive. Respondent performed a cursory physical examination and then issued the officer a prescription for 30 dosage units of Xanax. The Government does not contend that this prescription, in and of itself, was improper.

The officer returned to Respondent's office on February 7, 1992, this time accompanied by another undercover DEA task force officer. On this occasion, the undercover officers represented that they were truck drivers. The first officer asked Respondent for a prescription for 60 dosage units of Xanax, but Respondent gave him a prescription for forty dosage units instead, saying that it would be too risky to prescribe a larger quantity. After writing the prescription, Respondent then performed a cursory physical examination, not asking the officer any questions about his medical history or current problems.

A nurse took the second officer's weight and blood pressure. The officer told Respondent that he was having trouble meeting his work deadlines because he frequently had to stop to eat and rest, so he asked for something that could keep him awake and something that could bring him back down when he finished driving. The officer also told Respondent that he was constantly hungry and needed to stop too frequently to eat. He told Respondent that he had been buying drugs at truck stops. At the hearing in this matter the second officer testified that he always needed to lose weight, but that he and Respondent did not discuss any weight problems. Respondent issued the officer prescriptions for 30 dosage units of Zantryl (brand name for a product containing phentermine) and 25 dosage units of Xanax, both Scheduled IV controlled substances. Respondent testified at the hearing that he prescribed the Zantryl to the officer because it is an appetite suppressant and the officer had stated that he was a compulsive eater and was overweight, and that he prescribed the Xanax to calm him down at the end of the day.

On February 26, 1993, a third undercover DEA task force officer went to Respondent's office. On the patient history form, the officer listed her complaints as headache, back pain, and weight gain. She indicated to Respondent that she was tired and that she had gained five pounds. When Respondent asked her what was wrong with her, she replied, ''I am tired, bored, no energy to do anything. I was falling asleep outside while waiting.'' At some point during the visit, the undercover officer began crying. Respondent issued the officer a prescription for a non-controlled antidepressant. As to her headaches, the officer told Respondent that Tylenol did not help her. Respondent then issued a prescription for Fiorinal, a Schedule III controlled substance. The Government does not contend that these prescriptions were illegitimate.

The officer returned to Respondent's office on March 26, 1993. During this visit she asked Respondent for phentermine, which Respondent refused stating that she was not overweight. Respondent issued the officer another prescription for the non-controlled antidepressant, since according to Respondent, the officer appeared ''anxious or down.'' The officer next went to Respondent's office on April 15, 1993. She told Respondent that the drugs that he had previously prescribed for her were not strong enough. Respondent advised the officer not to purchase drugs on the street, because she would not know what she was buying. Respondent then prescribed the officer a non-controlled substance and 20 dosage units of Xanax. Respondent told the officer to take one Xanax per day and if that did not help to take two, but to try not to take it at all. Respondent also told the officer to take the Xanax only if she needed it to sleep, not to relax.

The officer's fourth undercover visit was on April 28, 1993. The day before, the officer, while acting in an undercover capacity, attempted to purchase Xanax from an individual on the street. The individual stated that he did not have any Xanax, but that he could get some from Respondent. The officer and the individual went to Respondent's office together on April 28, 1993. The officer saw Respondent first. She asked Respondent for more Xanax, and Respondent asked her if she wanted it to help her sleep. The officer responded affirmatively, and then Respondent said he would give her ''something else,'' because ''they don't want us to write Xanax.'' There was then some discussion about giving the officer Valium or Restoril, both Schedule IV controlled substances, but instead Respondent gave the officer three sample packages each containing two tablets of Halcion, also a Schedule IV controlled substance. Before leaving the examination room, the officer asked Respondent if she could buy some Xanax from him since she could not buy it on the streets. Respondent stated. ''I don't know how much they charge,'' but refused to sell it to her. The individual who had accompanied the officer then went into the examination room. The officer stood outside the room listening to the individual's conversation with Respondent. Respondent told the individual that he could not write any prescriptions for Xanax because he was being investigated. After some discussion, it was decided that Respondent could issue the individual a prescription since Respondent had not seen him in a while. The individual offered Respondent $25.00 and Respondent then wrote a prescription which turned out to be for 30 dosage units of diazepam 10 mg. (the generic form of Valium), not Xanax. Respondent testified at the hearing in this matter that he confronted the officer about not seeing a psychiatrist as he had recommended and was confused by the officer's requests for different drugs at different visits. Respondent did not offer any explanation for the diazepam prescription issued for the individual on this occasion.

This officer made her final undercover visit on June 30, 1993. The officer indicated that nothing was wrong with her, that she had not gone to see a psychiatrist, and that she had finished the drugs he had given her a long time ago. The officer offered to buy Xanax from Respondent, but Respondent told her that he could not write a prescription, and that she would have to see a psychiatrist. Nonetheless, Respondent wrote the officer a prescription for 25 tablets of Xanax.

Finally, a fourth undercover DEA task force officer made two visits to Respondent's office. The officer testified that when he first went to Respondent's office on October 15, 1993, the nurse would not let him see Respondent unless he indicated that something was wrong with him, so he put down on the medical history form that he had bad headaches. However, when he saw Respondent, he indicated that he had

headaches a long time ago, but was now trying to get off Vicodin (a Schedule III controlled substance containing hydrocodone). The officer also told Respondent that he used to use marijuana, but not anymore. Respondent testified that he was suspicious that the officer had Medicaid coverage since ''he looked a healthy person to me.'' Respondent wrote a prescription for the officer for 20 dosage units of hydrocodone with APAP, and told him ''don't take it if you don't need it,'' and ''don't give this to anybody.'' Respondent testified at the hearing in this matter that he prescribed the hydrocodone to the officer in case he had headaches in the future, and that he did not think that the officer was addicted to Vicodin. Respondent also testified that ''I wouldn't call Vicodin a narcotic.''

The officer returned to Respondent's office on October 21, 1993. During this visit, the officer indicated that was not having headaches, but that he was going out of town and did not want to be ''short of pills.'' Respondent continued to be suspicious of the officer's Medicaid coverage. Respondent issued the officer a prescription for 25 tablets of Vicodin and told him to ''[t]ry not to take these things if you don't need them.'' The officer then asked Respondent for some Xanax. Respondent refused, offering to give him something else. Respondent stated that, ''[t]here are a lot of problems with Xanax.'' The officer next offered to buy some Xanax from Respondent, but again Respondent refused, saying, ''they check on everything.'' Respondent testified at the hearing that the officer's insistence on obtaining Xanax caused him to suspect that the officer was seeking the drug for other than medical purposes.

In addition to the undercover visits, DEA's investigation of Respondent included a review of the records of three local narcotic treatment programs to determine whether Respondent had continued to treat methadone patients with controlled substances after the Board's 1990 order precluding him from doing so. The records of one program showed that Respondent issued a total of 29 controlled substance prescriptions to 21 different patients between February 1991 and January 1994. The records from the second program indicated that Respondent prescribed controlled substances a total of 52 times to six different patients between September 1990 and January 1994. Finally, the third program's records showed that Respondent prescribed controlled substances a total of 50 times to 18 patients between January 1991 and February 1994. Except for five of these patients, it is unclear whether Respondent knew that he was prescribing controlled substances to individuals undergoing methadone treatment.

Respondent testified at the hearing that while he had never received notification from the Board that the order restricting his medical license had expired or been modified, he had received copies of a form letter from the program director of one of the narcotic treatment programs which he believed justified his prescribing of controlled substances to individuals undergoing methadone treatment. This letter, dated September 30, 1992, and addressed to ''Dear Colleague'', was to be provided by a client of the program to a physician who prescribed the client controlled substances, if the client tested positive for drugs other than methadone. The letter states that the bearer is in a methadone maintenance treatment program and explains the effect of methadone maintenance treatment and considerations in treating methadone patients with drugs for other conditions.The letter advises the prescribing physician that state law requires that methadone patients provide documentation to the narcotic treatment program from the prescribing physician as to the necessity of the prescription and that the prescribing physician is aware that the patient is receiving methadone treatment. The letter specifically states that, ''[t]he intention of the regulation is not to restrict physicians in the exercise of their professional judgment in the practice of medicine but to require [methadone maintenance] patients to inform other physicians of this information which is vital to the prescribing physician.''

Respondent testified that approximately 15 of his patients presented him with a copy of this letter, and that he continued treating four of them because they had been longtime patients. Respondent admitted that he signed notes for these four patients saying that he knew that they were on methadone. Respondent further testified that he did not think that his prescribing of controlled substances to the patients on methadone in any way violated the standard of care, because he did not increase the dosages and some of the patients ''got into trouble with the law.''

Notwithstanding the Board's order precluding Respondent's prescribing of controlled substances to methadone patients, as discussed above, Texas law precludes such prescribing unless the physician notifies the Board in writing of the name and address of the patient that the physician is treating for narcotic use. The Government introduced into evidence an affidavit dated November 28, 1995, from the Board's Assistant Custodian of Records stating that the Board had no records indicating that Respondent had notified the Board of the name and address of any person he was treating for his or her narcotic use.

Respondent testified at the hearing that he never knowingly violated any standards of care with respect to prescribing for patients who were in methadone treatment programs; that he has never caused a patient to become addicted to any medication; that he was never a ''heavy writer'' of prescriptions, but that he has nonetheless become more cautious; and that in the past five years, he has refused to treat patients he thought were abusing drugs unless they agreed to a urinalysis.

On November 30, 1994, Respondent executed an application for renewal of his DEA Certificate of Registration. On this application, he answered ''No'' to a question asking, among other things, if he ''ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?'' During a discussion on March 22, 1995, a DEA investigator asked Respondent whether his medical license had ever been suspended or had any other action taken against it. Respondent answered that no such action had been taken. At the hearing in this matter, Respondent did not offer any explanation for the response on his 1994 renewal application or his representations to the DEA investigator.

The Government contends that Respondent's registration should be revoked based upon his prescribing of controlled substances to the undercover officers; his violation of the Board's 1990 order not to prescribe controlled substances to methadone treatment patients; and his falsification of his 1994 renewal application for DEA registration. Respondent contends that his registration should not be revoked because he did not engage in any misconduct serious enough to warrant restricting his authority to handle controlled substances; that questions of medical judgment are not within the purview of this forum and should be decided by the state medical board; and that he does the best he can practicing in a ''war zone'' of drug activity.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f)

requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

Regarding factor one, in August 1990, the Board restricted Respondent's license to practice medicine by prohibiting him from prescribing or dispensing controlled substances to any known drug abuser, including methadone patients. There is no evidence in the record that the Board's order has been terminated or modified, and in fact, Respondent testified that as far as he knew, it was still in effect. The recommendation of the appropriate state licensing board is just one of the factors to be considered and is not dispositive of whether Respondent's continued registration is inconsistent with the public interest. Therefore, the Acting Deputy Administrator rejects Respondent's argument that consideration of the undercover visits should be left to the state medical board.

As to Respondent's experience in dispensing controlled substances, Judge Bittner concluded that, excluding the prescriptions issued on January 9, 1992, February 26, 1993, and March 26, 1993, the prescriptions that Respondent issued to the undercover officers were not for a legitimate medical purpose. Respondent issued prescriptions to the undercover officers with little, if any, discussion regarding the medical need for the drug, and with little or no physical examination. On one occasion the officer asked for 60 dosage units of Xanax, however Respondent only prescribed 40 dosage units noting that it would be ''too risky'' to prescribe more. On several occasions, Respondent issued the prescriptions even after the officers indicated that there was nothing wrong with them. Specifically, one officer, while noting on the patient history form that he suffered from headaches, told Respondent during his first visit that had suffered from headaches in the past, but was now trying to get off Vicodin. On his second visit, the officer stated that he was not having headaches. The only reason given by the officer for wanting Vicodin was that he was going out of town and he was ''short of pills.'' Nonetheless, Respondent issued the officer a prescription for 20 hydrocodone with APAP and six days later issued another prescription for 25 dosage units.

Not only did Respondent issue prescriptions to the undercover officers, but he also issued a prescription to another individual for no legitimate medical reason. Of particular note regarding this prescription is that Respondent at first refused to issue the individual a prescription stating that he (Respondent) was under investigation. Nevertheless, Respondent issued the individual a prescription for Xanax after the individual pointed out that he had not seen Respondent in a while.

Respondent asserts that he practices in a virtual ''war zone'' of drug activity. The Acting Deputy Administrator concludes that in light of this assertion, Respondent should have been all the more vigilant in ensuring that controlled substances were prescribed only for legitimate medical purposes. Instead, Respondent prescribed controlled substances to the officers even though he admitted that he was confused by their repeated requests for different drugs. Two of the officers asked to purchase Xanax from Respondent after he refused to prescribe it for them. Although Respondent refused to sell the officers Xanax, he nonetheless issued them prescriptions for other controlled substances. Respondent admitted during his testimony that he was suspicious of one of the officer's Medicaid coverage, since the officer appeared healthy. Respondent also admitted that he refused to issue this officer a prescription for Xanax because he was suspicious of the officer's request. Yet Respondent issued this officer prescriptions for hydrocodone, in case the officer had headaches in the future, even though the officer denied suffering from headaches. The Acting Deputy Administrator concludes that these are not actions of a DEA registrant who is trying to prevent controlled substances from being diverted. Instead, Respondent's prescribing during the undercover investigation demonstrates a disregard for his responsibilities as a DEA registrant.

Of equal concern to the Acting Deputy Administrator is Respondent's continued prescribing of controlled substances to methadone patients after the Board entered an order in 1990, specifically prohibiting such prescribing. As Judge Bittner noted, it is undisputed that ''between February 1991 and January 1994, Respondent prescribed controlled substances a total of 131 times to a total of forty-five patients who were clients of various methadone treatment programs.'' While Judge Bittner found it unclear whether Respondent knew or should have known that all of these individuals were in narcotic treatment, she did find the evidence clear that ''Respondent was aware of five such patients. * * *'' Respondent asserted that a form letter, presented to him by some of his patients, that was addressed to ''Dear Colleague'' from the program director of a local narcotic treatment program, constituted permission for Respondent to issue prescriptions for controlled substances to methadone treatment patients. Like Judge Bittner, the Acting Deputy Administrator finds no merit to this assertion. This letter was a form letter from a narcotic treatment program, not from the Board that had restricted his medical license. There is no evidence in the record that Respondent sought to ascertain from the Board whether he was permitted to issue such prescriptions.

The Acting Deputy Administrator is extremely troubled by the number of prescriptions that Respondent issued to narcotic treatment patients after the Board issued its order prohibiting such prescribing. The Acting Deputy Administrator agrees with Judge Bittner that the evidence in the record shows that Respondent only actually knew that five of these individuals were undergoing narcotic treatment. However, as Judge Bittner stated in her opinion, ''one would expect that after the Medical Board disciplined Respondent and restricted his medical license for prescribing controlled substances to addicts and habitual users, Respondent would have been especially careful to avoid engaging in that conduct again.''

Regarding factors three and four, the Acting Deputy Administrator finds that Respondent has no convictions under Federal or state law relating to controlled substances. However, between 1987 and 1990, Respondent violated the Texas Medical Practice Act by prescribing controlled substances to patients who were in methadone maintenance treatment. Respondent continued to prescribe controlled substances to such patients after the Board prohibited him from doing so in 1990. In addition, Respondent issued

prescriptions during the undercover investigation for no legitimate medical purpose in violation of 21 CFR 1306.04.

Finally, as to factor five, the Acting Deputy Administrator finds relevant Respondent's representation on his 1994 application for renewal of his DEA registration that his state medical license had not been restricted, when in fact the Board had restricted his license in 1990. As stated previously, ''[s]ince DEA must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated.'' *Bobby Watts, M.D.* 58 FR 46995 (1993). In addition, the Acting Deputy Administrator finds it significant that in 1995, when specifically asked by a DEA investigator whether any action had been taken against his state medical license, Respondent replied that no such action had been taken. Respondent has not offered any explanation for these misstatements.

Judge Bittner concluded that Respondent's continued registration would be inconsistent with the public interest at this time in light of his prescribing of controlled substances during the undercover investigation for no legitimate medical purpose; his prescribing of controlled substances to patients enrolled in methadone treatment programs that resulted in the Board's 1990 order restricting his medical license; his continued prescribing of controlled substances to at least several patients he knew were in methadone treatment programs after the Board prohibited such prescribing; and his false statements on his renewal application and to the DEA investigator regarding the Board's action against his medical license. Judge Bittner concluded that ''Respondent is not fully capable and/or willing to accept and carry out the responsibilities inherent in DEA registration. * * *'' The Acting Deputy Administrator concurs with Judge Bittner's findings and conclusions.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AT7513282, issued to Leonel Tano, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective May 28, 1997.

Dated: April 16, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–10781 Filed 4–25–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; 1997 sample survey of law enforcement agencies.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 20, 1997 at 62 FR 347799 allowing for a 60-day public comment period. No comments were received by the Bureau of Justice Statistics.

The purpose of this notice is to allow an additional 30 days for public comments until May 28, 1997. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, 1001 G Street, NW., Suite 850, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1590. Written comments and suggestions from the public and affected agencies regarding the items should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* 1997 Sample Survey of Law Enforcement Agencies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection. Forms:* CJ–44, CJ–44A. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Police and sheriff agencies operated by State, local or tribal government. *Other:* None. These forms will be used to collect administrative and management statistics from a nationally representative sample of State and local law enforcement agencies in the United States in order to provide basic information on their workload and resources.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,400 respondents at 1.27 hours per response. This includes 2 hours per response for 925 respondents to Form CJ–44 and 1 Hour per response for 2,475 respondents to Form CJ–44A.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,325 annual burden hours.

Public comment on this information collection is strongly encouraged.

Dated: April 22, 1997.

Robert B. Briggs,

DOJ Clearance Officer.

[FR Doc. 97–10832 Filed 4–25–97; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the

forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: June 2–4, 1997, 8:30 a.m. to 5:00 p.m.

LOCATION: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20004; 202–393–2000.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004–1107; (202) 272–2004 (Voice), (202) 272–2074 (TTY), (202) 272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Strategic Planning
Youth Leadership Development Conference
History of the Americans with Disabilities Act
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on April 23, 1997.

Ethel D. Briggs,

Executive Director.

[FR Doc. 97–10987 Filed 4–24–97; 11:53 am]

BILLING CODE 6820–MA–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, May 2, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–10953 Filed 4–23–97; 4:19 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322 Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 1, 1997.
Time: 9:00 to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes for School Teachers in Western Civilization I, submitted to the Division of Research and Education for projects at the March 1, 1997 deadline.

2. *Date:* May 7, 1997.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes for College and University Faculty in World Civilizations, submitted to the Division of Research and Education for projects at the March 1, 1997 deadline.

3. *Date:* May 8, 1997.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes for College and University Faculty in World Civilization I, submitted to the Division of Research and Education for projects at the March 1, 1997 deadline.

4. *Date:* May 8–9, 1997.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration in Humanities Focus Grants I, submitted to the Division of Research and Education for projects at the April 18, 1997 deadline.

5. *Date:* May 9, 1997.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes for School Teachers in American Studies, submitted to the Division of Research and Education for projects at the March 1, 1997 deadline.

6. *Date:* May 15–16, 1997.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.

Program: This meeting will review applications for Education Development and Demonstration in Humanities Focus Grants II, submitted to the Division of Research and Education for projects at the April 18, 1997 deadline.

7. *Date:* May 20–21, 1997.

Time: 8:30 a.m. to 5:00 p.m.

Room: 430.

Program: This meeting will review applications for Education Development and Demonstration in Humanities Focus Grants III, submitted to the Division of Research and Education for projects at the April 18, 1997 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 97–10875 Filed 4–25–97; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems (#1190); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date and Time: May 16, 1997; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contact Person: Dr. Raul Miranda, Program Director, Chemical Reaction Processes, and Dr. Farley Fisher, Program Director, Combustion & Thermal Plasma, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY97 Major Research Instrumentation (MRI) Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 23, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–10871 Filed 4–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems 1205.

Date and Time: Tuesday, May 13, 1997, 8:30 a.m. to 5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Ken Chong, Program Director, Structural Systems and Construction Processes; John Scalzi, Program Director, Large Structural & Building Systems, Room 545, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning career proposals submitted to NSF for financial support.

Agenda: To review and evaluate Major Research Instrumentation (MRI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 23, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–10873 Filed 4–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: May 12, 1997 from 8:00 AM to 5:00 PM.

Place: Room 1105.17, NSF 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. C. Denise Caldwell, Program Director, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1807; email, dcaldwel@nsf.gov.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Atomic, Molecular, Optical and Plasma Physics MRI proposals as part of the selection process for awards.

Reason for Closing: The project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 23, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–10872 Filed 4–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATES AND TIMES: May 8, 1997, 10:30 a.m., Closed Session; May 8, 1997, 11:15 a.m., Open Session; May 8, 1997, 5:45 p.m., Closed Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday May 8, 1997

Closed Session (10:30 a.m.–11:15 a.m)

—Awards & Agreements
—Minutes, March 1997 Meeting
—Election of Executive Committee Members
—NSB Nominees—Class of 2004

Thursday May 8, 1997

Open Session (11:15 a.m.–5:45 p.m.)

—Long-Range Planning
—Government Funding of Scientific Research
—Minutes, March 1997 Meeting
—Closed Session Agenda Items for August 1997
—Chairman's Report
—Director's Report
—Executive Committee Annual Report
—Calendar of Meetings
—Reports from Committees
—Systemic Initiatives—Review
—Other Business

Thursday May 8, 1997

Closed Session (5:45 p.m.–6:45 p.m.)

—NSF Long-Range Planning and FY 1999 Budget

—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 97–10994 Filed 4–24–97; 11:54 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Forum on Passive Grade Crossing Safety

In connection with its investigation of the issues concerning the safety of passive grade crossings, where railroads and highways meet without gates or warning lights, the National Transportation Safety Board will convene a public forum beginning at 9:30 a.m., on Thursday, May 8, 1997, at the Jacksonville Hilton Hotel, 1201 Riverplace Boulevard, Jacksonville, Florida. For more information, contact Shelly Hazle, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 314–6100.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Prentice 404–562–1659 (voice) or 404–562–1674 (fax), at least 5 days prior to the public forum date.

Dated: April 23, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–10804 Filed 4–25–97; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection:

NRC Form 171, ''Paper to Paper Duplication Request''

NRC Form 171A, ''Multi-Media Duplication Request''

NRC Form 171B, ''Microform to Paper Request''

2. Current OMB approval number: 3150–0066.

3. How often the collection is required: On occasion.

4. Who is required or asked to report: Individuals or companies requesting copies to be made by reproduction.

5. The number of annual respondents: 18,300.

6. The number of hours needed annually to complete the requirement or request: 1,208 hours (18,300 forms X .066 hr/form) or about 4 minutes per form.

7. Abstract: These forms are utilized by individual members of the public to request reproduction of publicly available documents in NRC's Headquarters Public Document Room (PDR). Copies of the form are utilized by the reproduction contractor to accompany the orders and are then discarded.

Submit, by June 27, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of April, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–10863 Filed 4–25–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Company; Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 73.55 for Facility Operating License No. DPR–20, issued to Consumers Power Company, (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.'' The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken off site.

This environmental assessment has been prepared to address potential environmental issues related to the licensee's application of April 4, 1996.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), The licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), ''Access Requirements,'' specifies that ''licensee shall control all points of personnel and vehicle access into a protected area.'' It is specified in 10 CFR 73.55(d)(5) that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas

without escort.'' It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area. * * *''

Currently, unescorted access into the protected areas of the Palisades Nuclear Plant is controlled through the use of a photograph on a combination badge and keycard (hereafter, referred to as badges). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges off site. In accordance with the plant's physical security plans, neither licensee employees nor contractors are allowed to take badges off site.

The licensee proposes to implement an alternative unescorted access control system that would eliminate the need to issue and retrieve badges at the entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from certain requirements of 10 CFR 73.55(d)(5) is required to permit contractors to take their badges off site instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed exemption would not increase the probability or consequences of accidents previously analyzed and the proposed exemption would not affect facility radiation levels or facility radiological effluents. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of his/her hand (hand geometry) registered with his/her badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badges with them when they depart the site.

The licensee stated that the hand geometry equipment selected for use will meet the detection probability of 90 percent with a 95-percent confidence level in accordance with Regulatory Guide 5.44, ''Perimeter Intrusion Alarm Systems.'' This detection probability indicates that the false acceptance rate of the proposed hand geometry system will be comparable to that of the current system. Based on a Sandia report entitled ''A Performance Evaluation of Biometric Identification Devices'' (SAND91—0276 UC—906 Unlimited Release, printed June 1991), and on its experience with the current photo-identification system, the licensee stated that the use of the badges with the hand geometry system would enhance the overall effectiveness of the security program. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge off site, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for Palisades will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges off site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released off site, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Palisades dated June 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on March 28, 1997, the NRC staff consulted with the Michigan State official, Dennis Hahn, of the Michigan Department of Environmental Quality, Drinking Water and Radiological Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 4, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 9th day of April 1997.

For the Nuclear Regulatory Commission .

Robert G. Schaaf,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–10864 Filed 4–25–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8698]

Plateau Resources Limited

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1371 to authorize the licensee, Plateau Resources Limited (PRL), to resume commercial milling operations at the Shootaring Canyon uranium mill, located near Ticaboo, Utah. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

Source Material License SUA–1371 was originally issued by NRC on September 21, 1979, pursuant to Title 10, Code of Federal Regulations (10 CFR), Part 40, ''Domestic Licensing of Source Material.'' This license currently authorizes PRL to possess byproduct material in the form of uranium waste tailings and other byproduct wastes which were generated by its uranium recovery operations previously authorized under SUA–1371. Under the current license, PRL is not authorized to produce uranium concentrates. The tailings and wastes referred to above were generated during the three months in 1982 in which the mill was operated; the mill has been on standby status since that time. SUA–1371 was renewed for ''possession only'' status in 1986.

By amended license renewal application dated March 1, 1996, PRL requested authorization to resume operations at the Shootaring Canyon mill.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the resumption of operations at the Shootaring Canyon mill, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its appraisal, the NRC staff considered the following: (1) Information contained in previous environmental evaluations of the Shootaring Canyon project; (2) information contained in PRL's license renewal application; (3) information contained in PRL's license amendment requests submitted subsequent to its renewal application, and NRC staff approvals of such requests; (4) land use and environmental monitoring reports; and (5) information derived from NRC staff site visits and inspections of the Shootaring Canyon mill site and from communications with PRL, the State of Utah Department of Environmental Quality (DEQ), and the National Park Service. The results of the staff's appraisal are documented in an Environmental Assessment. The radiation safety aspects for the resumption of operations at the mill are discussed in a Safety Evaluation Report.

The license renewal would authorize PRL to resume operating the Shootaring Canyon mill, at a maximum production rate of 1,004,000 pounds of yellowcake per year, and to possess byproduct material in the form of uranium waste tailings and other uranium byproduct wastes generated by the milling operations authorized by the renewal license. The actual resumption of operations will be conditional on (1) The approval of a final design for the tailings impoundment liner by NRC and the Utah DEQ and the installation of that liner, (2) PRL's submittal of a technical evaluation of the existing cross-valley berm and tailings dam, and (3) NRC's confirmation during a pre-operational site inspection that standard operating procedures for operational and non-operational activities are in place.

All conditions in the renewal license and commitments presented in the licensee's license renewal application are subject to NRC inspection. Violation of the license may result in enforcement action.

Conclusions

The NRC staff has reexamined actual and potential environmental impacts associated with a resumption of yellowcake production at the mill site, and has determined that renewal of the source material license (1) Will be consistent with requirements of 10 CFR Part 40, (2) will not be inimical to the public health and safety, and (3) will not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. An acceptable environmental sampling program will be in place to monitor effluent releases and to detect if appropriate limits are exceeded;
2. The licensee will implement an intensive, routine inspection program of the mill process building, associated facilities, and tailings retention impoundments, and conduct an annual ''as low as is reasonable achievable'' (ALARA) audit program;
3. Standard operating procedures will be in place for all operational process activities involving radioactive materials that are handled, processed, or stored;
4. Mill tailings and process liquid effluents from the mill circuit will be discharged to a multi-lined tailings impoundment, with a leak detection system;
5. The licensee will implement an acceptable groundwater detection monitoring program to ensure compliance with the requirements of 10 CFR Part 40, Appendix A;
6. The licensee will conduct site decommissioning and reclamation activities in accordance with NRC-approved plans; and
7. Because the staff has determined that there will be no significant impacts associated with approval of the license renewal, there can be no disproportionately high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of 'Environmental Justice' concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Rev.1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to renew NRC Source Material License SUA–1371, for a resumption of operations at the Shootaring Canyon mill, as requested by PRL. Therefore, the principal alternatives available to NRC are to:

(1) Renew the license with such conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(2) Deny renewal of the license.

Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action; therefore, any alternatives with equal or greater environmental impacts need not be evaluated. Since the environmental impacts of the proposed action and the no-action alternative (i.e., denial of the renewal) are similar, there is no need to further evaluate alternatives to the proposed action.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed renewal of NRC Source Material License SUA–1371. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Plateau Resources Limited, 877 North 8th West, Riverton, Wyoming 82501;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 21st day of April 1997.

For the Nuclear Regulatory Commission.

Charles L. Cain,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material, Safety and Safeguards.

[FR Doc. 97–10862 Filed 4–25–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Options for Promoting Privacy on the National Information Infrastructure

AGENCY: Office of Management and Budget.

ACTION: Notice and request for comments.

SUMMARY: OMB announces the availability of ''Options for Promoting Privacy on the National Information Infrastructure'' (Options Paper) on behalf of the Information Policy Committee of the National Information Infrastructure Task Force (IITF). This Options Paper results from work performed by the Privacy Working Group and refined by the Committee. The Committee is chaired by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). This Options Paper builds upon the October 1995 report of the Privacy Working Group, ''Privacy and the National Information Infrastructure: Principles for Providing and Using Personal Information'' (Privacy Principles), which was published in draft form in the **Federal Register** on January 20, 1995 (60 FR 4362) and was finalized in June 1995. None of the options presented has been adopted as Administration policy; they are set forth in this document in the belief that they are worthy of public discussion.

DATES: Comments should be submitted no later than June 27, 1997.

ELECTRONIC AVAILABILITY AND ADDRESSES: The options paper is available electronically from the IITF site on the World Wide Web: http://www.iitf.nist.gov/ipc/ipc-pub.html and in paper form from the OMB Publications Office, 725 17th Street, NW., Washington, DC 20503, telephone: 202/395–7332, facsimile: 202/395–6137.

Comments may be sent to the Information Policy Committee c/o the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, Washington, DC 20503. Comments may also be submitted by facsimile to 202–395–5167, or by electronic mail to BERNSTEIN__M@A1.EOP.GOV. Comments submitted by facsimile or electronic mail need not also be submitted by regular mail.

FOR FURTHER INFORMATION CONTACT: Ms. Maya A. Bernstein, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Voice telephone: 202–395–4816. Facsimile: 202–395–5167. Electronic mail: BERNSTEIN__M@A1.EOP.GOV.

SUPPLEMENTARY INFORMATION: In the Report of the National Performance Review, ''Creating a Government that Works Better & Costs Less: Reengineering Through Information Technology,'' the Vice President tasked the Information Infrastructure Task Force with considering privacy policy with respect to the National Information Infrastructure (NII). The Privacy Working Group first developed ''Privacy and the National Information Infrastructure: Principles for Providing and Using Personal Information'' (the Privacy Principles), which described a set of fair information practices appropriate to the NII and which were finalized in June 1995. The next step for the Privacy Working Group was to consider how best to promote those principles. To that end, the Working Group undertook significant research on

the state of privacy with respect to the NII, current U.S. law, and private sector practices. That work served as the basis for the Information Policy Committee's Option Paper. The Committee is now making the Paper available for comment.

As Vice President Gore predicted in 1995, development of the Global Information Infrastructure (GII) is increasing economic growth and productivity, creating high-wage jobs in newly emerging industries, and fostering U.S. technological leadership across the globe. Through this medium, we can already secure high quality services at low cost and prepare our children for the demands of the 21st Century. A more open and participatory democracy is emerging at all levels of government.

The information economy of the 21st century will run on data. Some of that data may be highly personal and sensitive. In some cases, personal data may become quite valuable. Thus, the transition to the Information Age calls for a reexamination of the proper balance between the competing values of personal privacy and the free flow of information in a democratic society. Will our traditional balance point serve in the digital age? Can we continue to rely on the same tools we have used to strike this balance in the past? Or, is an entirely new approach warranted?

The Options Paper explores the growing public concern about personal information privacy. The paper describes the status of electronic data protection and fair information practices in the United States today, beginning with a discussion of the ''Principles for Providing and Using Personal Information,'' issued by the Information Infrastructure Task Force in 1995. It then provides an overview of new information technologies, which shows that personal information is currently collected, shared, aggregated, and disseminated at a rate and to a degree unthinkable just a few years ago. Government is no longer the sole possessor of extensive amounts of personal information about U.S. citizens: in recent years the acquisition of personal information by the private sector has increased dramatically.

The paper next considers in more detail the laws and policies affecting information privacy in four specific areas: government records, communications, medical records, and the consumer market. This examination reveals that information privacy policy in the United States consists of various laws, regulations and practices, woven together to produce privacy protection that varies from sector to sector. Sometimes the results make sense, and sometimes they do not. The degree of protection accorded to personal information may depend on the data delivery mechanism rather than on the type of information at issue. Moreover, information privacy protection efforts in the United States are generally reactive rather than proactive: both the public and the private sector adopt policies in response to celebrated incidents of nonconsensual disclosure involving readily discernable harm. Sometimes this approach leaves holes in the fabric of privacy protection.

The paper then turns to the core question: in the context of the Global Information Infrastructure (GII), what is the best mechanism to implement fair information practices that balance the needs of government, commerce, and individuals, keeping in mind both our interest in the free flow of information and in the protection of information privacy? At one end of the spectrum there is support for an entirely market-based response. At the other end of the spectrum, the federal government is encouraged to regulate fair information practices across all sectors of the economy. In between these poles lie a myriad of options.

In response to public concern, both government and private industry seem to be taking a harder look at privacy issues. As government and consumers become more aware of the GII's data collection, analysis and distribution capabilities, demand could foster a robust, competitive market for privacy protection. This raises the intriguing possibility that privacy could emerge as a market commodity in the Information Age. The paper recognizes ongoing efforts to enhance industry self regulation to carry out the IITF Privacy Principles, and also discuss ways this self regulation might be enforced. The paper also discusses a number of ways that government could facilitate development of a privacy market.

The paper then considers a number of options that involve creation of a federal privacy entity. It discusses some of the many forms that such an entity could take and considers the advantages and disadvantages of the various choices. It also considers the functions that such an entity might perform, as well as various options for locating a privacy entity within the federal government.

This paper presents a host of options for government and private sector action. The ultimate goal is to identify the means to maintain an optimal balance between personal privacy and freedom of information values in the digital environment. The next step is to receive and respond to public comment on the report in order to develop consensus regarding the appropriate allocation of public and private sector responsibility for implementation of fair information practices.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 97–10894 Filed 4–25–97; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on March 27, 1997, (62 FR 14707). Individual authorities established or revoked under Schedules A and B and established under Schedule C between March 1, 1997, and March 31, 1997, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during March 1997.

The following Schedule A authority was revoke during March 1997:

Department of Labor

Bureau of Labor Statistics. Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Effective March 7, 1997.

Schedule B

One Schedule B authority was established during 1997:

Department of Defense

Positions at grades GS–11 through GS–15 for the Defense Policy Science and Engineering Fellowship Program. Appointments may be made not to exceed two years and maybe extended for up to two additional years. Effective March 25, 1997.

Schedule C

The following Schedule C authorities were established during 1997.

Department of Agriculture

Confidential Assistant to the Director, Office of Communications. Effective March 5, 1997.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective March 7, 1997.

Confidential Assistant to the Administrator, Farm Services Agency. Effective March 14, 1997.

Special Assistant to the Chief, Forest Service. Effective March 14, 1997.

Department of Education

Confidential Assistant to the Assistant Secretary for Vocational and Adult Education. Effective March 12, 1997.

Confidential Assistant to the Assistant Secretary, Office of Secondary and Elementary Education. Effective March 14, 1997.

Special Assistant to the Director Regional Services Team. Effective March 14, 1997.

Confidential Assistant to the Special Assistant, Office of the Secretary. Effective March 19, 1997.

Special Assistant to the Director, White House Initiative on Hispanic Education. Effective March 27, 1997.

Secretary's Regional Representative—Region II—New York, N.Y. to the Deputy Assistant Secretary for Regional Services. Effective March 27, 1997.

Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective March 31, 1997.

Deputy Assistant Secretary for Regional and Community Services and Secretary's Regional Representative, Region III to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective March 31, 1997.

Deputy Assistant Secretary for Intergovernmental and Constituent Relations to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective March 31, 1997.

Department of Health and Human Services

Special Assistant to the Assistant Secretary for Children and Families. Effective March 3, 1997.

Director of Scheduling to the Chief of Staff, Office of the Secretary. Effective March 6, 1997.

Confidential Assistant, Office of Scheduling to the Director of Scheduling. Effective March 10, 1997.

Special Assistant to the Secretary of Health and Human Services. Effective March 13, 1997.

Special Assistant to the Director of Communications, Communications Services Division. Effective March 14, 1997.

Executive Director, Presidential Advisory Council on HIV/AIDS to the Assistant Secretary for Public Health and Science. Effective March 14, 1997.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective March 20, 1997.

Special Assistant to the Secretary of Health and Human Services. Effective March 20, 1997.

Department of Housing and Urban Development

Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations. Effective March 7, 1997.

Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs. Effective March 7, 1997.

Confidential Assistant to the Secretary of Housing and Urban Development. Effective March 7, 1997.

Deputy Chief of Staff for Operations to the Chief of Staff. Effective March 8, 1997.

Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs. Effective March 14, 1997.

Special Assistant to the Secretary of Housing and Urban Development. Effective March 21, 1997.

Intergovernmental Relations Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective March 27, 1997.

Public Affairs Coordinator to the Assistant Secretary for Public Affairs. Effective March 31, 1997.

Department of the Interior

Special Assistant to the Secretary and Director of Scheduling and Advance to the Deputy Chief of Staff. Effective March 19, 1997.

Special Assistant to the Director, National Park Service. Effective March 20, 1997.

Special Assistant to the Solicitor. Effective March 26, 1997.

Department of Justice

Attorney Advisor to the Assistant Attorney General, Civil Division. Effective March 14, 1997.

Staff Assistant to the Attorney General. Effective March 17, 1997.

Staff Assistant to the Assistant to the Attorney General (Chief Scheduler). Effective March 28, 1997.

Department of Labor

Special Assistant to the Assistant Secretary, Employment Standards Administration. Effective March 7, 1997.

Speech Writer to the Assistant Secretary for Policy. Effective March 7, 1997.

Special Assistant to the Assistant Secretary for Public Affairs. Effective March 20, 1997.

Director of Communications and Public Information to the Assistant Secretary for Employment and Training. Effective March 24, 1997.

Special Assistant to the Assistant Secretary, Employment Standards Administration. Effective March 24, 1997.

Staff Assistant to the Administrator, Wage and Hour Division. Effective March 24, 1997.

Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective March 28, 1997.

Department of State

Staff Assistant to the Chief of Staff. Effective March 10, 1997.

Department of the Treasury

Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs). Effective March 5, 1997.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective March 5, 1997.

Public Affairs Specialist to the Director of Public Affairs. Effective March 12, 1997.

Legislative Information Specialist to the Director, Office of Legislative Affairs. Effective March 12, 1997.

Staff Assistant to the Assistant Secretary (International Affairs). Effective March 24, 1997.

Department of Veterans Affairs

Special Assistant to the Secretary of the Department of Veterans Affairs. Effective March 7, 1997.

Environmental Protection Agency

Special Assistant to the Administrator. Effective March 6, 1997.

National Aeronautics and Space Administration

Legislative Affairs Specialist to the Associate Administrator, Legislative Affairs. Effective March 27, 1997.

Office of Science and Technology Policy

Confidential Assistant to the Associate Director, Technology Division. Effective March 31, 1997.

Securities and Exchange Commission

Secretary (OA) to the Director, Market Regulation. Effective March 14, 1997.

Director of Public Affairs to the Chairman, Securities and Exchange Commission. Effective March 21, 1997.

Small Business Administration

Special Assistant to the Administrator, Special Projects. Effective March 27, 1997.

U.S. International Trade Commission

Confidential Assistant to the Commissioner. Effective March 21, 1997.

United States Information Agency

Director, Office of Citizen Exchanges to the Associate Director, Bureau of Educations and Cultural Affairs. Effective March 18, 1997.

Special Assistant to the Chief of Staff, Office of the Director. Effective March 21, 1997.

Program Officer to the Deputy Director, Office of European and NIS Affairs. Effective March 24, 1997.

Director, Office of Congressional and Intergovernmental Affairs to the Director, United States Information Agency. Effective March 28, 1997.

Senior Advisor to the Director, Office of Public Liaison. Effective March 31, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–10900 Filed 4–25–97; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENT'S COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION

Public Meeting

April 23, 1997.

ACTION: Houston PCCIP Public Meeting.

TIME AND DATE: 9am–12pm, Tuesday, May 13, 1997.

PLACE: Houston City Hall, City Council Chambers (Tent), 900 Bagby St., Houston, TX 77002.

MATTERS TO BE CONSIDERED: Advice or comments of any concerned citizen, group or activity on assuring America's critical infrastructures.

Note: A sign-language interpreter will be available for the hearing-impaired.

CONTACT PERSON FOR MORE INFORMATION: Nelson McCouch, Public Affairs Director, (703) 696–9395, nelson.mccouch@pccip.gov

Robert E. Giovagnoni,

General Counsel, President's Commission on Critical Infrastructure Protection.

[FR Doc. 97–10841 Filed 4–25–97; 8:45 am]

BILLING CODE 3110–$$–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22627; 811–7348]

The Diaz-Verson Funds, Inc.; Notice of Application

April 21, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The Diaz-Verson Funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 31, 1996 and amended on April 8, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 16, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1200 Brookstone Centre Parkway, Suite 105, Columbus, Georgia 31904.

FOR FURTHER INFORMATION CONTACT: Shirley A. Bodden, Paralegal Specialist, at (202) 942–0575, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company organized as a Maryland corporation. It has one portfolio, the Diaz-Verson Americas Equity Fund. On November 19, 1992, applicant registered under the Act by filing a notification of registration on Form N–8A. On the same date, applicant filed a registration statement under the Act and under the Securities Act of 1933 to register an indefinite number of shares of applicant. The registration statement became effective on March 3, 1993, and applicant commenced a public offering of the shares on March 23, 1993.

2. On September 30, 1996, applicant's board of directors met and authorized the liquidation and dissolution of the Fund pursuant to a Plan of Liquidation (the ''Plan''), citing principally the lack of cost-effective marketing alternatives to increase applicant's size. Proxy materials were filed with the SEC on October 3, 1996, and were mailed to applicant's shareholders on October 18, 1996. Applicant's shareholders met on November 22, 1996 and approved the Plan.

3. On December 20, 1996, applicant had approximately 581,952.129 outstanding shares with an aggregate net asset value of $5,797,266 and a per share net asset value of $9.96. Pursuant to the Plan, all of applicant's assets were liquidated and a check representing each shareholder's portion of the proceeds was mailed on or about December 27, 1996. Each shareholder received proceeds equal to applicant's net asset value per share immediately prior to liquidation. Applicant's portfolio securities were all disposed of in the ordinary course of business at prevailing market prices, or pursuant to valuations approved by applicant's Board of Directors, at usual and customary brokerage commissions where commissions were charged. Applicant has made distributions in complete liquidation to all its securityholders.

4. Applicant anticipates liquidation expenses to be approximately $30,000, which will be borne by applicant's adviser, Diaz-Verson Capital Investment, Inc. The adviser has paid to applicant all unamortized organizational expenses.

5. Applicant has no outstanding assets, securityholders, debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than

those necessary for the winding up of its affairs.

6. Applicant intends to file Articles of Dissolution with the State of Maryland.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–10796 Filed 4–25–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38535; File No. SR–CBOE–96–68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to RAES Orders That Are Re-routed to the Exchange's Order Routing System

April 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on November 12, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the self-regulatory organization.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add an interpretation to its Retail Automatic Execution System (''RAES'') rule for equity options that specifies the trading crowd's firm quote obligation for RAES orders that get re-routed through the Exchange's Order Routing System. Also, the Exchange proposes to add a rule change clarifying when an order reaches the trading station for purposes of the firm quote rule. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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 specify the trading crowd's firm quote obligation for RAES orders that get re-routed through the Exchange's Order Routing System (''ORS''). Also, this rule change clarifies the time at which an order reaches the trading station for purposes of the Exchange's firm quote rule.

Generally, under ordinary trading conditions, only customer market or marketable limit orders are eligible to be routed to RAES. When RAES receives such an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry to the system. A buy order will pay the offer and a sell order will sell at the bid. A market-maker who is participating in the RAES system will be designated as contra-broker on the trade.

In situations in which the prevailing market bid or offer is equal to the best bid or offer on the Exchange's books, the RAES order generally will be re-routed away from RAES on ORS, under the existing ORS parameters.[4] This is done because the Exchange's rule governing priority of bids and offers, Rule 6.45, gives priority to orders on the customer limit order book over any other order at the post. Therefore, a RAES sell order cannot be filled by the RAES system at a price lower than or equal to the best book bid and a RAES buy order cannot be filled by the RAES system at a price higher than or equal to the best book offer. When the RAES order is re-routed over the ORS, such an order ordinarily will be routed to a Floor Broker in the crowd via a printer or PAR terminal, or will be routed to the firm's booth. Whether the order gets routed to the booth or to the trading station is determined by the order routing instructions the broker's firm provides to the Exchange. Once the Floor Broker receives the order, it is his responsibility to represent the order in the crowd.

Because these re-routed RAES orders. (''RAES kickouts'') are generally customer orders for ten contracts or less, they are ordinarily eligible for firm quote treatment under Rule 8.51.[5] Rule 8.51(a)(1) states that a trading crowd is required to sell (buy) at least ten contracts at the offer (bid) which is displayed *when* a buy (sell) customer order ''reaches the trading station where the particular option contract is located for trading.'' Because the trading crowd will be expected to fill the first order at the price that existed when the RAES order was re-routed to the trading station, it is important that the Floor Broker represent the order in a timely fashion. Ordinarily, the Exchange interprets the phrase ''when the order reaches the trading station'' to mean when the order is represented in the crowd by a Floor Broker. The Exchange proposes to incorporate this interpretation into Rule 8.51(a)(2).

In the cases of RAES kickouts that are routed directly to the trading station, however, the Exchange believes that a public customer should be entitled to have the order filled at the bid or offer that existed at the time the order was entered into the RAES system, *i.e.*, the price the order would have received had it traded directly with the book.[6] The Exchange does not believe a public customer should have to take the risk that the price will move against it in the period between the time the order gets re-routed and the time the Floor Broker actually represents the order in the crowd.[7] The Exchange takes this view because, in the case of RAES kickouts,

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 28, 1997, the Exchange filed an amendment to the rule proposal. *See* letter from Timothy Thompson, Senior Attorney, CBOE, to Janice Mitnick, Attorney, Division of Market Regulation, Commission, dated February 28, 1997 (''Amendment No. 1''). Amendment No. 1 made several changes to the rule proposal in order to clarify the scope of the rule filing and to conform the rule language to reflect the clarifications.

[4] Rule 6.8(b) provides an exception to this rule for options on IBM and other option classes following the determination of special market conditions. *See* Rule 6.8(b).

[5] In some instances, the firm quote obligation for a particular option may be for other than ten contracts. *See* Rule 8.51(a).

[6] If the market price is better than the guaranteed RAES kickout price when the order is represented in the crowd, pursuant to Rule 6.73, the RAES kickout order would be filled at the market price. *See* Amendment 1, p. 2.

[7] In the case of an order that the firm has chosen to route to the firm's booth, the Exchange does not believe the trading crowd should bear the risk that the price will move away from the price that the customer could have received had the order not been re-routed, because of the potentially greater delay in the order being represented to the crowd. In these cases, the Floor Broker will be responsible for ensuring that the customer's order is represented in a timely fashion.

the customer sending an order to the Exchange will have done nothing different and would have no different expectations than any other RAES customer whose order was not re-routed from RAES. The factor that determines whether an order gets re-routed, the fact that the prevailing market bid or offer matches the bid or offer on the book, is outside of the customer's control and is not likely to be known by the customer.

The new proposed RAES kickout price guarantee will cover only the ''first order'' which is kicked out of RAES. The ''first order'' is defined as the first order re-routed at a particular market.[8] It should be noted that if more than one RAES order is re-routed at approximately the same time and at the same market, the rule change does not guarantee that the second order will be filled at the price that existed at the time of the second order's entry into the RAES system. The price at which the second or any subsequent RAES kickout order would be filled may be better or worse than the price at which the first RAES kickout order for up to ten contracts was filled. Consistent with the terms of Rule 8.51, the trading crowd would be entitled to change the quotes after the first order of up to ten contracts had been traded at that price.

The Exchange believes that it is appropriate to extend the price guarantee for the first RAES kickout order only.[9] The Exchange notes that most RAES kickout situations involve only one order which is kicked out of RAES. Thus, the limit of the guarantee to the first order is not an issue in those situations. Additionally, in situations where there is more than one kickout at a certain price, the market in these options is likely very busy and floor brokers may as a practical matter be incapable of representing these kicked out orders immediately. In proposing to limit the guarantee to the first order, the Exchange weighed the benefits of this guarantee against the potential disruptive effect of numerous orders kicked out of RAES within a second or two of each other. If the guarantee were extended to all orders that are rejected at that price, the market-makers would be forced to fill these customer orders at quotes that might no longer reflect current market situations by the time the floor broker was able to represent the orders. In any event, the orders that do not get filled at the guaranteed RAES kickout price will be entitled to be filled at the disseminated market quotes at the time they are represented in the crowd, which may be better than the guaranteed RAES kickout price.[10]

2. Statutory Basis

By clarifying the terms of one current rule and changing another rule to add further protections to public customer orders, the proposed rule furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange states that it believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–96–68 and should be submitted by May 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–10795 Filed 4–25–97; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* Amendment 1, p.1.

[9] *See* Amendment 1, p.2.

[10] *See* Amendment 1, p.2.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38536; File No. SR–MBSCC–97–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Valuation of Securities Deposited as Collateral in the Participants Fund To Satisfy Daily Margin Requirements

April 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on February 12, 1997, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission') the proposed rule change (File No. SR–MBSCC–97–02) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies MBSCC's method of determining the value of securities deposited as collateral in the participants fund to satisfy the MBSCC margin requirement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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

[1] 15 U.S.C. 78s(b)(1).

may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC's rules allow participants to satisfy their margin requirements by depositing approved forms of collateral such as cash, securities,[3] and letters of credit into the participants fund. According to MBSCC, historically, participants preferred using letters of credit as collateral to satisfy their margin requirement. Securities had represented only a small portion of participant fund deposits. However, recently securities have become the dominant form of acceptable collateral used by participants to satisfy their margin requirements. In 1996, securities constituted approximately 73 percent of total deposits to the participants fund. As a result of this increased use of securities, MBSCC reappraised the value attributed to this form of collateral.

Currently, mortgage-backed securities are credited at the lesser of par or current market value, while Treasury securities are valued at current market value. Both types of securities are revalued daily and analyzed for pending maturity.

The proposed rule change will amend MBSCC's valuation of securities by using the security's remaining maturity to determine the value attributable to the security. When a security has a remaining maturity of greater than one year, the proposed rule change requires MBSCC to value mortgage-backed securities at the lesser of par or 95 percent of the current market value and Treasury securities at 95 percent of their current market value. If a security's remaining maturity is less than one year, the proposed rule change requires MBSCC to value mortgage-backed securities at the lesser of par or the current market value and Treasury securities at the current market value. MBSCC will continue to revalue securities daily and analyze them for pending maturity before the depositing participant is credited.[4]

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[5] and the rules and regulations promulgated thereunder because it will assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received the MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–97–02 and should be submitted by May 16, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[2] The Commission has modified the text of the summaries submitted by MBSCC.

[3] Securities acceptable as collateral included direct obligations of the United States (Treasury Bills, Treasury Notes, and Treasury Bonds) (''Treasury securities'') and mortgage-backed securities (Government National Mortgage Association securities, Federal National Mortgage Association securities, and Federal Home Loan Mortgage Corporation securities).

[4] Because par value for mortgage-backed securities is $100, the proposed rule change will apply a five percnet haircut only to those mortgage-backed securities that have a current market value of $105 or less. For example, a mortgage-backed security with a current market value exceeding $105 is and will continue to be revalued to a par value of $100. However, a mortgage-backed security with a current market value of $105 will now be revalued to $99.75 or 95 percent of current market value. Similarly, a mortgage-backed security with a current market value of $99 will be revalued to $94.05.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38534; File No. SR–NASD–97–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Registration Category, Study Outline and Specifications for Series 55 Examinations, Equity Trader

April 21, 1997.

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 March 26, 1997, the NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On April 11, 1997, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] *See* letter from Craig L. Landauer, Associate General Counsel, NASD Regulation to Yvonne Fraticelli, Attorney, Division of Market Regulation (''Division''), SEC, dated April 11, 1997 (''Amendment No. 1''). In Amendment No. 1, NASD Regulation clarified that individuals who have been ''grandfathered'' from taking either the General Securities Representative Examination (Series 7) or the Limited Representative-Corporate Securities Examination (Series 62) will not be required to take either examination to qualify to take the Series 55

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 National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') proposes to amend NASD Rule 1032, ''Categories of Representative Registration,'' to add a new registration category, Equity Trader (Series 55). Below is the text of the proposed rule change. Proposed new language is italicized.

Rule 1032. Categories of Representative Registration

(f) Limited Representative—Equity Trader

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 must register with the Association as a Limited Representative-Equity Trader if, with respect to transactions in equity, preferred or convertible debt securities effected otherwise than on a securities exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.

(2) Before registration as a Limited Representative—Equity Trader as defined in subparagraph (1) hereof may become effective, an applicant must:

(A) be registered pursuant to Rule 1032, either as a General Securities Representative or a Limited Representative—Corporate Securities: and

(B) pass an appropriate Qualification Examination for Limited Representative—Equity Trader. Any person who has filed an application to take this examination by (date thirty (30) days after the effective date of this rule) must pass the examination by (24 months after effective date above). Any person who is eligible for this extended qualification period and who fails this examination during such twenty-four (24) month time period must wait (30 days from the date of failure to take the examination again. Any person who files an application to take this qualification examination after (date thirty (30) days after the effective date of this rule) must pass this examination before conducting such activities as described in paragraph (f)(1) above. In no event may a person who is eligible for the extended qualification period function as an Equity Trader beyond the 24-month period without having successfully passed the appropriate qualification examination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

It is the NASD's responsibility under Section 15A(g)(3) of the Act[4] to prescribe standards of training, experience and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD has developed examinations and administers examination developed by other self-regulatory organizations designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

In 1995, the NASD's Market Surveillance staff and the NASD's National Business Conduct Committee (''NBCC'') became concerned about the escalating number of rule violations by traders conducing market making and principal trading functions in both the Nasdaq Market and over-the-counter (''OTC'') equity trading markets. With the view that better training and qualification of traders was necessary, the NASD's Market Surveillance staff conducted an assessment of how traders are prepared to carry out the role of trading and market making in equity securities by visiting member firms and discussing the issue with several senior managers of the Association and several members of the NASD's Market Surveillance Committee. In particular, the NASD staff discussed with these parties a qualification examination requirement designated specifically for traders. The parties contacted supported the establishment of a qualification examination for traders.

This proposed rule change will establish a registration category (Series 55) and qualification examination for equity traders. Paragraph (1) of proposed NASD Rule 1032(f) defines the scope of the requirement to include market makers, agency traders and proprietary traders in equity or convertible debt securities. The inclusion of convertible debt securities[5] reflects that fact that, under certain conditions, convertible debt securities trade similarly to equity security and many of the same regulatory issues and concerns apply to trading in both types of securities.

This paragraph also contains an exemption for traders whose principal activities are executing orders on behalf of an affiliated investment company which is registered with the Commission under the Investment Company Act of 1940. This exemption is intended to reflect the reality that such traders are generally in the same position as buy-side professionals employed within investment companies, who would not be subject to the examination requirement.

Paragraph (2) of proposed NASD Rule 1032(f) establishes that an individual must be registered as either a Series 7 or Series 62 representative in addition to passing the Series 55 Examination before he can be registered in the Series 55 category.[6] This requirement is consistent with the requirements applicable to other specialized registration categories.

Paragraph (2) does not have a ''grandfather'' provision. The NASD believes that such a provision is not appropriate due to the uneven knowledge of existing rules among traders as well as the large number of rule and structural changes occurring in the equity markets. The proposed rule provides that presently registered traders must pass the qualification examination within two years of the effectiveness of the rule. The two year time period is intended to provide

examination currently proposed by NASD Regulation.

[4] 15 U.S.C. 78o–3(g)(3).

[5] Pursuant to a telephone conversation between Craig L.Landauer, Associate General Counsel, NASD Regulation and Yvonne Fraticelli, Attorney, Division, SEC, on April 7, 1997, Commission staff has replaced the word ''exclusion'' with the word ''inclusion.''

[6] Under the proposal, individuals ''grandfathered'' from taking either the Series 7 or Series 62 examinations will not be required by the proposal to take either examination to qualify to take the proposed Series 55 examination. *See* Amendment No. 1, *supra* note 3.

traders sufficient time to study and pass the examination. This time period also takes into consideration that some traders with many years of experience in the securities industry may not have been required to take either the Series 7 or Series 62 examinations.

This examination will consist of ninety questions, and candidates will have three hours to complete the examination. The passing score for the examination will be 70%.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[7] and 15A(g)(3)[8] of the Act in that the NASD is required to prescribe standards of training, experience and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD develops and administers examinations to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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 purposes of the Act, as amended.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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–97–21 and should be submitted by May 19. 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–10794 Filed 4–25–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78o–3(g)(3).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38537; File No. SR–NASD–97–11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc., Relating to the Release of Disciplinary Information

April 22, 1997.

I. Introduction

On February 11, 1997, the NASD Regulation, Inc. (NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] a proposed rule change consisting of an Interpretation on the Release of Disciplinary Information in IM–8310–2 of the Rules of the National Association of Securities Dealer's, Inc. (''NASD''). On March 10, 1997, NASD Regulation filed with the Commission Amendment No. 1. The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register**.[2] One comment letter was received.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

The NASD's Public Disclosure Program (''Program'') currently provides through the Central Registration Depository (''CRD'') a synopsis of all pending NASD disciplinary information regarding members and associated persons, including information on disciplinary complaints[4] when they are issued by the Association and disciplinary decisions when they are issued by any Committee or Board of the Association. Recently, the Commission approved an amendment that requires the Association to provide copies of disciplinary complaints and decisions upon request.[5]

The Interpretation on the Release of Disciplinary Information (''Interpretation''), contained in IM–8310–2,[6] currently permits the Association to issue information regarding certain specified significant disciplinary decisions when they become final.[7] The specified decisions are limited to those that impose sanctions of a suspension, bar or fine of $10,000 or more.

The Program has expanded to now provide a synopsis of all pending NASD disciplinary information regarding members and associated persons, including information on the filing of disciplinary complaints. While the information is available through CRD, concerns have been raised because there is a disparity in accessability of the information. The NASD does not publish, to the membership or the press, the issuance of a significant complaint regarding a member or associated person with whom the individual does

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] *See* Securities Exchange Act Release No. 38380 (March 10, 1997), 62 FR 12866 (March 18, 1997).

[3] *See* letter from Steven Alan Bennett, Senior Vice President and General Counsel, Bank One Corporation, to Mr. Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 7, 1997, supporting the proposed rule change and Amendment No. 1.

[4] This rule filing relates to ''disciplinary complaints,'' and does not address ''customer complaints.''

[5] *See,* Securities Exchange Act Release No. 37797 (October 9, 1996); 61 FR 53984 (October 16, 1996).

[6] The Interpretation was previously cited as ''Resolution of the Board of Governors—Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons'' and appeared after paragraph 2301 of the NASD Manual, following Article V, Section 1 of the Rules of Fair Practice.

[7] The publication of information is normally done through a monthly press release containing information about significant disciplinary actions that have become final during the preceding month. In addition, a more detailed press release may be issued on a more expedited basis about a case of particular importance.

business. Moreover, the current provisions of IM–8310–2 do not permit the Association to be pro-active in providing notification to the membership and the press of non-final disciplinary decisions and does not permit the Association to publicize other (final or non-final) disciplinary decisions that do not meet the current publication criteria, but that nonetheless involve a significant policy or enforcement issue that should be brought to the attention of the public.

In considering this issue, NASD Regulation believes that the interests of the public in obtaining improved access to information concerning significant disciplinary matters must be balanced against the legitimate interests of respondents not to be subject to unfair publicity concerning unadjudicated allegations of violations (*i.e.*, complaints) and non-final determinations of violations (*i.e.*, non-final decisions). Proposed Interpretation IM–8310–2 seeks to balance these interests by authorizing the Association to release information on disciplinary matters that could most significantly affect investors' interest and by enhancing the disclosure accompanying the release of disciplinary information.

The Association would be authorized to release information on those disciplinary complaints that present the most significant investor protection issues, *i.e.* violations of anti-fraud, anti-manipulation, and sales practices rules that affect investors. In addition, the Association would be authorized to release to the public information the President of NASD Regulation determines should be publicized in the public interest as well as information on any NASD-initiated [8] disciplinary complaint that contains an allegation of a violation of a specifically identified statute, rule or regulation of the SEC, NASD, or Municipal Securities Rulemaking Board (''MSRB'') [9] that is determined by the NASD Regulation Board of Directors to involve serious misconduct that affects investors (''Designated Rules'').[10] The Association would also be authorized to release information on final and non-final disciplinary matters that: (1) Meet the current criteria for significant disciplinary decisions; (2) meet the specific criteria proposed for disciplinary complaints, or (3) the President of NASD Regulation determines should be publicized in the public interest.

The proposal also provides for, in limited circumstances, the release of information on disciplinary complaints that contain allegations of violations of other rules and regulations not included on the list of Designated Rules, but nonetheless involve serious misconduct that could affect investors. Proposed Interpretation IM–8310–2 would authorize the President of NASD Regulation to issue information on any complaint or group of complaints that involve a significant policy or enforcement determination where the release of the information is deemed to be in the public interest.

In order to ensure that the appropriate disclosures accompany information on any disciplinary complaint, NASD Regulation proposed to require that any disciplinary complaint be accompanied by a disclosure regarding the status of the complaint. The Interpretation currently requires disclosure that ''the issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.'' The proposed amendment would expand this disclosure to include the following statement: ''Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.'' NASD Regulation believes that this disclosure will help to enable recipients of the information to view it in an appropriate context and, thereby, provide appropriate protections to the respondent.[11]

With respect to non-final disciplinary decisions, NASD Regulation proposed to amend the Interpretation to require that the current significance test for release of information on final decisions also be applied to the release of information on non-final decisions—with the additional requirement that non-final decisions be accompanied by appropriate disclosures as to the status of the case.[12] As a result of these changes, the Association would be authorized to release information on non-final disciplinary decisions that impose monetary sanctions of $10,000 or more, penalties of expulsion, revocation, suspension, or a bar from being associated with member firms.

Association would be authorized to release information on non-final disciplinary decisions that impose monetary sanctions of $10,000 or more, penalties of expulsion, revocation, suspension, or a bar from being associated with member firms.

In addition, the proposal would require the release of information on all non-final and final decisions that contain allegations of a Designated Rule violation, regardless of the extent to the sanction or whether any sanction had, in fact, been imposed. NASD Regulation believes that where information on a disciplinary complaint is released because it includes an allegation of a violation of one or more Designated Rules, information on the decision involving the same matter should also be released based on the same public policy interests that justify the release of compliant information—regardless of whether the decision results in the finding of a violation and the imposition of sanction, a dismissal of the allegation, or a reversal of earlier findings.

NASD Regulation also proposed amending the provision regarding waiving the release of information in a particular case where the release of the information would be deemed to violate fundamental notions of fairness or work an injustice. The proposed amendment transfers the authority to grant exceptions from the Board of Governors of the NASD to the National Business Conduct Committee (''NBCC''), in order to facilitate consideration of any application for an exception pursuant to the standard NBCC review procedures for motions by respondents.

III. Discussion

The Commission believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD. In particular, Section 15A(b)(6)

[8] With respect to the methodology for the release of information on complaints and decisions, it is anticipated that information will be released through an omnibus press release (that is subsequently included in an NASD Notice to Members), a press release on an individual matter, or through the NASD Regulation WebSite.

[9] NASD Regulation maintains the authority and responsibility to enforce compliance with MSRB rules with respect to member firms.

[10] NASD Regulation proposed a list of Designated Rules that included those SEC, NASD, and MSRB rules that prohibit significant fraudulent activity or egregious conduct. The list of Designated Rules was published in Securities Exchange Act Release No. 38380 (March 10, 1997), 62 FR 12866 (March 18, 1997). In addition, the list of Designated Rules will be published in the Notice to Members announcing the approval of this rule proposal. In the future, any changes to the list will be filed with the Commission as a proposed rule change in accordance with Rule 19b–4(e)(1). In addition, the changes to the list will be published by the Association in a Notice to Members.

[11] While the Association receives request for disciplinary information from either telephonic inquiries or written inquiries, the requested information is released in written form and will be accompanied by the disclosure.

[12] As proposed, paragraph (c) of Interpretation IM–8310–2 would be redesignated as subparagraph (d)(1) and the provisions that currently prevent the Association from releasing information on non-final disciplinary decisions would be deleted.

of the Exchange Act [13] requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and 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 the NASD Regulation's proposal to expand the Association's authority to release information on significant disciplinary complaints and significant final and non-final disciplinary decisions is consistent with the Association's obligations to protect investors and the public interest.

The Commission believes investor confidence in NASD members will be enhanced because more information will be available to the public under the proposed Interpretation. Moreover, the Commission believes that providing the public with more complete information on the disciplinary history of NASD members will aid investors in making informed decisions with respect to choosing a broker.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act that the proposed rule change and Amendment No. 1 (SR–NASD–97–11) be and hereby is approved. The Interpretation IM–8310–2 should become effective 30 days after the date a Notice to Members is issued announcing adoption of the proposed rule change and containing the list of Designated Rules. The Notice to Members shall be issued within 45 days of publication of this approval order in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–10882 Filed 4–25–97; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. § 78*o*–3.

[14] 17 CFR 200.30–3(a)(12) (1989).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38530; File No. SR–PSE–97–01]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Granting Approval to Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1, Relating to the Exchange's Limitation of Liability in Connection With Indexes on Which Options Are Listed or Traded on the Exchange

April 21, 1997.

On January 13, 1997, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') submitted to 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 clarify the scope of the Exchange's rule concerning the limitation of liability of the Exchange, its affiliates, index licensors, and administrators in connection with indexes on which options are listed or traded on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on February 13, 1997.[3] No comments were received concerning the proposal. On February 18, 1997, the PSE submitted Amendment No. 1. This order approves the proposal as amended.[4]

PSE Rule 7.13 currently provides that the Exchange shall have no liability for damages, claims, losses, or expenses caused by any errors, omissions or delays in calculating or disseminating the index value. The proposed rule change deletes this rule and replaces it with one that defines the scope of the Exchange's limited liability more clearly.[5] In addition , the proposal extends the limited liability provisions to any affiliates of the Exchange as well as any ''Index Licensor'' or ''Administrator.'' [6] However, in order to conform its limitation of liability provisions to those of other self-regulatory organizations (''SROs''), the PSE represented that it will not rely on this rule to limit its liability for intentional misconduct or for any violation of the federal securities laws.[7]

The Communication finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to prevent fraudulent and manipulative acts, and, in general, to protest investors and the public interest.[10]

The Commission finds that the proposed limitation of liability language will provide the PSE with protection that is substantively similar to protection already afforded other self-regulatory organizations.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38253 (Feb. 6, 1997), 62 FR 6825.

[4] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated February 13, 1997 (''Amendment No. 1'').

[5] Specifically, the proposal provides that neither the Exchange, any affiliate, nor any Index Licensor or Administrator shall have any liability for any loss, damages, claim, or expense arising from or occasioned by any inaccuracy, error, or delay in, or omission of or from, (i) Any index and basket information or (ii) the collection, calculation, compilation maintenance, reporting or dissemination of any index or any index and basket information, resulting either from any negligent act or omission by the Exchange, any affiliate or any Index Licensor or Administrator or from any act, condition or cause beyond the reasonable control of the Exchange, any affiliate or any Index Licensor or Administrator, including, but not limited to, flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction. In addition, the proposed rule change states that these parties disclaim all applicable warranties with respect to any basket or stocks or index traded on the Exchange.

The proposal defines ''Index and basket information'' as (a) information relating to the inclusion and relative representation of stocks in any index from which a basket is derived, such an index's values, a basket's component stocks, the weighted summation of the bids or offers of a basket's component stocks, and basket and component stock last sale and quotation information and (b) other information relating to a basket or its index.

[6] The proposal defines an ''Index Licensor'' or ''Administrator'' as any person who: (a) licenses to the Exchange the right to use (i) an index that is the basis for determining the inclusion and relative representation of a basket's component stocks or (ii) any trademark or service mark associated with such an index; (b) collects, calculates, complies, reports and/or maintains such an index, or index and basket information relating to such an index; (c) provides facilities for the dissemination of index and basket information; and/or (d) is responsible for any of the activities described above.

[7] Amendment No. 1, *supra* note 4.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[11] *See* American Stock Exchange Rules 902C and 1003; Chicago Board Options Exchange Rule 24.14;

Additionally, because the PSE represents that the proposed rule change cannot be used to limit its liability for intentional misconduct or for any violations of the federal securities laws, the Commission believes the proposal will protect investors and the public interest, while also serving to facilitate transactions in securities. For example, by defining the scope of potential liability more clearly, entities will not be discouraged from creating new products or calculating and disseminating settlement values.[12] Therefore, derivative products, which provide hedging or other economic functions, should remain available to investors.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 simply clarifies that the Exchange will interpret its limitation of liability provisions in a manner that is consistent with other SROs' interpretations of their limited liability rules. Furthermore, this interpretation has been published in the **Federal Register** on several occasions for the full comment period, and no comments have ever been received. For these reasons, the Commission finds that accelerating approval of Amendment No. 1 is consistent with Section 6 and Section 19(b)(2) of the Act.[13]

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Pacific Stock Exchange. All submissions should refer to File No. SR–PSE–97–01 and should be submitted by May 19, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PSE–97–01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–10881 Filed 4–25–97; 8:45 am]

BILLING CODE 8010–01–M

New York Stock Exchange Rule 702(b); and Philadelphia Stock Exchange Rule 1057.

[12] *See* Securities Exchange Act Release No. 34125 (May 27, 1994), 59 FR 29307 (approving File No. SR–Amex–93–41); Securities Exchange Act Release No. 38041 (Dec. 11, 1995), 61 FR 66721 (approving File No. SR–Phlx–96–11).

[13] 15 U.S.C. 78f and 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 07/07–0087]

United Financial Resources Corp; Notice of Surrender of License

Notice is hereby given that United Financial Resources Corporation 7401 F. St. Omaha, Nebraska 68127 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). United Financial Resource Corp. was licensed by the Small Business Administration on July 7, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: April 16, 1997.

Donald A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–10837 Filed 4–25–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2534]

United States International Telecommunications Advisory Committee Standardization Sector (ITAC–T) National Study Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) National Study Group will meet on 28 April 1997 from 10:30 AM. to 12:30 PM, in Room 2533A at the Department of State, 2201 C Street, N.W., Washington, DC 20520.

The U.S. National Group, ITAC–T, will meet to discuss preparations for the April 29, 1997 Geneva meeting concerning Internet domain names. The Geneva meeting will include an information session and Meeting of Signatories and potential signatories of the generic top level domain Memorandum of Understanding (GTLD–MOU). The short lead time for this meeting results from the short notice received from ITU.

Members of the General Public may attend this meeting and join in the discussions, subject to the instructions of the Chairman, Earl S. Barbely.

Note: If you wish to attend please send a fax to 202–647–7407 not later than 24 hours before the scheduled meeting. On this fax, please include subject meeting, your name, social security number, and date of birth. One of the following valid photo ID's will be required for admittance. U.S. driver's license with your picture on it, U.S. passport, U.S. Government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: April 22, 1997.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 97–10919 Filed 4–23–97; 3:03 pm]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice 2535]

United States International Telecommunications Advisory Committee Radiocommunication Sector Study Group 8—Mobile Services; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 8—Mobile Services will meet on 15 May 1997 at 2:00 to 4:00 p.m., in Room 2533A at the Department of State, 2201 C Street, NW., Washington, DC 20520.

Study Group 8 studies and develops recommendations concerning technical and operating characteristics of mobile, radiodetermination, amateur and related satellite services.

This meeting will prepare for the June 9–12 international meeting of Study Group 8.

Members of the General Public may attend these meetings and join in the

discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: If you wish to attend please send a fax to 202–647–7407 not later than 24 hours before the scheduled meeting. On this fax, please include subject meeting, your name, social security number, and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, U.S. Government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: April 22, 1997.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunication Sector.

[FR Doc. 97–10920 Filed 4–23–97; 3:03 pm]

BILLING CODE 4710–45–M

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

DATE AND TIME: Friday, May 2, 1997—9:00 a.m.–5:00 p.m.; Saturday, May 3, 1997—9:00 a.m.–12:00 p.m.

PLACE: Poco Diablo Hotel & Resort, 1752 South Highway 179, P.O. Box 1709, Sedona, Arizona 86336.

MATTERS TO BE CONSIDERED: FY 1997 grant requests and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: All matters other than those noted as closed below.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 97–10966 Filed 4–23–97; 4:59 pm]

BILLING CODE 6820–SC–M

SUSQUEHANNA RIVER BASIN COMMISSION

Comprehensive Plan; Fee Schedule

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of public hearing on addition to comprehensive plan; Fee schedule.

The Susquehanna River Basin Commission will hold two public hearings in conjunction with its regular meeting on May 15, 1997 at the Best Western Eden Resort Inn & Conference Center, 222 Eden Road, Lancaster, PA. beginning at 8:30 a.m. The first hearing will be for the purpose of receiving public comments on the inclusion of the proposed Out-of-Basin Diversion Policy and Protocol in the Commission's *Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin.* A second hearing will follow thereafter on proposed revisions to the Commission's project review fee schedule.

Under Section 3.10 of the Susquehanna River Basin Compact, P.L. 91–575, 84 Stat 1509 et seq., the Commission must review and approve all diversions of water from the Susquehanna River Basin. Up to this time, the Commission has adopted no formal policy position or statement on how it will evaluate proposed diversions, but has relied on positions articulated in past docket decisions. This policy establishes the principles that the Commission will consider in the approval of diversions and adds a protocol describing how those principles will be applied. Written comments will also be accepted and made a part of the hearing record.

The proposed revisions to the fee schedule will abolish the annual compliance monitoring fee for most projects and implement an upfront charge to defray the cost of compliance monitoring. The Commission will also be able to charge an extraordinary project review fee for projects that, because of their complexity, require an extraordinary expenditure of review time by Commission staff. Several other changes are proposed to improve the format and readability of the fee schedule.

Copies of the entire policy statement and protocol and the proposed revisions to the fee schedule may be obtained upon request to the Commission at 1721 N. Front Street, Harrisburg, PA 17102–2391; (717) 238–0423. Written comments may be submitted to and further information obtained from Richard A. Cairo, General Counsel.

Dated: April 16, 1997.

Paul O. Swartz,

Executive Director.

[FR Doc. 97–10802 Filed 4–25–97; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Rectifications to the NAFTA Rules of Origin Set Forth in the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of rectifications to the NAFTA rules of origin set forth in the Harmonized Tariff Schedule of the United States.

SUMMARY: The Office of the United States Trade Representative is providing notice of certain rectifications to the rules of origin for goods covered by the North American Free Trade Agreement (NAFTA), as set forth in the Harmonized Tariff Schedule of the United States (HTS). These rectifications are intended to maintain consistency between the HTS and the NAFTA rules of origin.

DATES: The effective date of the rectifications set forth in this notice are indicated in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT: William L. Busis, Associate General Counsel, (202) 395–3150, 600 17th Street, NW., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: At a meeting of the NAFTA Commission held on March 20, 1997, the governments of the United States of America, the United Mexican States, and Canada (the NAFTA Parties) agreed to certain technical rectifications to the NAFTA rules of origin contained in Annex 401 of the NAFTA. These rectifications were developed by the NAFTA Working Group on Rules of Origin, and are intended to maintain consistency between Annex 401 and the tariff schedules of the NAFTA Parties. The appendix to this notice embodies these Annex 401 rectifications in the NAFTA rules of origin set forth in general note 12(f) of the HTS.

Proclamation 6969 of January 27, 1997 (62 FR 4415, January 29, 1997) authorized the United States Trade Representative (USTR) to exercise the authority provided to the President under Section 604 of the Trade Act of 1974 (the 1974 Act), as amended by Pub. L. 100–418, 88 Stat. 2073 (19 U.S.C. 2483), to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in USTR by Proclamation 6969 and the authority vested in the President by the Constitution and the laws of the United States, including, but not limited to, section 604 of the 1974 Act and section 202(q) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3332(q)), the rectifications, technical or conforming changes, and similar modifications set forth in the appendix to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn form warehouse for consumption, on or after

the effective date specified in the appendix.

Dated: April 15, 1997.

Charlene Barshefsky,

United States Trade Representative.

Appendix

Effective with respect to goods entered, or withdrawn from warehouse for April 28, 1997 consumption, on or after April 28, 1997 general note 12(t) to the Harmonized Tariff Schedule of the United States is modified as follows:

1. The tariff classification rule (TCR) for chapter 82 reading ''A change to headings 8201 through 8215 from any other chapter.'' is deleted, and the following new rules are set forth in numerical sequence immediately below the expression ''*chapter 82.*'':

''1. A change to heading 8201 from any other chapter.

2. A change to subheadings 8202.10 through 8202.20 from any other chapter.

3. (A) A change to subheading 8202.31 from any other chapter or

(B) A change to subheading 8202.31 from subheading 8202.39, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

A change to subheadings 8202.39 through 8202.99 from any other chapter.

5. A change to headings 8203 through 8206 from any other chapter.

6. (A) A change to subheading 8207.13 from any other chapter; or

(B) A change to subheading 8207.13 from subheading 8207.19, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

7. A change to subheadings 8207.19 through 8207.90 from any other chapter.

8. A change to headings 8208 through 8210 from any other chapter.

9. A change to subheading 8211.10 from any other chapter.

10. (A) A change to subheadings 8211.91 through 8211.93 from any other chapter; or

(B) A change to subheadings 8211.91 through 8211.93 from subheading 8211.95, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value methods is use, or

(2) 50 percent where the net cost method is used.

11. A change to subheadings 8211.94 through 8211.95 from any other chapter.

12. A change to headings 8212 through 8215 from any other chapter.''

2. TCR 11 for chapter 84 is modified by deleting ''8406.11'' and by inserting in lieu thereof ''8406.10''.

3. TCR 229 for chapter 84 is modified by deleting ''8479.81'' at each instance and by inserting in lieu thereof ''8479.82''.

4. TCR 230 for chapter 84 is deleted.

5. TCR 231 for chapter 84 is deleted and the following new TCR 231 is inserted in lieu thereof:

''231. A change to tariff item 8479.89.55 from any other tariff items, except from tariff items 8479.90.45, 8479.90.55, 8479.90.65 or 8479.90.75, or combinations thereof.''

6. TCR 8 for chapter 85 is modified by deleting ''8504.90.70'' and by inserting in lieu thereof ''8504.90.40''.

7. TCR 90 for chapter 85 is modified by deleting ''8528.12.60,'' and by inserting in lieu thereof ''8428.12.62.''.

8. TCR 119 for chapter 85 is deleted and the following new TRC 119 is inserted in lieu thereof:

''*119. (A)* A change to tariff item 8536.50.40 from any other tariff item, except from tariff item 8538.90.40; or

(*B*) A change to tariff item 8536.50.40 from tariff item 8538.90.40 whether or not there is also a change from any other tariff item, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.''

9. TCRs 7 and 8 for chapter 95 are deleted and the following new TCR 7 is inserted in lieu thereof:

''7. A change to subheadings 9506.32 through 9506.39 from any other chapter.''

[FR Doc. 97–10954 Filed 4–25–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–041]

Propeller Injury Prevention Involving Rented Boats

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to solicit comments on the effectiveness of specific devices and interventions which have been suggested for reducing the number of recreational boating accidents involving rented power boats in which individuals are injured by the propeller. Comments are also solicited on the extent to which such devices or interventions may reduce the severity of injuries to individuals involved in propeller-strike accidents.

DATES: Comments must be received July 28, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–041), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randolph Doubt, Project Manager, Recreational Boating Product Assurance Division, (202) 267–6810.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this docket (CGD 95–041) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background Information

In a request for comments published in the **Federal Register** on May 11, 1995 60 FR 25191, the Coast Guard solicited comments from all segments of the marine community and other interested persons on various aspects of propeller accident avoidance. In an Advance Notice of Proposed Rulemaking published in the **Federal Register** on March 26, 1996 [59 FR 13123], the Coast Guard solicited information to supplement what had been received in response to the original request for comments in order to determine the appropriate Federal and State roles in reducing propeller-strike incidents; whether governmental intervention is appropriate; and if so, whether it should be directed at the vessels, their manufacturers, their operators, their owners, or the companies leasing such vessels.

Based on comments received, other research efforts and after consultation with the National Boating Safety Advisory Council in November 1996, several potential devices and interventions have been suggested to aid in this endeavor. Persons submitting

comments should do as directed under request for comments above, and reply to the following specific suggested devices and interventions. Form letters simply citing anecdotal evidence or stating support for or opposition to regulations, without providing substantive data or arguments do not supply support for regulations.

1. Swimming Ladders

(a) Location: Several serious propeller-strike accidents have occurred when individuals were swimming near the stern of a rented boat and someone on board the boat engaged the engine. Prohibiting the location of boarding ladders or swim platforms adjacent to or over a propeller would reduce the potential for such accidents, especially on larger boats when visibility in the water area about the boat is impaired or restricted. *(b) Interlocks:* Another suggested device is to require the installation of an interlock to prevent engagement of the propeller(s) when a swimming ladder is in the deployed position. For swimming ladders which are always in the deployed position, a guard preventing use of the ladder would be coupled with an interlock.

2. Large Warning Notices

People swimming near the stern of boats with the engine(s) running may not be aware of the danger of being struck by the propeller(s) if the engine(s) are deliberately or accidentally put into gear. The operators of propeller-driven rental boats may lack sufficient boating safety education to conscientiously determine the whereabouts of passengers on board before putting the engine(s) in gear. Requiring the display of large warning notices at the helm and on the transom or engine would warn both vessel operators, passengers and swimmers of the location of the propeller(s) and danger.

3. Clear Vision Aft

The location of the helm on rental houseboats and other boats with a large amount of freeboard aft, severely limits the visibility of individuals who may be in the water near the transom area. On rental boats with poor visibility aft, requiring TV monitoring of the area aft of the boat would alert vessel operators to the presence of swimmers in the water near the transom area.

4. Propeller Shaft Engagement Alarm

Warning signals which sound when trucks and other commercial vehicles are put in reverse are useful in warning pedestrians. Requiring the installation of a similar alarm or other signal on propeller-driven rental boats when the shaft is engaged in either direction, would alert swimmers to the danger of a rotating propeller.

5. Kill Switch/Auto Throttle and Neutral Return

In some boating accidents involving rented houseboats, the helm was left unattended even though the engine was at idle with the propeller engaged, while passengers were either in the water or diving overboard. In other accidents, the helm was vacated due to an accidental fall or ejection overboard which allowed the boat to begin turning in a circle and to run down the former occupant(s). Requiring installation of automatic devices (no preliminary operator action necessary) to stop the engine or return the throttle to idle and the transmission to neutral, if the helm is vacated, might reduce the number of such accidents.

6. Education

One of the leading causes of all recreational boating accidents is operator inattention or carelessness. A lack of boating education or boating experience is a frequent cause of accidents involving rental boats. Requiring a safety and operational checkout for rental craft operators and their passengers consisting of education specifically directed to the location and dangers of propellers, might reduce the numbers of accidents in which individuals renting boats are struck by propellers.

Comments and information regarding propeller guards, pump jets (jet drives), alternatives to propeller guards, and any other devices that might reduce the likelihood of an accident or the severity of an injury are also solicited. Technical information received will be forwarded to the Marine Technology Society (MTS) which is currently conducting an availability search for off-the-shelf propeller guards, pump jets, alternatives to guards, prototypes, devices with potential for reducing accidents, and related literature. This will be followed by a period of testing and analysis, under a Coast Guard grant.

The Coast Guard will consider all relevant comments in detering what action may be necessary to address propeller accidents involving rented propeller-driven vessels.

Dated: April 17, 1997.

T.J. Meyers,

Captain, U.S. Coast Guard, Acting Director, Operations Policy.

[FR Doc. 97–10678 Filed 4–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8725

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8725, Excise Tax on Greenmail.

DATES: Written comments should be received on or before June 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Greenmail.

OMB Number: 1545–1086.

Form Number: 8725.

Abstract: Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 12

Estimated Time Per Response: 6 hr., 49 min.

Estimated Total Annual Burden Hours: 82

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 18, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–10905 Filed 4–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8810, Corporate Passive Activity Loss and Credit Limitations.

DATES: Written comments should be received on or before June 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporate Passive Activity Loss and Credit Limitations.

OMB Number: 1545–1091.

Form Number: 8810.

Abstract: Under Internal Revenue Code section 469, losses and credits from passive activities, to the extent they exceed passive income (or/in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Current Actions: There are no changes being made to the form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time Per Response: 37 hr., 42 min.

Estimated Total Annual Burden Hours: 3,770,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 18, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 97–10906 Filed 4–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5754

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5754, Statement by Person(s) Receiving Gambling Winnings.

DATES: Written comments should be received on or before June 27, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement by Person(s) Receiving Gambling Winnings.

OMB Number: 1545–0239.

Form Number: 5754.

Abstract: Section 3402(q)(6) of the Internal Revenue Code requires that a statement be given to the payer of

certain gambling winnings by the person receiving the winnings when that person is not the winner or is one of a group of winners. It enables the payer to prepare Form W–2G, Certain Gambling Winnings, for each winner to show the winnings taxable to each and the amount withheld. IRS uses the information on Form W–2G to ensure that recipients are properly reporting their income.

Current Actions: There are no changes being made to the form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 306,000.

Estimated Time Per Response: 12 min.

Estimated Total Annual Burden Hours: 61,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 17, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–10907 Filed 4–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–8; OTS No. 2275]

First Federal Savings and Loan Association of Sistersville, Sistersville, West Virginia; Approval of Conversion Application

Notice is hereby given that on April 15, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Sistersville, Sistersville, West Virginia, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: April 23, 1997.

By the Office Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–10876 Filed 4–25–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–9; OTS No. 03295]

First Federal Savings and Loan Association of Spartanburg, Spartanburg, South Carolina; Approval of Conversion Application

Notice is hereby given that on April 16, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Spartanburg, Spartanburg, South Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309.

Dated: April 23, 1997.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–10877 Filed 4–25–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–10; OTS No. 06454]

Security Federal Savings Bank of McMinnville, TN, McMinnville, Tennessee; Approval of Conversion Application

Notice is hereby given that on April 21, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Security Federal Savings Bank of McMinnville, TN, McMinnville, Tennessee, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: April 23, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–10878 Filed 4–25–97; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register

Vol. 62, No. 81

Monday, April 28, 1997

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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970415091-7091-01;I.D. 033197D]

RIN 0648-AJ88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper Grouper Fishery Off the Southern Atlantic States; Black Sea Bass Pot Fishery; Control Date

Correction

In proposed rule document 97–10539 beginning on page 19732 in the issue of Wednesday, April 23, 1997 make the following corrections:

1. On page 19732, in the third column, in the **SUMMARY**, in the seventh line from the bottom, ''*[insert date of publication in the Federal Register]*'' should read ''April 23, 1997''.

2. On page 19733, in the first column, in the last paragraph, in the fifth line, ''*[insert date of publication in the Federal Register]*'' should read ''April 23, 1997''.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–808–P]

RIN 0938–AG70

Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services

Correction

In proposed rule document 97–7477, beginning on page 14851 in the issue of Friday, March 28, 1997, make the following correction:

On page 14862, in the table, in the seventh column, in the ninth line, ''35.5'' should read ''35.52''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

Correction

In notice document 97–9704 beginning on page 18360 in the issue of Tuesday, April 15, 1997 make the following correction:

On page 18360, in the first column, in the **DATES** section, ''April 15, 1997'' should read ''May 15, 1997''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 8

[CGD 96-055]

RIN 2115-AF37

Streamlined Inspection Program

Correction

In proposed rule document 97–8509 beginning on page 17008 in the issue of Tuesday April 8, 1997 make the following correction:

On page 17010, Illustration (1) -- Application to OCMI was duplicated on page 17011.

BILLING CODE 1505-01-D

federal register

Monday
April 28, 1997

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 75

Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 75

RIN 1219–AB00

Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its safety standards for roof and rock bolts at metal and nonmetal mines and underground coal mines by updating the reference to the American Society for Testing and Materials (ASTM) standard for roof and rock bolts and accessories. The new reference reflects technological advances in the design of roof and rock bolts and support materials. It would improve the level of protection provided by the standards currently in use.

DATES: Submit written comments on or before June 27, 1997. Submit written comments on the information collection requirements by June 27, 1997.

ADDRESSES: Send written comments on this proposed rule to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203. Commenters are encouraged to send comments on a computer disk or via e-mail to psilvey@msha.gov, along with an original hard copy. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Room 10235, Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; phone: 703–235–1910, fax: 703–235–5551.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

On August 29, 1995, the Office of Management and Budget (OMB) published a final rule in the **Federal Register** (60 FR 44978) implementing the new Paperwork Reduction Act of 1995 (PRA 95). Consistent with PRA 95, these OMB rules expanded the definition of ''information'' to clarify that a ''certification'' would involve the collection of ''information'' if the Agency used it to monitor compliance. Mine operators currently are required to obtain a certification statement that the testing and manufacture of roof and rock bolts comply with the specified standard, and to keep a copy of this certification statement so that it can be made available to miners' representatives and representatives of the Secretary of Labor (the Secretary). Although the proposed rule would not change this requirement, it is now considered an information collection burden because of the expanded definition of ''information'' under PRA 95. The burden hours and costs associated with roof bolt certifications, therefore, do not reflect any increase for the mining industry.

The collection of information contained in this proposal is subject to review by OMB under the PRA 95. The title, description, and respondent description of the information collection are discussed below with an estimate of the annual information collection burden. Included in the estimate is the time to obtain the manufacturer's signature and file the form.

With respect to the following collection of information, MSHA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of MSHA's functions, including whether the information will have practical utility; (2) the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Description: Sections 56.3203(a)(1), 57.3203(a)(1), and 75.204(a)(1) would require the mine operator to obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–95. Sections 56.3203(a)(2), 57.3203(a)(2), and 75.204(a)(2) require that the certification be made available to an authorized representative of the Secretary. MSHA estimates that it would take the mine operator about 3 minutes to obtain a signature and file the form. Agency experience has shown that major roof and rock bolt manufacturers routinely provide a certification to mine operators at the time of the initial contract and update the certification annually. Smaller manufacturers provide a certification at the time of initial contract and upon request from the mine operator.

Description of Respondents: The respondents are mine operators. MSHA estimates that this provision annually affects 653 surface metal and nonmetal mines; 185 underground metal and nonmetal mines; and 973 underground coal mines.

Information Collection Burden: The total estimated annual information collection burden for surface metal and nonmetal mines is about 33 hours at an estimated annual cost of about $1,180. The total estimated annual information collection burden for underground metal and nonmetal mines is about 9 hours at an estimated annual cost of about $330. The total estimated annual information collection burden for underground coal mines is about 49 hours at an estimated annual cost of about $2,040.

The following chart summarizes MSHA's estimates by section.

Regulation in 30 CFR	Number of respondents	Hours per response	Number of responses	Number of responses per respondent	Annual costs	Total hours per regulation
56.3203(a)(1)	653	0.05	653	1	$1,175	32.65
57.3202(a)(1)	185	0.05	185	1	333	9.25
75.204(a)(1)	973	0.05	973	1	2,043	48.65
Total	1,811	0.05	1,811	1	3,551	90.55

The burden hours and costs associated with roof bolt certifications do not reflect any increase for the mining industry because mine operators currently are required to perform these activities.

Under section 3507(o) of PRA 95, the Agency has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding

these burden estimates or any other aspect of these collections of information, including suggestions for reducing these burdens, (1) directly to the Office of Information and Regulatory Affairs, OMB; Attention: Desk Officer for MSHA; 725 17th Street NW., Room 10235; Washington, DC 20503, and (2) to Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; 4015 Wilson Boulevard, Room 631; Arlington, VA 22203.

II. Background

A. Metal and Nonmetal Mines

On October 8, 1986, MSHA published a final rule (51 FR 36194) revising its safety standards for ground control at metal and nonmetal mines. This rulemaking included comprehensive rock bolt standards in Title 30 Code of Federal Regulations (CFR) §§ 56/57.3203 which addressed the quality of rock fixtures and their installation. Roof and rock bolts and accessories are an integral part of ground control systems and are used to prevent the fall of roof, face, and ribs. Accidents involving falls of roof in underground mines or falls of highwall in surface mines have resulted in injuries and fatalities.

These standards currently require that metal and nonmetal mine operators obtain a certification from the manufacturer that rock bolts and accessories are manufactured and tested in accordance with the 1983 American Society for Testing and Materials (ASTM) publication ''Standard Specification for Roof and Rock Bolts and Accessories'' (ASTM F432–83). The ASTM standard for roof and rock bolts and accessories is a consensus standard used throughout the United States. It contains specifications for the chemical, mechanical, and dimensional requirements for roof and rock bolts and accessories used for ground support systems.

The manufacturer's certification is made available to an authorized representative of the Secretary to attest to the appropriate testing and manufacture of the rock bolts and accessories. Requiring that the mine operator obtain a certification from the manufacturer assures mine operators that the material they use meets technical requirements established to promote safety.

B. Underground Coal Mines

MSHA published a final rule on February 8, 1990, (55 FR 4592) revising paragraphs (a) and (b) of § 75.204. This standard references ASTM publication ''Standard Specification for Roof and Rock Bolts and Accessories'' (ASTM F432–88), which was the most recent revision available at that time. The final rule also requires mine operators to obtain a certification from the manufacturer that roof bolts and accessories are manufactured and tested in accordance with ASTM F432–88. To comply with this rule, mine operators are required to provide the certification document, upon request, to an authorized representative of the Secretary to establish that their roof bolts are designed and tested in accordance with the ASTM standard.

This reference to the ASTM standard performs the same function as the reference to the 1983 ASTM standard for metal and nonmetal mining application. That is, the certificate assures mine operators that the material they use meets technical requirements established to promote safety.

III. Discussion

MSHA has found that the existing certification requirement has been successful in maintaining compliance with requirements for roof and rock bolts and accessories. MSHA is proposing to retain the certification requirement and to update existing §§ 56.3203, 57.3203, and 75.204 by replacing the references to outdated ASTM F432–83 and ASTM F432–88 with a new reference to ASTM F432–95.

MSHA participated in the development of ASTM F432–95 through active representation at meetings of the American Mining Congress (predecessor organization to the National Mining Association) Roof Support Group. It was that committee that prepared the revised document for consideration by ASTM. The committee was open to all manufacturers of roof and rock bolts and accessories, and considered comments from all participants in developing the new specifications. MSHA Technical Support personnel conducted both laboratory and field studies which provide supporting data for the various changes. This proposed rulemaking has been followed closely by the National Mining Association, the United Mine Workers of America, and the United Steelworkers, and the Agency does not anticipate any opposition.

MSHA is updating the standards because the Agency believes that ASTM F432–95 is more comprehensive than those referenced in existing standards, that it reflects advances in rock and roof bolt technology, and that it would provide better protection for miners than the standards currently in place. As discussed below, these revisions will not reduce the protection afforded miners by the MSHA standards currently in place.

A. New Products Addressed

ASTM F432–95 covers products not addressed by the current standards including grouting materials, large diameter bolts, thread deformed bars, and formable anchorage devices.

1. Grouting Materials

Grouting materials, which were not addressed by either ASTM F432–88 or ASTM F432–83, are extensively covered by ASTM F432–95. The term ''grouting materials'' is used in ASTM F432–95 to include any chemical materials (such as polyester, polyurethane, or epoxy resins) that are used to anchor mine roof bolts. While grouted bolts have been used successfully to support mine roofs since the 1970's, each manufacturer has a different method to describe proper application of grouting materials and their performance characteristics. This lack of standardization has caused confusion and occasional misapplication of a particular grout formulation and, therefore, has resulted in improperly grouted boreholes. Improperly grouted boreholes can result in poor bolt performance and, potentially, an inadequately supported roof. A survey of MSHA field personnel revealed that improper borehole grouting has been a contributing factor in roof fall accidents. Under ASTM F432–95, there are specific requirements regarding strength, cure rate, cartridge volume, and labeling that will standardize the production and application of grouting materials and reduce the likelihood that grouted bolts will be improperly installed.

2. Large Diameter Bolts

Similarly, large diameter bolts, ranging in size from 1⅛ inch to 1½ inch, are now addressed by ASTM F432–95. MSHA field personnel report that these large diameter bolts are growing in popularity and are being used in areas of adverse roof conditions where smaller diameter bolts would fail. ASTM F432–95 provides standard strength and thread tolerance limits that ensure minimum performance levels and the interchangeability of components produced by different manufacturers. Compatibility is essential in ensuring that components acquired from different sources function properly when used together, such as mechanical anchors from one manufacturer and bolts from another, and provide an adequate margin of safety.

3. Thread Deformed Bars and Formable Anchorage Devices

Two new technologies, thread deformed bars and formable anchorage

devices, also are addressed by ASTM F432–95. These bolting systems were not in use at the time ASTM F432–83 and ASTM F432–88 were adopted; but, their effectiveness has been demonstrated at a number of mines, which has led MSHA to approve their use in roof control plans. ASTM F432–95 provides specific manufacturing, strength, and identification requirements for these products to ensure that minimum performance levels are met and that reliable products are available to the mine operator. Updating the roof control standards which reference the ASTM specifications covering these systems would reduce the time required by mine operators to receive approval to use these devices in the roof control plan, and eliminate the need for repetitive and time consuming underground tests.

B. Additional Safety Benefits

ASTM F432–95 provides a number of additional safety benefits, including strength standards for couplers, tolerances for external and internal threads, dimensions for hardened washers, and bolt grading and identification systems.

1. Couplers

Couplers are devices which connect two bolt sections. ASTM F432–95 increases the strength standard for couplers and requires couplers to withstand the full breaking loads of the bolts with which they are used. In comparison, ASTM F432–88 requires only that couplers support the minimum yield and tensile loads of the connected bolts. In practice, roof bolt strengths often exceed the minimum strength requirements of ASTM F432–88 by a substantial margin, often in excess of 8,000 pounds. The new coupler requirements will ensure that the full strength of the bolting system is achieved and that catastrophic bolt failure, through premature coupler breakage, is prevented.

2. Internal and External Threads

New tolerances have been established under ASTM F432–95 for both external threads primarily used for bolts, as well as internal threads used in couplers, anchor plugs, and nuts. MSHA experience indicates that the current thread tolerances of ASTM F432–88 and ASTM F432–83 are relatively tight and have been linked to thread seizure problems occasionally experienced during the installation of tensioned roof bolts. Thread seizure or binding can be caused by expansion anchor compression on bolt threads or the jamming of threads by small metal shards produced during the planned shearing of torque inhibiting pins or plugs. Thread seizure during roof bolt installation can significantly influence the torque-tension relationship. In turn, the torque check required by §§ 56.3203(f)(2), 57.3203(f)(2), and 75.204(f) (3), (4), and (5) may not indicate bolt tension accurately and, thus, fail to detect bolt installations that are not in compliance with those standards. The revised requirements of ASTM F432–95 would allow a slightly looser fit between mating threads (0.003 inch), which would reduce the possibility of thread seizure without affecting the strength of the component parts. The net result would be the improved reliability of roof bolt installations through more consistent bolt tensioning.

3. Hardened Washers

ASTM F432–95 provides revised dimensions and tolerances for hardened washers that are used to enhance the uniformity of installed roof bolt tension. Current dimensions listed in ASTM F432–83 and ASTM F432–88 are such that it is impossible to use hardened washers with many deformed bars because the center hole dimensions are too small. In addition, the restricted outside diameter (2 inches nominal) prevents the effective use of hardened washers with large diameter bolts (i.e., 1½ inch diameter) because of the grossly reduced bearing surface. The revised hardened washer dimensions of ASTM F432–95 are compatible with the bolts currently in use and ensure that the benefits of uniform bolt tension can be achieved with those systems.

4. Uniform Grading Systems

ASTM F432–95 also contains a revised bolt grading system that would cover existing products and establish grade intervals for high strength bolts that may be developed in the future. The current reference standards of ASTM F432–83 and ASTM F432–88 are limited to grades currently in use. This essentially precludes the immediate use of higher strength bolts. The use of higher strength bolts now requires often unnecessary and time consuming tests to allow for MSHA approval of these bolts for use in an individual mine.

In addition, the current system uses a single symbol for bolt head identification to designate both grade and diameter. Given the variety of bolting systems in use (⅝, ¾, ⅞, 1, and 1⅛ inch diameters; grades 40, 55, 60, 75; plain and rebar bolts), a large number of symbols are used. Consequently, under the current system, identifying the grade and diameter of a bolt used underground, from the bolt head, has become difficult and extremely confusing. This increases the potential for the inadvertent use of bolt types either not prescribed by the roof control plan or not suitable for the roof conditions encountered. The revised grading and identification system of ASTM F432–95 would allow for the introduction of new high strength bolting systems and make it easier for miners to verify the grade and diameter of the bolts in use by looking at the bolt head.

A grading system also has been established in ASTM F432–95 for threaded tapered plugs used in expansion anchors that specify minimum non-seizure and non-stripping loads for the bolt and plug threads. This system would enable mine operators to select expansion anchors with strength characteristics that are compatible with the bolting system in use, and ensure that thread seizure will not occur during bolt installation.

5. Low Strength Bolts

Finally, ASTM F432–95 would eliminate the use of low strength grade 30 bolts permitted by both ASTM F432–83 and 88, and delete certain chemical and grade requirements contained in those versions that unnecessarily restrict new technology. As a result, ASTM F432–95, through its improved specifications, would provide additional safety to miners as compared to the current specifications.

MSHA expects that the elimination of the use of grade 30 bolts would not adversely impact the mining industry. MSHA allows a year for mine operators to use existing inventory. Further, MSHA experience indicates that the majority of mine operators are no longer using the 30 grade bolts and that they are no longer being manufactured.

C. Existing Inventory

This proposal would allow mine operators to use inventories of roof support components meeting the design criteria of ASTM F432–83 and ASTM F432–88 for up to one year from the effective date of the final rule. After that year, only roof support components meeting ASTM F432–95 would be permitted to be installed. This one-year period will not result in a diminution of safety to miners and will allow mine operators, including small mines and seasonal operations, to exhaust existing supplies of roof support materials on site. It also would allow miners who use roof support materials to become sufficiently trained in the use of roof bolts and accessories that meet the requirements of ASTM F432–95. MSHA

specifically solicits comments from the mining community as to the suitability of this time period. MSHA is proposing that mine operators, however, could start using components meeting the ASTM F432–95 standard upon the effective date of the final rule.

MSHA also believes that the one-year time period gives sufficient time for roof bolt manufacturers to consume present tooling, exhaust inventories of products meeting current specifications, and produce and make available to mine operators quantities of roof bolts meeting the design criteria of ASTM F432–95. MSHA specifically solicits comments from the mining community on whether this time period is adequate to supply mine operators with the kind and quantity of roof bolts needed.

IV. Executive Order 12866 and Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of proposed regulations. MSHA estimates that the cost impact of the proposed rule is the same as under the existing rule. The primary benefit of the proposed rule is that it provides for advancements in roof bolt technology and, therefore, would increase protection for miners. MSHA has determined that this proposed rule does not meet the criteria of a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA traditionally has considered small mines to be those with fewer than 20 employees. For the purposes of the RFA and this certification, MSHA has analyzed the impact of the proposed rule on all mines, on those with fewer than 20 employees, and on those with fewer than 500 employees, and has concluded that there is no cost impact on the mining industry.

The Agency has provided a copy of this proposed rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the proposed rule, including the preamble and regulatory flexibility certification statement, to all affected mine operators.

Regulatory Flexibility Certification

In accordance with section 605 of the RFA, MSHA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, MSHA must include in the proposed rule a factual basis for this certification. The Agency also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis.

Factual Basis for Certification

MSHA has used a qualitative approach in concluding that the proposed rule would not have a significant economic impact on a substantial number of small entities. MSHA anticipates that the cost of purchasing roof and rock bolts and accessories would not increase as a result of the proposed requirement that they meet the new ASTM specification (ASTM F432–95). This ASTM standard incorporates technological advances that are currently available and being used by the mining industry. Although MSHA does not expect any cost increases as a result of this proposed rule, there may be minimal costs which the Agency is not able to predict at this time. For this reason, MSHA solicits comments from the mining industry, especially small mines and roof bolt manufacturers, as to the impact of the proposed rule, both costs and benefits. With respect to costs, the Agency requests that commenters provide supporting information.

V. Unfunded Mandates Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

List of Subjects

30 CFR Parts 56 and 57

Mine safety and health, Surface mining, Underground mining.

30 CFR Part 75

Coal, Mine safety and health, Underground mining.

Dated: April 17, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, MSHA proposes to amend chapter I of title 30 of the Code of Federal Regulations as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 56.3203 is amended by revising the introductory text of paragraph (a), paragraph (a)(1), and the introductory text of paragraph (b) to read as follows:

§ 56.3203 Rock fixtures.

(a) On and after April 28, 1998, for rock bolts and accessories addressed in ASTM F432–95, ''Standard Specification for Roof and Rock Bolts and Accessories,'' the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–95; and

(2) * * *

(b) Fixtures and accessories not addressed in ASTM F432–95 may be used for ground support provided they—

* * * * *

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 57.3203 is amended by revising the introductory text of paragraph (a), paragraph (a)(1), and the introductory text of paragraph (b) to read as follows:

§ 57.3203 Rock fixtures.

(a) On and after April 28, 1998, for rock bolts and accessories addressed in ASTM F432–95, ''Standard Specification for Roof and Rock Bolts and Accessories,'' the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–95; and

(2) * * *

(b) Fixtures and accessories not addressed in ASTM F432–95 may be

used for ground support provided they—

* * * * *

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

5. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

6. Section 75.204 is amended by revising the introductory text of paragraph (a), paragraph (a)(1), and the introductory text of paragraph (b) to read as follows:

§ 75.204 Roof bolting.

(a) On and after April 28, 1998, for roof bolts and accessories addressed in ASTM F432–95, ''Standard Specification for Roof and Rock Bolts and Accessories,'' the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–95; and

(2) * * *

(b) Roof bolts and accessories not addressed in ASTM F432–95 may be used, provided that the use of such materials is approved by the District Manager based on—

* * * * *

[FR Doc. 97–10722 Filed 4–25–97; 8:45 am]

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federal register

Monday
April 28, 1997

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Idaho; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5817–8]

Water Quality Standards for Idaho

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing water quality standards that would be applicable to the waters of the United States in the State of Idaho. If promulgated as final standards, they will supersede those aspects of Idaho's water quality standards that EPA disapproved in 1993 and 1996. EPA is taking this action because it believes those State water quality standards are inconsistent with the Clean Water Act and EPA's implementing regulations. The timing of this rulemaking is designed to comply with a court order directing EPA to propose standards by April 21, 1997 and to promulgate final standards 90 days thereafter. EPA is proposing new use designations on currently unclassified waters in the State, and new use designations on 53 specified water body segments whose use designations do not meet the goals of the Clean Water Act and which have not been justified by the State. EPA is also proposing new temperature criteria necessary to protect certain threatened and endangered species and species being considered for listing as threatened and endangered. Finally, EPA's proposal addresses the State's mixing zone and anti-degradation policies as well as its excluded waters provision.

DATES: EPA will accept public comments on this rulemaking until May 28, 1997. Comments postmarked after this date may not be considered. EPA is sponsoring two public hearings on today's proposed water quality standards for Idaho on May 12, 1997. The first is scheduled for 2–5:00 pm (MDT), and the second for 6:30–9:30 pm (MDT).

ADDRESSES: An original plus 2 copies, and if possible an electronic version of comments either in WordPerfect or ASCII format, should be addressed to Lisa Macchio, U.S. EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101.

The public hearings will be held in Rooms A and B of the Department of Environmental Quality Earl Chandler Building, 1410 North Hilton, Boise, Idaho.

The administrative record for today's proposed rule is available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101, between 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Lisa Macchio at U.S.EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101 (telephone: 206–553–1834), or William Morrow in U.S.EPA Headquarters at 202–260–3657.

SUPPLEMENTARY INFORMATION:

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A. Potentially Affected Entities

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in Idaho could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Idaho.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

B. Background

1. Statutory and Regulatory Background

Under section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA), States are required to develop water quality standards for waters of the United States within the State. Section 303(c) provides that water quality standards shall include the designated use or uses to be made of the water and criteria necessary to protect the uses. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

EPA regulations implementing section 303(c) are published at 40 CFR Part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all water bodies in the State, water quality criteria sufficient to protect those use designations, and an anti-degradation policy consistent with EPA's water quality standards. 40 CFR 131.6. States may also include in their standards policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval.

The authority to review and to approve or disapprove new or revised water quality standards for EPA Region X has been delegated from the Administrator to the Regional Administrator, and redelegated to the Regional Director of Water. See EPA's Delegation Manual, § 2–10, dated January 28, 1976, and EPA Region X's redelegation manual, § R10 1250.42, September 12, 1995. The authority to determine that new or revised standards are needed, notwithstanding a prior approval, has not been delegated, and so remains with the Administrator.

Section 303(c) of the CWA authorizes EPA to promulgate water quality standards to supersede State standards that have been disapproved, or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. EPA is acting today to promulgate standards superseding State standards that have been deemed disapproved by the U.S. District Court for the Western District of Washington's in *Idaho Conservation League* v. *Browner* (No. C96–807WD, February 20, 1997, herein ''*ICL* v. *Browner*''). Today's proposal represents a preliminary determination by the Administrator that each of the elements in today's rulemaking is necessary and appropriate.

EPA's usual practice when promulgating a water quality standard is to provide 45 days advance notice of a hearing, and a public comment period that extends at least until the date of the hearing. 40 CFR § 25.5(a). However, the regulations also allow for the modification of specific deadlines where necessary to accommodate the specific provisions of court orders. Here, EPA is under a court order to propose standards in 60 days and to promulgate 90 days after proposal. A comment period of 45 days would not allow EPA sufficient time to analyze and consider a substantial set of comments. Accordingly, EPA is providing a comment period of 30 days as well as holding two public hearings on May 12, 1997. The demanding schedule for promulgation of standards in this case has also led EPA to propose a special procedure by which the Regional Administrator for Region 10 may grant variances from EPA-designated uses where, following promulgation of these standards, information becomes available showing that an EPA-designated use is unattainable. See section I. below for a detailed discussion.

Section 7 of the Endangered Species Act requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), to insure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which have been designated as ''critical.'' Consultation is designed to assist federal agencies in complying with the requirements of section 7 by supplying a process within which FWS and NMFS provide such agencies with advice and guidance on whether an action complies with the substantive requirements of ESA. Approval of State water quality standards and federal promulgation of water quality standards are considered federal actions, and hence EPA is required to comply with the requirements of section 7 of ESA prior to final promulgation.

As a result of EPA's responsibilities and duties under Section 7 of the Endangered Species Act, EPA has initiated informal consultation with FWS and NMFS on this rulemaking. As part of this process EPA is preparing a biological assessment document which will be submitted to FWS and NMFS prior to the final rulemaking. EPA expects to conclude consultation with the Services prior to the final rulemaking.

EPA developed today's proposed standards by application of existing State requirements for development of water quality standards set out in 40 CFR Part 131, EPA's implementing policies and procedures, and existing methodologies for criteria development. The basis for the proposed rule is described more fully below in sections C–I.

2. Factual Background

On July 11, 1994, Idaho submitted a complete set of water quality standards to EPA for review and approval. Pursuant to section 303(c)(3) of the CWA, EPA reviewed this complete set of standards. Under the mistaken assumption that all the standards submitted in 1994 were new or revised, EPA reviewed and approved or disapproved all of the State's standards in a June 25, 1996 letter from Chuck Clarke, Region X Regional Administrator, to Wallace Cory, Director, Idaho Division of Environmental Quality. Specifically, the letter disapproved the State's default use designation for unclassified waters, the use designations for 53 waters with designated uses, temperature criteria, portions of the mixing zone and antidegradation policies, the Kinross-Delamar variance, and the excluded waters provision. The letter stated that EPA was approving the remainder of Idaho's water quality standards, subject to completing the consultation required under section 7 of the Endangered Species Act.

Subsequent to the June 25, 1996 action, EPA Region X discovered records that clarified that the standards it had acted on included not only new and revised standards, but also standards which had been previously approved in the same or substantially the same form. This discovery was significant because Region X had been delegated authority to approve or disapprove only new or revised State standards; the Administrator has reserved the authority to determine that new or revised federal standards are needed where State standards have previously been approved. EPA promptly notified the parties and the court of this discovery.

To ensure that all the deficiencies in Idaho's standards were addressed in these circumstances, by a November 22, 1996 memorandum from Chuck Clarke to the Administrator, Region X acknowledged its error and recommended that the EPA Administrator act pursuant to her discretionary authority to fill those gaps where Region X had acted beyond its authority. On February 20, 1997, the District Court in *ICL* v. *Browner* held that EPA was obligated to promulgate standards to supersede all of those disapproved in the June 25, 1996 letter, regardless of whether the standards were new or revised.

C. Unclassified Waters

1. Background

Water quality standards consist of designated beneficial uses, criteria necessary to protect those uses, and an antidegradation policy. Water quality standards establish the ''goals'' for a water body. Designated beneficial uses determine what criteria apply to the water body. In general, States have not

had the resources to designate beneficial uses on a segment-by-segment basis for all of the State's surface waters. States usually initially designate beneficial uses site-specifically for a subset of water segments that are potentially threatened by degradation, and then as resources and information become available gradually begin to classify the remainder. This allows States to focus limited resources on collecting information to protect the water segments at most risk. This approach combined with a default use designation for unclassified waters ensures all State surface waters have designated beneficial uses and are protected for purposes of the Clean Water Act.

Section 101(a)(2) of the Clean Water Act States the national goal of achieving by July 1, 1983, ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water,'' wherever attainable. These national goals are commonly referred to as the ''fishable/swimmable'' goals of the Clean Water Act. Section 303(c)(2)(A) requires water quality standards to ''protect the public health and welfare, enhance the quality of water, and serve the purposes of this Act.'' EPA's regulations at 40 CFR Part 131 interpret and implement these provisions through a requirement that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability. Unless that presumption has been rebutted, a default designation of fishable/swimmable beneficial uses apply.

Under 40 CFR § 131.10(j), States and Tribes are required to conduct a use attainability analysis (UAA) whenever the State or Tribe designates or has designated uses that do not include the uses specified in Section 101(a)(2) of the CWA, or when the State or Tribe wishes to remove a designated use that is specified in Section 101(a)(2) of the Act, or adopt subcategories of uses that require less stringent criteria. Section 131.10 lists grounds upon which a finding of un-attainability may be based. At a minimum, uses are considered by EPA to be attainable if the uses can be achieved when (1) effluent limitations under Section 301(b)(1) (A) and (B) and Section 306 are established for point source dischargers, and (2) cost effective and reasonable best management practices are established for nonpoint source dischargers.

A UAA is defined in 40 CFR § 131.3(g) as a ''structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).'' In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment. In addition, where the economic impact of attaining a use is an issue, those impacts may be documented in the UAA.

2. Idaho's Unclassified Waters Provision

Idaho's regulations at 16.01.02.101.01. adopted August 24, 1994, protected unclassified surface waters for primary contact recreation, unless the physical characteristics of a water body prevented primary contact recreation. In those cases, the water body was protected for secondary contact recreation. While providing for swimmable waters unless and until such use is shown to be unattainable, this provision did not provide any protection for aquatic life, that is, the ''fishable'' component of fishable/swimmable uses. In its June 1996 letter, EPA disapproved this provision because it did not protect unclassified waters for ''protection and propagation of fish, shellfish and wildlife'' and because the State had not demonstrated that such uses were unattainable in unclassified waters, as required by sections 101(a) and 303(c) of the CWA and by EPA's regulations.

On December 1, 1996, Idaho adopted a modified unclassified waters provision which protects unclassified waters for all recreational use in and on the water and the protection and propagation of fish, shellfish and wildlife, ''wherever attainable.'' By letter dated September 23, 1996, Idaho explained that this language was not intended to establish a default designation for aquatic life, but rather that the State contemplated that when regulatory decisions such as NPDES permit decisions arose, data would be reviewed to determine the appropriate beneficial use. Based on this letter and conversations with Idaho's Division of Environmental Quality, it is EPA's understanding that under Idaho's intended interpretation, this provision does not presume that unclassified waters will be protected for fishable/swimmable uses and does not require that such uses be demonstrated to be unattainable before a lesser use is employed in regulatory decisions. Idaho's approach appears to shift the burden so as to require a demonstration that fishable/swimmable uses *are* attainable before they will be protected. This is inconsistent with the goals of CWA § 101(a)(2) and the requirements of CWA § 303(b)(2) and 40 CFR 131.10.

3. Federal Use Designation for Unclassified Waters in Idaho

EPA is proposing to promulgate a default use designation for unclassified waters which provides for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, unless it is demonstrated to EPA for a particular water body that such use(s) are unattainable. Demonstrations that a fishable/swimmable use is unattainable for a particular unclassified water body can be made by applying for a variance to the federal standard. The federal variance procedure is discussed in section I. The CWA specifies that States are to establish water quality standards which includes designating beneficial uses. It is only when a State adopts standards inconsistent with the CWA, that EPA must promulgate replacement standards. If Idaho formally designates a beneficial use for a specific unclassified water body, that water body would no longer be subject to the proposed unclassified waters provision. Such designations are subject to EPA review and approval under CWA § 303(c)(2). In addition, if Idaho corrects the deficiency in their current designated use for unclassified waters, and EPA approves, EPA will remove today's federal designated use for unclassified waters.

In order to provide for the protection and propagation of aquatic life in unclassified waters, it is necessary to determine the predominant type of aquatic life in Idaho's surface waters. Aquatic life in different ecosystems have different needs. Salmonid fishes, especially chinook salmon and bull trout, are often referred to as cold-water fish (ODEQ, 1995). Cold-water fish occur in all of Idaho's basins, with some limited exceptions of isolated sub-basins in southern Idaho. Table 1 shows the non-salmonid fish found in Idaho (Simpson and Wallace, 1982). These fish are classified as cool/cold-and warm-water species (ODEQ, 1995; Simpson and Wallace, 1982; Sigler and Sigler, 1987). Non-salmonid cool/cold-water fish native to Idaho include several species of sculpin, dace, chub, and suckers. The only known warm-water species of fish native to Idaho are the Utah sucker and the Utah chub.

TABLE 1.—NONSALMONID FISHES OF IDAHO (SIMPSON AND WALLACE, 1982)

Family	Common names	Introduced or native	Warm or cool/cold
CLUPEIDAE	American Shad, Herring	Introduced	Warm.
CENTRARCHIDAE	Bass, Largemouth Bass, Pumpkinseed, White Crappie, Green Sunfish, Warmouth, Bluegill.	Introduced	Warm.
	Black Crappie, Smallmouth Bass	Introduced	Cool/Cold.
COTTIDAE	Bear Lake Sculpin, Mottled Sculpin, Paiute Sculpin, Shorthead Sculpin, Shoshone Sculpin, Slimy Sculpin, Torrent Sculpin, Wood River Sculpin.	Native	Cool/Cold.
ICTALURIDAE	Black Bullhead, Brown Bullhead, Channel Catfish, Tadpole Madtom, Flathead Catfish.	Introduced	Warm.
CATOSTOMIDAE	Bluehead Sucker, Bridgelip Sucker, Largescale Sucker, Longnose Sucker, Mountain Sucker.	Native	Cool/Cold.
	Utah Sucker	Native	Warm.
GADIDAE	Burbot	Native	Cool/Cold.
CYPRINIDAE	Common Carp, Fathead Minnow, Goldfish, Tench, Tui Chub	Introduced	Warm.
	Chiselmouth, Leatherside Chub, Leopard Dace, Longnose Dace, Northern Squawfish, Peamouth, Redside Shiner, Speckled Dace, Lake Chub.	Native	Cool/Cold.
	Utah Chub	Native	Warm.
POECILIIDAE	Guppy, Western Mosquitofish	Introduced	Warm.
PETROMYZONTIDAE	Pacific Lamprey	Native	Cool/Cold.
ESOCIDAE	Northern Pike	Introduced	Cool/Cold.
OSMERUS	Rainbow Smelt	Introduced	Cool/Cold.
PERCOPSIDAE	Sand Roller	Native	Cool/Cold.
ACIPENSERIDAE	White Sturgeon	Native	Cool/Cold.
PERCIDAE	Walleye, Yellow Perch	Introduced	Cool/Cold.

The Utah Chub is native to the Bear River basin and the Snake River basin above Shoshone falls. It is also found in the Wood River system and in Henry's Fork of the Snake River with its range restricted to the area below Mesa Falls (Simpson and Wallace, 1982). The Utah Chub prefers lake, pond and reservoir environments and is tolerant of warmer water temperatures (Simpson and Wallace, 1982). The Utah Chub is considered a ''nuisance'' in trout waters, and the Idaho Department of Fish and Game has attempted, unsuccessfully to eradicate Utah Chub from important trout waters (Simpson and Wallace, 1982). Although no life cycle studies have been conducted in Idaho, the successful colonization of the Utah Chub in trout waters would seem to indicate that the Utah Chub can reproduce and survive in cold water. The Utah Sucker is also found in the Bear River basin and the Snake River basin above Shoshone Falls. Although the temperature requirements for different stages of its life cycle are unknown, its geographic distribution covers a wide range of warm to very cold waters which suggest it is an adaptable species (Simpson and Wallace, 1982).

The majority of native Idaho fish are classified as cold water species and the presence of these species occurs throughout the entire State. The only two warm water native fish species are of limited geographic range and also occur where cold water native fish species exist. In addition, of the 240 water segments that Idaho has specifically designated beneficial uses for in their water quality standards (see IDAPA 16.01.02.100.–161.), only 3 have been designated as warm water biota. Of those three, EPA is proposing to promulgate cold water protection for one of those streams based on the presence of cold water species (see section D.4.ii.). EPA believes having a default assumption protective of cold water species applicable in the State of Idaho is reasonable based upon the State's beneficial use designations to date and the scientific information presented above.

Idaho has set out in its water quality standards at 16.01.02.250.02.c. criteria necessary to support cold water aquatic life. Because the predominant ecosystem in Idaho is comprised of cold water aquatic life, EPA is proposing to rely on Idaho's existing criteria for cold water biota for the protection of unclassified waters, except where lower temperatures are required to protect threatened and endangered species (see section E below). Idaho's existing criteria for cold water biota include criteria for dissolved oxygen (D.O.), temperature, ammonia, and turbidity. EPA solicits comment on the selection of cold water biota as a default beneficial use for unclassified waters. In particular, EPA seeks information about the present distribution of various salmonid and non-salmonid cold water species in Idaho. EPA also solicits comment on the distribution of warm water species in Idaho. EPA seeks data on the temperature requirements of sensitive life cycle stages for the Idaho Chub and the Idaho Sucker. EPA also seeks comment on the historical distribution of both native cold water and native warm water species in Idaho.

The second component of ''fishable/swimmable'' is proposed to be addressed through the primary contact recreation use and associated criteria. However, as discussed below in section D.4.i., Idaho's criteria for secondary contact recreation are adequate to protect swimming. EPA seeks comment on the option of relying on secondary contact recreation for protection of recreation in unclassified waters. Specifically, EPA is seeking comment on whether a primary contact recreation use designation is necessary when the criteria associated with secondary contact recreation are protective of swimming.

When Idaho designates a beneficial use for a specific water body that is currently unclassified, that water body will no longer be within the scope of EPA's unclassified waters beneficial designated use. EPA will review the State's beneficial use designation for specific water bodies and approve or disapprove as part of EPA's review process under section 303(c) of the CWA.

D. Stream Segments With Specific Beneficial Use Designations

1. Background

As discussed in Section ''C. Unclassified Waters'' above, the federal water quality standards regulations require that water quality standards

provide for fishable/swimmable uses unless it has been demonstrated that attaining the designated beneficial uses is not feasible for any of the reasons described in 40 CFR 131.10(g). Whenever the State designates or has designated uses that do not include these fishable/swimmable uses or when the State wishes to remove a designated use, a use attainability analysis (UAA) must be completed and submitted to EPA for review.

2. EPA Review of Idaho's Use Designations

Idaho's 1994 water quality standards which were submitted to EPA for review contained 53 water body segments which had designated beneficial uses which were less than fishable/swimmable. More specifically, the designated beneficial uses for 9 segments were missing cold water biota, for 18 were missing primary contact recreation and for 26 were missing both cold water biota and primary contact recreation. Idaho had not submitted UAA's justifying the lowered uses for these segments.

In a letter to Idaho from EPA in October 1995, EPA pointed out this deficiency. Idaho took no action. On June 25, 1996, EPA disapproved the uses for these 53 water body segments because the State had failed to justify lower use classifications in accordance with 40 CFR § 131.10(j). EPA Stated that, to meet the requirements of the CWA, Idaho must either submit use attainability analyses providing the justification for less than fishable/swimmable uses for the subject waters or revise the standards to include fishable and swimmable uses.

3. Recent Idaho Actions

To date, Idaho has taken action to revise the designated beneficial uses for 2 of the 53 water body segments. Idaho adopted a temporary rule on February 11, 1997 for the upgrade of uses for West Fork Blackbird Creek, SB 4211 in the Salmon Basin, and Lindsay Creek, CB 210 in the Clearwater Basin. The temporary rule designated cold water biota and salmonid spawning use for West Fork Blackbird Creek and secondary contact recreation for Lindsay Creek and became effective on March 1, 1997. Idaho submitted this temporary rule to EPA on March 24, 1997.

With these changes, it appears that the beneficial use designations for these segments meet the requirements of 40 CFR 131.10. However, the process followed by Idaho in adopting this temporary rule has not yet provided an opportunity for public hearing or comment on the rule as required by 40 CFR 131.20. Because these segments are covered by Judge Dwyer's order, and because EPA has not completed its approval/disapproval action on Idaho's temporary rules for these segments, they are included in today's proposal. If EPA approves these or other State adopted standards before promulgating a final Federal rule, there will be no need to include them in the final promulgation.

4. Federal Beneficial Use Designations for Specific Water Body Segments

In its modified order, the District Court ordered EPA to propose water quality standards by April 21, 1997 for the 53 water body segments whose designations EPA had disapproved in June 1996. The brevity of this schedule did not allow EPA time to complete its review of available data on each of these segments, nor did it allow EPA time to solicit data prior to this proposed rulemaking. Accordingly, in proposing designated beneficial uses for the water body segments of concern, EPA is relying on the rebuttable presumption implicit in its regulations, that fishable/swimmable uses are attainable. If further data indicates that this presumption is not appropriate for particular water bodies, EPA's final rule will be revised accordingly. In particular, if EPA determines, based on the record, that any of Idaho's designations are justified, there will not be a need for federally promulgated use designations for the water bodies in question. EPA believes that this approach is reasonable because it is consistent with the goals in section 101(a)(2) of the CWA and the implementing requirements in the water quality standards regulations at 40 CFR Part 131.

Idaho's use classification system includes a number of beneficial uses for its waters, including ''domestic water supply'', ''agricultural water supply'', ''cold water biota'', ''warm water biota'', ''salmonid spawning'', ''primary contact recreation'' and ''secondary contact recreation''. EPA's approach in proposing beneficial uses for the 53 water body segments is to select uses from Idaho's system which correspond to ''fishable/swimmable'' uses. This approach meets the requirements of the CWA while facilitating ultimate withdrawal of federal standards.

i. Primary Contact Recreation

Forty-four of the water bodies whose beneficial use designations were disapproved by EPA were missing primary contact recreation. In most instances, the water bodies were assigned secondary contact recreation; a few segments had neither primary or secondary. In light of recent discussions with the State, it now appears that the criteria assigned by Idaho to protect secondary contact recreation are consistent with EPA guidance on bacteriological criteria for primary contact recreation.

In the current Idaho water quality standards, except for fecal coliform bacteria, all of the criteria applicable to primary contact recreation are also applicable to secondary contact recreation (i.e., all toxic substance criteria for the protection of human health apply to both primary and secondary contact recreation, see IDAPA 16.01.02.250.01.c.). It is only the bacteriological criteria which differ between primary and secondary contact recreation.

Idaho's current bacteriological criteria for the protection of secondary contact recreation are concentrations of fecal coliform bacteria not to exceed a geometric mean of 200/100 milliliters (ml) based on a minimum of five samples taken over a thirty day period, 800/100 ml at any time; and 400/100 ml in more than ten percent of the total samples taken over a thirty day period. (See IDAPA 16.01.02.250.01.b.)

Idaho's current bacteriological criteria applicable for the protection of primary contact recreation apply between May 1 and September 30 of each calendar year and are concentrations of fecal coliform bacteria not to exceed a geometric mean of 50/100 ml based on a minimum of five samples taken over a thirty day period, 500/100 ml at any time; and 200/100 ml in more than ten percent of the total samples taken over a thirty day period. (See IDAPA 16.01.02.250.01.a.). EPA's section 304(a)(1) bacteriological criteria document published in 1976 recommended a log mean fecal coliform limits of 200 FC/100 ml.

EPA believes it is required by the terms of the District Court's order to propose primary contact recreation as a designated beneficial use for those water bodies which already have secondary contact as a designated beneficial use. However, EPA is soliciting comment on whether Idaho's secondary contact recreation, with its associated criteria, is sufficient. Specifically, EPA seeks comment on (1) whether Idaho's criteria for secondary contact recreation are in fact sufficient to protect primary contact recreation; and (2) if that is so, whether there is any reason to promulgate federal primary contact recreation use designations for the streams already subject to the secondary contact recreation criteria.

ii. Cold Water Biota

Thirty five of the 53 segments addressed in EPA's June 1996 letter

were disapproved because they were missing a cold water biota beneficial use designation. As discussed above, under section C (Unclassified Waters), cold water biota is the appropriate default aquatic life classification for Idaho. To the extent possible prior to proposal, EPA also examined data for these 35 segments relevant to the existence of, or potential to support, cold water biota.

EPA solicited and collected water chemistry data for the South Fork Coeur d'Alene River Basin from Idaho Fish and Game, the Coeur d'Alene Tribe and from within EPA's Superfund Program. In addition, biological monitoring data on marcroinvertebrates and fish population data was collected from the Idaho Department of Fish and Game and the Coeur d'Alene Tribe for this basin.

EPA also reviewed physical, chemical and biological data on West Fork Blackbird Creek which Idaho DEQ submitted to EPA. Additionally Idaho DEQ submitted to EPA preliminary results of assessment data which either they had collected or had been collected from other sources, such as Idaho Department of Fish and Game, on the 35 water body segments which were lacking a cold water biota beneficial use designation.

Based on the above data, as well as EPA's approach discussed in Section C above, EPA determined that it is appropriate to propose a cold water biota designated beneficial use for the 35 water body segments.

iii. Salmonid Spawning

As a result of EPA's responsibilities and duties under Section 7 of the Endangered Species Act, EPA initiated informal consultation with FWS and NMFS on our proposed action. In conferring with NMFS on designating beneficial uses for these 53 segments, EPA obtained data from Idaho Department of Fish and Game which indicated that 7 of the 53 segments provide spawning habitat for chinook and steelhead salmon. Of these 7, there were 4 which Idaho had not already designated for salmonid spawning use. As a result of this information, EPA is proposing an additional designated use of salmonid spawning for the following four segments: Grasshopper Creek, Little Bear Creek, Blackbird Creek, Panther Creek.

Based on the information provided, EPA determined that salmonid spawning, which requires more stringent temperature and dissolved oxygen criteria than those assigned to cold water biota, was the appropriate beneficial use to ensure ''fishable'' water quality for these four water body segments.

5. Request for Comment and Data

EPA believes the above beneficial uses are appropriate considering the requirements of the CWA and given the time frame which the court had ordered. Nonetheless, it is possible that information exists which may further support or refute their attainability or support or refute the appropriateness of the State's uses. Accordingly, EPA will evaluate any data which is submitted with regard to the aquatic life uses (i.e., cold water biota and salmonid spawning) of the 35 water body segments as well as the proposed primary contact recreational use. Based on such information EPA can make a final decision whether the designated uses in today's proposal are appropriate and required by the Clean Water Act. To assist the Agency in ensuring that its decisions are based upon the best available information, the Agency is soliciting information. To assist commenters the following paragraphs provide guidance on what information is relevant.

Specifically EPA is seeking information that would assist in determining whether the beneficial uses identified above are currently being attained, can be attained, or have been attained since or before 1975; whether natural conditions or features or human caused conditions prevent the attainment of these uses and cannot be remedied or would cause more environmental damage to correct than to leave in place; or whether the controls more stringent than those required by Section 301(b) and 306 of the Clean Water Act would be needed to attain the uses and would cause substantial and widespread economic and social impact. Below is a general discussion of the types of data/information requested by the Agency:

Ambient Monitoring Information: (1) Any in-stream data for any of the above stream segments reflecting either natural conditions (e.g., in-stream flow data or other data relating to stream hydrology) or irretrievable human-caused conditions which prevent the uses or water quality criteria from being attained; (2) any available in-stream biological data; (3) any chemical and biological monitoring data that verify improvements to water quality as a result of treatment plant/facility upgrades and/or expansions; and (4) any in-stream data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

Current and Historical Effluent Data: (1) Any data and information relating to mass loadings from point source discharges of pollutants such as BOD, NH_3-N, chlorine, metals (e.g., As, Cd, Cr, Cu, Pb, Hg, Ni, Ag, Zn), toxics (e.g., volatile organic chemicals such as benzene or toluene, acid extractables such as pentachlorophenol, base neutrals such as anthracene, fluorene or pyrene, and pesticides such as aldrin, lindane, DDT, dieldrin, endrin and toxaphene); (2) data and information related to facility or treatment plant effluent quality; and (3) any information related to releases of pollutants from other sources such as landfills, transportation facilities, construction sites, agriculture/silviculture, incinerators, and contaminated sediments.

Models: (1) Any data or information on analytical models which can be used to evaluate or predict stream quality, flow, morphology; (2) any physical, biological or chemical characteristics relating to beneficial uses; and (3) the results of any such models which can be used to evaluate beneficial uses.

Economic Data: Any information relating to costs and benefits associated with facility or treatment plant expansions or upgrades. This information includes: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facility or treatment plant expansions or upgrades, or associated with facilities or treatment plants meeting limits; (2) any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both; (3) descriptions of the geographical area affected; (4) any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property; and (5) any effects of changes in tax revenues if the private-sector entity were to go out of business, changes in income to the community if workers lose their jobs, and effects on other businesses both direct and indirect.

E. Temperature Criteria for Threatened and Endangered Species

1. Background

Water quality standards consist, in part, of designated uses and criteria to protect those uses. States designate uses for aquatic life to provide protection for a variety of aquatic species which may be present in their waters. Thermal requirements for these species vary among species and among different life stages. Providing protection for these varied species and their temperature requirements can be accomplished a

number of ways. Most commonly, temperature criteria are set to protect the more sensitive species residing at a site, or subcategories of uses are established with criteria tailored to address and protect particular species and/or life stages.

Idaho has three aquatic life designated beneficial uses, cold water biota, warm water biota and salmonid spawning, with each category having differing applicable temperature criteria. When designating uses and applying this categorical aquatic life based approach, Idaho is required to ensure that the criteria are sufficiently protective to safeguard the full range of waters in the State to which the uses are assigned. EPA's review of the criteria assigned by Idaho to its cold water biota beneficial use designation indicated that the temperature criteria did not provide adequate protection to some more sensitive species. Accordingly, EPA disapproved aspects of Idaho's cold water biota temperature criteria in the June 1996 letter. Idaho has not revised these criteria to meet EPA's objection.

EPA's approach today is to propose more protective temperature criteria to apply to Idaho's current cold water biota beneficial use designation for those segments and river reaches with more sensitive species. The Agency believes this approach minimizes the impact on Idaho's current water quality standards while providing the protection required by the CWA. EPA proposes to modify only the temperature criteria applicable to the cold water biota beneficial use designation for specific water bodies [for a list of these waters see § 131.33 (c)–(e) of today's proposed rule]. The remaining criteria applicable to coldwater biota (i.e., turbidity, ammonia, and dissolved oxygen) remain unchanged. Specifically, today's proposal includes more stringent temperature criteria for specified waters in Idaho in order to protect the Kootenai River white sturgeon, five species of aquatic snails (hereinafter ''snails''), and bull trout. The literature indicates that Idaho's temperature criteria are inadequate to protect these aquatic species. EPA is consulting with the FWS concerning the adequacy of the criteria being proposed today. The following is a discussion of why EPA determined more stringent criteria were needed and how EPA selected the criteria being proposed today.

FWS has determined that Kootenai River white sturgeon and five species of aquatic snails are threatened by extinction in Idaho. In addition, the bull trout is a candidate for listing as threatened or endangered. (Although FWS was petitioned to list the bull trout, it has not yet listed it.) Where a species is likely to be listed EPA assesses the effects to candidate aquatic species in a similar manner as listed species. Therefore EPA specifically assessed the impacts of Idaho's water quality standards to bull trout.

In order to determine whether EPA's approval of Idaho's water quality standards would adversely effect species listed or candidates for listing under ESA, EPA reviewed applicable scientific literature. Based on a review of the literature available to EPA, the Agency determined that Idaho's temperature criteria were inadequate in providing protection to Kootenai River white sturgeon, 5 species of aquatic snails and bull trout. As discussed more fully below, the scientific literature indicates that temperatures in exceedance of applicable requirements, along with other habitat parameters, are threats to each of these aquatic species. EPA determined that temperatures lower than those currently specified under the State's designated uses are more appropriate for these species. Based on this determination, on June 25, 1996 EPA disapproved Idaho's temperature criteria in certain water body segments which provide habitat for these species.

2. Kootenai River White Sturgeon

i. EPA's Review

According to the literature and review of the data from the Kootenai River monitoring programs conducted from 1990 through 1995, Kootenai River white sturgeon (*Acipenser transmontanus*) spawned within a 16 river kilometer (10 river mile) stretch of the Kootenai River, primarily from Bonners Ferry downstream to the lower end of Shorty's Island (White Sturgeon: Kootenai River Population Draft Recovery Plan, U.S. FWS). Kootenai River sturgeon spawn from May through July (58 FR 36379–86; July 7, 1993). Spawning is dependent on, and therefore occurs when, the physical environment permits egg development and cues ovulation. Following fertilization, white sturgeon eggs attach to river substrate and undergo a relatively short incubation period of 8 to 15 days until they hatch (Brannon et. al., 1985). Landlocked populations of white sturgeon normally spawn during the period of peak flows from April through July (Duke et. al. 1990).

According to the literature, significant modification to the natural hydrograph in the Kootenai River caused by flow regulation at Libby Dam is considered the primary reason for the Kootenai River sturgeon's declining numbers (Apperson and Anders 1991). Since 1972, when Libby Dam began operating, spring flows in the Kootenai River have been reduced an average 50 percent, and winter flows have increased by 300 percent over normal. As a consequence, natural high spring flows required by white sturgeon for reproduction rarely occur during the May to July spawning season when suitable temperature, water velocity and photoperiod conditions exist.

Based on recent monitoring studies of Kootenai River flow, temperature, and fertilized egg distribution, water temperatures corresponding to estimated spawning dates of Kootenai River sturgeon range from approximately 8.5 to 14 °C and have been estimated to occur in the May–July time period. During 1970, 1974 and 1980, where successful, natural recruitment of Kootenai sturgeon is believed to have occurred, temperatures associated with peak flow events during the presumed spawning period ranged from 11 to 13 °C (U.S. Fish and Wildlife Service, Columbia River Basin Field Office, ''Rationale for Reestablishment of Natural Recruitment of Kootenai River White Sturgeon''). Elsewhere, spawning of white sturgeon has been documented at higher temperatures than Kootenai sturgeon, with reported spawning in the lower Columbia River occurring at temperatures ranging from 10–18 °C during 1987 to 1991 (Parsley et al., 1993). Parsley et al. further report that most of the spawning in the lower Columbia River occurred between 10 and 12 °C. Because the Columbia River white sturgeon may be acclimated to warmer temperatures than those experienced by sturgeon in the Kootenai River, the applicability of Columbia River data to Kootenai sturgeon is unclear. It should be further noted that white sturgeon spawning is cued by other factors, of which flow is among the most important, and therefore, the lack of spawning at some temperatures may be due to suboptimal flow conditions or other important factors. Thus, while the available information suggests that 8–14 °C is a reasonable temperature range to be considered for maintenance of Kootenai River sturgeon, the current optimal temperature range for Kootenai River white sturgeon is not entirely certain.

Partly because of the uncertainty in defining optimal spawning conditions for Kootenai sturgeon, the FWS and the U.S. Army Corps of Engineers (COE) are experimenting with agreed upon operational guidelines for flow releases at Libby Dam during 1997 and 1998 in part, to obtain more data to determine optimal spawning conditions for

sturgeon. Future studies and monitoring may more accurately determine Kootenai River white sturgeon spawning requirements.

Data on temperature requirements of other life stages of white sturgeon is much more limited. An optimum temperature for egg development of 14 °C is reported by Wang et al. (1985 as cited by Parsley et al., 1993), with elevated mortality occurring at 18 °C and complete mortality at 20 °C. Temperature tolerance data for other life stages was not found, although older sturgeon are reported to inhabit deeper locations in Kootenai River locations with temperatures ranging from 14 to 20 °C (PSMFC, 1992).

In addition to evaluation of the literature, EPA conferred with FWS and COE staff in determining appropriate temperature values protective of sturgeon spawning. EPA reviewed data from monitoring efforts by the COE on the Kootenai River from 1993 through 1997.

ii. Idaho's Temperature Criteria

Idaho's current designated beneficial use for the Kootenai River from Bonners Ferry to Shorty's Island is cold water biota, which has applicable temperature criteria of 22 °C or less with a maximum daily average of 19 °C Hence, EPA concluded that Idaho's cold water biota temperature criteria do not provide an adequate level of protection for Kootenai River white sturgeon spawning.

iii. EPA's Proposed Temperature Criteria

Temperature criteria being proposed for the Kootenai River from Bonners Ferry to Shorty's Island were derived using EPA's temperature criteria guidance (''Temperature Criteria for Freshwater Fish: Protocol and Procedures''; U.S. EPA, 1977). The EPA protocol recommends expression of temperature criteria in two forms: (1) A short-term maxima (protection against lethal conditions, usually for a duration of 24 hours), and (2) a mean temperature value (expressed as the maximum weekly average temperature) that is designed to protect critical life stage functions such as spawning, embryogenesis, growth, maturation and development. For sturgeon, sufficient data were available to derive weekly mean temperature criteria to protect spawning and egg incubation.

In addition to data sources discussed previously, EPA relied on communications with relevant Corps and FWS staff.

Based on the information reviewed, EPA is proposing seasonal minimum and maximum weekly average temperature criteria to protect for white sturgeon spawning [see § 131.33(d) of today's proposed rule]. Rather than setting temperature criteria based on fixed calendar dates, the temperature criteria for Kootenai River sturgeon are designed to protect critical spawning and egg incubation life stages, but allow for some temporal flexibility as to when such temperatures for spawning and egg incubation activities can occur. This flexibility is desirable given known, natural temperature variations that occur at the Kootenai River site from year to year. Therefore, such criteria are based on first establishing a *minimum* weekly average temperature of 8 °C (believed to be the lower limit for spawning), followed by an 8-week time period where the *maximum* weekly average temperature does not exceed the upper spawning temperature limit of 14 °C currently estimated for Kootenai River sturgeon. Selection of an 8-week ''spawning window'' approximates the length of the spawning period currently estimated for Kootenai River sturgeon. The maximum weekly average temperature criterion of 16 °C set for weeks 9 and 10 (after achievement of the 8 °C minimum temperature) is intended to protect egg incubation of late spawners based on 1–2 week egg incubation time reported for Kootenai River sturgeon. The 16 °C maximum weekly average temperature criterion is an EPA inferred estimate of the threshold for egg incubation based on data reported by Wang et al. (1985; as cited in Parsley et al., 1993) and reflects natural gradual warming of water temperatures that will likely occur at this site during mid to late July.

EPA believes that these temperature criteria in combination with the time frame regime will provide appropriate protection for white sturgeon spawning in the Kootenai River while maintaining necessary flexibility due to natural variability in seasonal temperature regimes. While recognizing that other factors besides temperature are also limiting to a viable population of sturgeon in the Kootenai River system, EPA determined that revising the temperature criteria in this known spawning segment was an appropriate and needed measure towards the protection and conservation of this species.

EPA is soliciting comments and data on the proposed temperature criteria. Comments are particularly sought concerning: (a) Additional information on range, distribution, and population of the species; (b) the relationship between water velocities, temperature and spawning; (c) appropriate time frames for sturgeon spawning; (d) implementation issues associated with the weekly moving average and onset of the maximum weekly average; and (e) appropriateness of both the minimum and maximum weekly average values.

3. Freshwater Aquatic Snails

i. EPA's Review

EPA reviewed the available scientific literature in order to determine the water quality requirements for the following five species of freshwater aquatic snails which are listed as threatened or endangered under the ESA: the Bliss Rapids snail, the Snake River physa, Banbury Springs lanx, Utah valvata snail and Idaho springsnail.

According to the 1995 Snake River Aquatic Species Recovery Plan developed by the FWS, these 5 snails occupy habitat in the middle Snake River from C.J. Strike Reservoir to American Falls Dam. The recovery area for 4 of the species (Idaho springsnail, Utah valvata snail, Snake River physa and Bliss Rapids snail) has been delineated in the mainstem Snake River between river kilometers (rkm) 834–1142 (rivermiles (rm) 518–709). The recovery area for the one remaining species (Banbury Springs lanx) includes cold-water spring complexes to the Snake River between rkm 941.5–948.8 (rm 584.8–589.3).

Little is known about the ecology of the listed snail species. A priority recovery measure in the Recovery Plan is to obtain more data to describe habitat and life history requirements. EPA reviewed available literature on the distribution and habitat conditions where the listed snails are found in the Snake River. From a survey conducted by Idaho Power in the Middle Snake River from April through December 1995 (Crazier and Myers, 1996) there is data showing that the Bliss Rapids snail occurred in water temperatures of 7.6 degrees C to 19.8 degrees C, the Banbury Springs lanx occurred in temperatures of 11.8 degrees C to 14.5 degrees C, and the Idaho springsnail was found in water temperatures of 7.6 degrees C to 19.8 degrees C. The Utah valvata and Snake River physa were not found in the portion of the river that was surveyed. The Snake River Recovery Plan (1995) notes that the Banbury Springs lanx had only been found at that time in waters of 15 degrees C. to 16 degrees C. The Recovery Plan recommends annual average temperatures below 18 degrees C, however an annual average is not likely to provide an adequate basis for

implementation of a temperature criterion.

ii. Idaho's Temperature Criteria

The current Idaho water quality standards designate part of the recovery area within the Snake River, specifically, water body segment SWB–10, Snake River from King Hill to Marsing, primary contact recreation, which has no applicable temperature criteria, and designate other parts of the recovery area cold water biota, which has temperature criteria of 22 °C or less with a maximum daily average of 19 °C.

Based on the information which was reviewed and conferring with FWS, EPA determined that the cold water biota temperature criteria do not provide an adequate level of protection for these five species of snails. Therefore, on June 25, 1996, EPA disapproved Idaho's temperature criteria applicable within the specified geographic ranges or recovery areas for each of the 5 snail species.

iii. EPA's Proposed Temperature Criterion

In order to provide adequate and protective temperatures for the listed snail species EPA is proposing a maximum daily average temperature of 18 degrees C in the Middle Snake River from river mile 518 to river mile 709. Additionally, for water body segment SWB 10, which does not currently have cold water biota designated use, EPA is also proposing that use as well as a maximum daily average of 18 degrees C temperature criterion. This proposal is based on the limited temperature information available related to the species occurrence, the Recovery Plan recommendation, and correspondence between the FWS and Idaho on April 11, 1997. The FWS letter responded to a State request for clarification of the Recovery Plan recommendation, and it again stressed the need for a temperature at or below 18 degrees C as a level necessary to move toward recovery of the listed aquatic snails. The letter additionally noted that spring habitats where listed snails occur adjacent to the Snake River will likely require even lower temperatures for optimal habitat conditions.

EPA is soliciting comments on the proposed temperature criterion. Because of the limited information available at the time of this proposal, EPA is soliciting additional data. Data and information are sought pertinent to: (1)aquatic snail occurrence in the Middle Snake River, and (2) refining the habitat and temperature requirements of the individual species. EPA is also soliciting comments on other options for applying temperature criteria to the Middle Snake River for protection of listed aquatic snails.

4. Bull Trout

i. EPA's Review

According to the literature, bull trout (*Salvelinus confluentus*) is a species which is considered an indicator of the environmental health of watersheds and is known to reproduce only in clean, cold relatively pristine streams.

EPA evaluated the literature and conferred with biologists from the Idaho Department of Fish and Game, and the Interior Columbia Ecosystem Management Project. According to the literature, bull trout is a species requiring a narrow and relatively cold range of temperature conditions to reproduce and survive. They appear to be one of the most temperature intolerant species of salmonids. They spawn in late summer through fall (late August-November) and have a long egg incubation period (typically lasting from early fall to April). High temperatures are therefore a concern for migration and spawning in the late summer and early fall.

Incubation of bull trout eggs requires cold temperatures ranging from 1 to 6 °C and occurs at optimum temperatures of approximately 4 °C (ORDEQ, 1994; Weaver and White, 1985; McPhail and Murray, 1979). Specifically, Weaver and White (1985) report 4 to 6 °C as being needed for egg incubation of bull trout embryos in Montana streams. Further, McPhail and Murray (1979) report 0% to 20% survival of incubating bull trout embryos at temperatures ranging from 8 to 10 °C; 60% to 90% survival at 6 °C; and 85–95% survival at 2–4 °C, further suggesting 6 °C as close to a reasonable threshold for egg incubation.

Based on EPA's review of the literature, in addition to a review conducted by the Oregon Department of Environmental Quality (ORDEQ, 1994), a temperature range of 4–10 °C is believed to be necessary to maintain successful bull trout spawning. A temperature range of approximately 6 to 8 °C is believed approximate the optimum spawning temperatures of bull trout (Idaho Department of Fish and Game). Optimum temperatures for fry growth have been reported to be 4 °C (McPhail and Murray, 1979). For later life stages of bull trout, temperatures less than 12 °C appear to be most suitable for juvenile rearing and adult migration. Specifically, Shepard et al. (1984) report the highest densities of bull trout in Montana streams at temperatures of 12 °C and below, some presence of bull trout at 15 to 18 °C and complete absence of bull trout in streams with temperatures exceeding 19 °C. Based on field observations of the presence of juvenile bull trout in Idaho streams, 12 °C also appears to be a maximum temperature where juveniles are found (Idaho Dept. Fish and Game). Temperatures between 10 and 12 °C are also reported to be the optimum range for adult migration, which occurs between bull trout feeding and spawning areas (ORDEQ, 1994).

ii. Idaho's Temperature Criteria

The current temperature criteria applicable to the cold water biota use classification (22 °C or less with a maximum daily average of 19 °C) does not provide an adequate level of protection for bull trout. Therefore, on June 25, 1996, EPA disapproved Idaho's temperature criteria applicable within geographic ranges where bull trout occur.

iii. EPA's Proposed Temperature Criteria and Bull Trout Distribution

Temperature criteria being proposed for Idaho streams designated as bull trout habitat were derived using EPA's temperature criteria guidance (''Temperature Criteria for Freshwater Fish: Protocol and Procedures; U.S. EPA, 1977). The EPA protocol recommends expression of temperature criteria in two forms: (1) a short-term maxima (protection against lethal conditions, usually for a duration of 24 hours), and (2) a mean temperature value (expressed as the maximum weekly average temperature) that is designed to protect critical life stage functions such as spawning, embryogenesis, growth, maturation and development. Sufficient data were available to derive temperature criteria as maximum weekly average temperatures (MWAT) that would be protective of various bull trout life stages, including spawning, egg incubation, juvenile rearing and adult migration. Because of the complex life history of bull trout, EPA is proposing temperature criteria that would span a calendar year, but that would vary depending on the presence and thermal tolerances of various bull trout life stages [see § 131.33(c)(1) in today's proposed rule].

During January and February, the maximum weekly average temperature (MWAT) criterion is proposed at 4 °C to protect optimum temperatures required for egg incubation. During March, a MWAT of 6 °C is being proposed based on data discussed earlier that indicate 6 °C approximates a maximum temperature threshold for successful egg incubation. A MWAT of 8 °C during the

month of April is being proposed to account for an expected gradual increase in stream temperatures during this time period and is considered to be within the optimum range for juvenile growth. During May, a MWAT of 10 °C is proposed because it reflects an expected gradual increase in stream temperatures that is likely to occur at this time and is considered an optimum temperature for adult migration and juvenile growth. A MWAT criterion of 12 °C is being proposed for the months of June, July and through August 15 to protect against exceedence of temperature limits reported for juvenile rearing. A MWAT criterion of 10 °C is proposed from August 16 through the month of September because this temperature reflects the upper range for spawning reported in the literature for bull trout and bull trout spawning occurs during this time period. During the month of October, a MWAT value of 8 °C is proposed to maintain optimal temperature conditions for bull trout spawning and reflects an expected gradual decrease in stream temperatures. Finally, a MWAT value of 6 °C is proposed for the months of November and December to reflect the limit for egg incubation and spawning optimum.

At the time of the disapproval, EPA had not identified the exact geographic areas inhabited by bull trout. EPA believed that Idaho had the resources to ascertain this information as the Office of the Governor of Idaho was in the process of developing a bull trout conservation plan. On July 1, 1996 a final version of the Governor's Bull Trout Plan was released. This plan identifies 59 key watersheds which should be targeted for the protection and restoration of bull trout populations. Although this plan identifies watersheds of concern, it did not provide the level of resolution which EPA deems necessary in describing distribution of bull trout.

Today's proposed rulemaking includes a list of water bodies where revised temperature criteria are needed in order to protect bull trout. In deriving this list, EPA relied upon bull trout distribution data from the Interior Columbia Basin Ecosystem Management Project (ICBEMP) as well as bull trout distribution data from the Idaho Department of Fish and Game.

Section 131.33(c)(2) of today's proposed rule contains a list of Idaho water bodies that are known, suspected, and/or predicted to serve as spawning and rearing areas of bull trout. The ICBEMP's ''Key Salmonid'' database [footnote 1 to § 131.33(c)(2)], and the Idaho Department of Fish and Game Digital Bull Trout Distribution Database [footnote 2 to § 131.33(c)(2)] were both used in deriving this list.

The ICBEMP data are tied to sub-watersheds, also known as ''6th-code HUCs''. ICBEMP scientists determined criteria to identify sub-watersheds that represent spawning and rearing areas. Sub-watersheds identified as migration corridors only are excluded. The resultant sub-watersheds were overlaid with the digital Pacific Northwest River Reach File in the EPA Geographic Information System to produce a file of streams within these sub-watersheds with possible spawning and rearing activity. Only streams with attributed names in the dataset were used in this process. Some streams with no actual bull trout spawning and rearing activity are probably included, as only one stream with bull trout presence was sufficient to cause the entire sub watershed (thus all named streams within) to indicate spawn and rearing presence from this database. EPA used the 1994–1995 version of this database.

The Idaho Department of Fish and Game attributed bull trout distribution data to Pacific Northwest River Reach File segments. Water bodies coded as having ''known or suspected'' bull trout presence are contained in the table with a superscript of ''2''. Hence the water bodies from this database in the table contain areas that may be used as only migration corridors, as there was no way to specifically exclude them.

EPA had discussions with FWS on the temperature requirements for bull trout protection. Additionally EPA consulted with staff from Idaho Department of Fish & Game as well as numerous biologists familiar with bull trout requirements and distribution.

Based on the above information, EPA is proposing maximum weekly average seasonal temperature criteria. These criteria are proposed in § 131.33(c)(1) of today's proposed rule.

EPA is soliciting comment on both the temperature criteria as well as the distribution data. Comments are particularly sought concerning (a) affirmation of the presence of bull trout spawning in the current list of water bodies in section (c)(2) of today's proposed rule; (b) the adequacy of the proposed methodology for defining bull trout distribution; (c) whether or not there is a better way to describe the distribution; (d) site specific temperature data for any of the listed water bodies; (e) site specific or laboratory temperature data on bull trout; (f) proposals to address protection of migratory corridors; (g) identification of water bodies in § 131.33(c)(2) of today's proposed rule which are not spawning and rearing areas; (h) identification of additional known water bodies which provide spawning and rearing habitat; (i) original information which would refine the list down to stream level as opposed to watershed level along with geographic identifiers for these streams i.e., USGS hydrologic unit codes; and (j) other methods for refining the geographic distribution list.

F. Antidegradation Policy

The third component of a State's water quality standards, in addition to designated uses and criteria to support those uses, is an antidegradation policy consistent with 40 CFR 131.12. Section 131.12(a) specifies three levels of protection to be accorded waters. The first level (commonly referred to as Tier I) requires that existing uses, and the level of water quality needed to protect such uses, be protected and maintained [§ 131.12(a)(1)]. The second level (Tier II) requires that water quality in certain high quality waters not be lowered unless the lowering is found to be necessary to accommodate important social and economic development [§ 131.12(a)(2)]. The highest level of protection (Tier III) applies to waters identified as ''Outstanding National Resource Waters;'' water quality in such waters shall be maintained and protected [§ 131.12(a)(3)].

EPA Region X's June 1996 letter disapproved the Tier III portion of Idaho's antidegradation policy (IDAPA 16.01.02.051.03) because it did not protect Tier III waters from degradation caused by point sources, and thus did not provide effective protection for such waters. On November 14, 1996, the State adopted a temporary rule which added protection from point sources and addressed EPA's concern. This rule was effective December 1, 1996. The State formally submitted this revised rule to EPA for approval by a letter dated March 13, 1997, which was received by EPA on March 24, 1997. Because of the timing of this State submission and the work involved in preparing today's proposal, EPA has not yet completed its approval process on the State's revision. Accordingly, EPA believes it is still bound by the court's order to propose a federal water quality standard addressing the deficiency in section 16.01.02.051.03 of Idaho's 1993 antidegradation policy.

Therefore, EPA is today proposing a Tier III antidegradation provision applicable to waters of the United States within the State of Idaho. EPA's proposed rule uses the wording of the revised Idaho antidegradation policy, both because that revision addressed EPA's concern and because using the

same language will facilitate the ultimate withdrawal of EPA's proposal upon formal approval by EPA of Idaho's revision.

G. Mixing Zone Policy

1. Idaho's Existing Policy

Idaho's mixing zone policy at IDAPA 16.01.02.060. applies to point source wastewater discharges. The policy States that, after a biological, chemical, and physical appraisal of a receiving water and proposed discharge, the Department of Environmental Quality (DEQ) will determine the appropriateness of a mixing zone, its size, configuration, and location. In making such a determination, the DEQ is required to consider a number of parameters specified in subsections 060.01.a–h. Subsections 060.01.a–d. address the use of submerged pipes and diffusers; unreasonable interferences to the beneficial uses; and limitations for overlapping or multiple mixing zones. In addition, subsections 060.01.e. and f. specify discrete physical limitations to the size, shape, and location of mixing zones for discharges to free-flowing systems (e.g., streams and rivers) and discharges to open waters (e.g., lakes or reservoirs). Subsection 060.01.g. allows water quality within a mixing zone to be exempt from both Idaho's chemical-specific water quality criteria at 16.01.02.250. and selected narrative criteria at 16.01.02.200.01., 16.01.02.200.02., and 16.01.02.200.03. (Idaho's subsection 200.01. prohibits State surface waters from containing concentrations of hazardous materials that are of significance to public health; subsection 200.02 prohibits toxic substances in toxic concentrations; and subsection 200.03. prohibits deleterious materials in concentrations that impair designated beneficial uses.)

EPA disapproved subsection 060.01.g. of Idaho's mixing zone policy because, although the principles identified in the remainder of Idaho's mixing zone policy are adequate to ensure that the designated uses of the receiving water are maintained, the language of the policy makes these principles non-binding. Subsection 060.01. States ''the Department will *consider* [emphasis added] the following principles'' (060.01.a–h). Thus, although subsections 060.01.a.–f. and h. contain explicit language regarding the physical limitations to the size, shape, and location of mixing zones, which on their face would appear to protect designated beneficial uses even if narrative criteria are not applicable, the word ''consider'' indicates that compliance with subsections 060.01.a.–f. and h. is not mandatory.

Clean Water Act § 303(c)(2)(A) requires States to adopt water quality criteria to protect designated beneficial uses. EPA's implementing regulations at 40 CFR 131.11 further clarify that such criteria ''must contain sufficient parameters or constituents to protect the designated use.'' There are no exceptions identified, or alluded to in the CWA or EPA's implementing regulations. Water quality within a mixing zone is not exempted. By definition a mixing zone is an area where chemical-specific acute and chronic water quality criteria can be exceeded as long as a number of other protections are maintained (Water Quality Standards Handbook; EPA–823–B–94–005a, August 1994). These other protections are narrative criteria. EPA is not precluding flexibility in how Idaho chooses to interpret the narrative criteria at subsections 200.01.–03. EPA has simply disapproved an authorized, categorical exemption from the narrative criteria in the absence of other binding requirements in the mixing zone policy.

EPA's regulations at 40 CFR 131.11(a)(2) require States and tribes to identify methods for implementing narrative criteria. Such methods need to address all mechanisms to be used by the State to ensure that narrative criteria are attained. Chemical-specific ambient water quality criteria are most frequently used to ensure that narrative criteria and beneficial designated uses are attained. However, when chemical-specific criteria are absent or do not apply, as is the case for water quality within a mixing zone, other implementation methods are needed to ensure the designated uses are attained (WQS Handbook, Chap. 3). While mixing zones allow the magnitude component of an ambient water quality criterion to be exceeded, controlling the exposure component ensures the beneficial designated use is maintained. Idaho's implementation methods at 060.01.a.–h. would control exposure by limiting the size, shape, and location of a mixing zone, if they were mandatory.

2. Federal Mixing Zone Policy for Idaho

To address the above deficiency, EPA considered two options. Under the first option, EPA would make the requirements of subsections 060.01.a.–f. and h. mandatory. This would protect the water quality within a mixing zone and ensure that the designated beneficial uses for the water body as a whole are maintained. However, EPA was concerned that this approach would disregard site-specific situations that may warrant some flexibility. For example, stream-specific and discharge-specific conditions may allow a mixing zone to consume more than 25% of the volume of stream flow (as specified in 060.01.e.ii.) and still ensure that the designated beneficial use is attained.

For that reason, EPA also considered a second option that changes the language at 060.01.g. so as not to exempt water quality within a mixing zone from the narrative criteria at subsections 200.01.–03. This approach allows Idaho to retain the discretion on when to rely on the default implementation methods specified in subsections 060.01.a.–f. and h., and when to rely on alternative methods to ensure the designated beneficial use is maintained. Today's proposed rule contains this second option.

EPA solicits comment on the appropriateness of option 1 and option 2. Does the increased flexibility provided in option 2 leave too much discretion to the State? Are there other alternatives for protecting the water quality within a mixing zone to ensure the designated beneficial uses for the water body as a whole are maintained?

H. Excluded Waters Provision

Each State is required to have water quality standards for all navigable waters in the State. CWA § 303. The term ''navigable waters'' is defined in § 502(7) of the CWA to mean the ''waters of the United States, including the territorial seas''. In accordance with the intent expressed by the legislative history of the CWA, the term ''waters of the United States'' is in turn defined in regulations to include, *inter alia*, intrastate waters whose use, degradation, or destruction would or could affect interstate commerce. 40 CFR 122.2 and § 232.2(q). This portion of the definition is further explained at 53 FR 20765 (June 6, 1988).

Idaho's standards provide that, unless designated for particular uses, lakes, ponds, pools, streams, and springs outside public lands but located wholly and entirely upon a person's land are not protected specifically and generally for any beneficial use (see IDAPA 16.01.02.101.03.).

The fact that a water may be located wholly on a person's land does not necessarily preclude it from being a water ''the use, degradation or destruction of which would or could affect interstate commerce.'' Hence, it is at least theoretically possible that some of these unprotected excluded waters could be waters of the United States. To ensure that any such waters receive the protection afforded other unclassified waters, EPA is today proposing a rule which effectively adds to the State's

excluded waters provision the qualifying phrase ''unless such waters * * * are 'waters of the United States' as defined at 40 CFR § 122.2.''

This proposal is precautionary in nature. EPA has not identified any specific waters which would be affected by this change. However, the language EPA is proposing ensures that, if such waters are later identified, their beneficial uses will be protected in the same way uses of other unclassified waters are.

I. Federal Variances

As explained above in Sections C. and D., because of the scope of rulemaking and the schedule ordered by the District Court, EPA has relied on a rebuttable presumption approach to designating beneficial uses and is only able to provide a 30-day comment period. EPA's final rule will reflect consideration of the data made available to it by the close of the comment period. However, it is possible that subsequent data may become available which will be material to the attainability of the uses involved in today's proposal.

If this occurs, one option available to EPA would be to propose to revise or withdraw the federal use designation. An alternative approach, particularly where the information is discharger-specific and/or it appears that the use in question will eventually be attainable, is to grant a water quality standards variance applicable to the discharger in question. EPA has approved the granting of water quality standards variances by States in circumstances which would otherwise justify changing a use designation on grounds of unattainability. In contrast to a change in standards which removes a use designation for a waterbody, a water quality standards variance applies only to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability was based; the underlying standard remains in effect for all other purposes.

For example, if a designated aquatic life use is currently precluded because of high levels of metals from past mining activities which cannot be remediated in the short term, but it is expected that water quality will eventually improve, a temporary variance may be granted to a discharger with relaxed criteria for such metals, until remediation progresses and the use becomes attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria, while encouraging ultimate attainment of the underlying standard. A water quality standards variance provides a mechanism for assuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA that require NPDES permits meet applicable water quality standards, while granting temporary relief to point source dischargers.

While 40 § CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances from federally adopted standards. EPA believes that it is appropriate to provide comparable federal procedures where, as proposed here, EPA adopts use designations which rely, at least in part, on a rebuttable presumption that fishable/swimmable uses are attainable or adopts more stringent criteria for the State's use designations. Therefore, EPA is proposing to authorize the Region X Regional Administrator to grant water quality standard variances where a permittee submits data indicating that an EPA-designated use is not attainable for any of the reasons in 40 CFR § 131.10(g) or that a State designated use is not attainable due to EPA-promulgated temperature criteria. This variance procedure will apply to standards promulgated by EPA for specific named segments. EPA does not believe it is necessary to have a variance procedures for unclassified waters, since Idaho may effectively provide the same relief by classifying an unclassified water, but invites comment on this point.

Today's proposed rule spells out the process for applying for and granting such variances. Because water quality standard variances are technically revised water quality standards, the proposal requires a variance to go through the same basic steps as the originally promulgated standard, that is, publication of the proposed variance, the opportunity for a hearing, and publication of the final variance. However, the Administrator is delegating to the Regional Administrator the authority to propose and grant these variances. This delegation should expedite the processing of variance requests, as they will typically arise in the context of NPDES proceedings being handled by EPA Region X.

The proposed variance procedures require an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his delegatee) with supporting information. To avoid delays in the permitting process attributable to the variance request, the proposal requires the applicant to submit the variance request prior to or concurrent with the NPDES application. EPA seeks comment on the appropriateness of this timing requirement.

The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and the applicant implementing reasonable best management practices for nonpoint source control. EPA will incorporate into the permittee's NPDES permit all conditions needed to implement the variance.

Under the proposal, a variance may not exceed 5 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the permittee did not comply with the conditions of the original variance.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

J. Regulatory Impact Analysis

As explained more fully below in section L (Regulatory Flexibility Act), EPA's proposed rule does not itself establish any requirements directly applicable to regulated entities. While implementation of today's proposed rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any of these as yet unknown requirements on dischargers. Nonetheless, EPA is attempting, within the limits of these uncertainties, to make an estimate of the possible indirect costs which might ultimately result from this rulemaking.

The following is a summary of the proposed methodology being used for the regulatory impact analysis (RIA) that is being prepared for this rule. Further discussion will be included in the full RIA, which will be included in the docket as part of the final rulemaking.

Under the CWA, costs cannot be a basis for adopting water quality criteria that will not be protective of designated uses. If a range of scientifically defensible criteria that are protective can be identified, however, costs may be considered in selecting a particular criterion within that range.

The designated uses and water quality criteria of the proposed rule are not enforceable requirements until separate

steps are taken to implement them. Therefore, this publication of the proposed rule does not have an immediate effect on dischargers. Until actions are taken to implement these designated uses and criteria, there will be no economic effect on any dischargers.

In the short time prior to proposal EPA attempted to assess, to the best of its ability, compliance costs for facilities that could eventually be indirectly affected by the designated uses and water quality criteria of today's proposed rule. As described below, EPA searched readily available data sources but did not find the information necessary to accurately estimate these potential costs. Although the costs are not expected to be significant, EPA has developed a methodology to estimate the potential indirect cost impacts on facilities discharging pollutants to waters subject to the numeric water quality criteria and uses established by this proposal. During the public comment period EPA will continue to gather additional data and information on the facilities and waters needed to evaluate use attainability and the costs attributable to this rule.

EPA is soliciting public comment and supporting data on the facilities and waters it intends to evaluate as part of the RIA, and on the methodology it will use to estimate costs associated with implementation of the proposed rule. EPA will review the comments and data provided by the public as well as the information and data it gathers during the public comment period, and will estimate the potential costs to facilities as an indirect result of attaining numeric water quality criteria and uses proposed in this rule. EPA will include this information as part of the final rulemaking.

1. Use Attainability

As discussed earlier in this preamble, EPA is relying on the rebuttable presumption that fishable/swimmable uses are attainable in the water body segments affected by this rulemaking. However, in order to properly assess the impact of EPA's new use designations in Idaho, EPA performed a preliminary evaluation to determine if this presumption is appropriate for all assessed water body stream segments affected by this proposal.

Although an appropriate evaluation of use attainability should consider physical, biological, and chemical indicators, the court-ordered schedule did not provide adequate time to properly evaluate all indicators. EPA did, however, extract chemical-specific data from the EPA STORET data base, which houses ambient water quality data for water bodies throughout the U.S., including Idaho. If EPA were to find that significant exceedances of water quality criteria (in terms of relative magnitude above the applicable criteria, duration of exceedance above the criteria, and the number and types of pollutants) has occurred, then an upgrade of designated uses might not be appropriate.

EPA's STORET extraction included all data on record, and all pollutants for which EPA's new use designation would result in more stringent water quality criteria. EPA focused on the 35 water body segments for which the cold water biota protection designated use will be applied. Upon extraction, EPA generated summary statistics (minimum, average, and maximum values on record) for the ambient water quality within each affected stream segment and compared them to the applicable water quality criteria to protect the cold water biota use designation.

Most data on record in STORET for the affected water body stream segments is from the period prior to the mid-to late-1980's. Based on this data, EPA found periodic exceedances of water quality criteria for several water body stream segments for several specific parameters. However, due to the age of most of the data, and the fact that data for all applicable parameters were not available, EPA could not definitively conclude that a downgrade for any water body stream segment affected by this rule was justified. Therefore for purposes of cost estimates, EPA assumed that the new use designation would apply to all affected water bodies. EPA is requesting comments and data regarding the applicability of the new use designation for these water body stream segments. The affected water body stream segments can be found in Section 131.33(b), Tables 1–6, within this proposal. EPA is most interested in the following types of information: instream characteristics (e.g., mean width/depth, flow/velocity, reaeration rates); riparian characteristics; biological inventory; biological potential (e.g., diversity, intolerant species); and ambient pollutant concentrations for applicable parameters of concern for the stream segment.

2. Costs

i. Overview of Methodology To Estimate Potential Costs Related to New Use Designations

The new use designations being proposed by EPA, by themselves, will have no impact or effect. However, when the water quality criteria to protect these uses are applied to dischargers through the NPDES permit program, then costs may be incurred by regulated entities (i.e., point source dischargers) but these costs can vary significantly because of the wide range of control strategies available to dischargers. Since the NPDES permitting authority also has significant flexibility and discretion in how it chooses to implement water quality criteria, analysis of potential costs would be difficult to perform for all potentially affected entities, even if EPA had more time than was allowed under the Court established time-frame. EPA attempted to estimate the potential costs attributable to the proposal by developing detailed cost estimate for a selected subset (a sample) of facilities from the point source dischargers that may be impacted by the proposed rule and then used the sample results to extrapolate to the universe of potentially affected facilities. As explained below, EPA has not been able to come up yet with a reliable cost estimate due to significant data gaps. The following discussion addresses the approach which EPA has attempted to use, and plans to follow if more data is obtained.

The actual impact of the proposed rule will depend upon the procedures and policy decisions that will be established by the permitting authority to implement the rule and on which control strategy the discharger selects in order to bring the facility into compliance. These procedures and policy decisions established by the permitting authority typically provide the methods to determine the need for water quality-based effluent limits (WQBELs) and, if WQBELs are required, how to derive WQBELs from applicable water quality criteria. The implementation procedures used to derive WQBELs for this analysis were based on the methods recommended in the EPA ''Technical Support Document for Water Quality-based Toxics Control'' (or TSD) (EPA/505/2–90–001; March 1991). Specifically, a projected effluent quality (PEQ) was calculated and compared to the projected WQBEL. A PEQ is considered an effluent value statistically adjusted for uncertainty to estimate a maximum value that may occur.

The PEQ for each selected pollutant was compared to the projected WQBEL. If the PEQ exceeded the projected WQBEL, a reasonable potential existed to exceed the WQBEL. Pollutants with a reasonable potential to exceed then were analyzed to determine potential costs to achieve the projected WQBEL.

Prior to estimating compliance costs, an engineering analysis of how each sample facility could comply with the projected WQBEL was performed. The costs were then estimated based on the decisions and assumptions made in the analysis. To ensure consistency and reasonableness in estimating the general types of controls that would be necessary for a sample facility to comply with the proposal (assuming that implementation of the rule resulted in more stringent discharge requirements), as well as to integrate into the cost analysis the other alternatives available to regulated facilities, a costing decision matrix was used for each sample facility. Specific rules were established in the matrix to provide the reviewing engineers with guidance in consistently selecting options.

Under the decision matrix, costs for minor treatment plant operation and facility changes were considered first. Minor, low-cost modification or adjustment of existing treatment was determined to be feasible where literature indicated that the existing treatment process could achieve the projected WQBEL and where the additional pollutant reduction was relatively small (e.g., 10 to 25 percent of current discharge levels).

Where it was not technically feasible to simply adjust existing operations, the next most attractive control strategy was determined to be waste minimization/pollution prevention controls. However, costs for these controls were estimated only where they were considered feasible based on the reviewing engineer's understanding of the process(es) at a facility. The practicality of techniques was determined based on several criteria established in the decision matrix. Decision considerations included the level of pollutant reduction achievable through waste minimization/pollution prevention techniques, appropriateness of waste minimization/pollution prevention for the specific pollutant, and knowledge of the manufacturing processes generating the pollutant of concern.

If waste minimization/pollution prevention alone was deemed not feasible to reduce pollutant levels to those needed to comply with the projected WQBELs, as calculated for this analysis, a combination of waste minimization/pollution prevention, simple treatment, and/or process optimization was considered. If these relatively low-cost controls could not achieve the projected WQBELs, more expensive controls (e.g., end-of-pipe treatment) were considered.

Development of end-of-pipe treatment cost estimates constituted a review of the existing treatment systems at each facility. Decisions to add new treatment systems or to supplement existing treatment systems were based on this initial evaluation. For determining the need for additional or supplemental treatment, sources of performance information included the EPA Office of Research and Development (ORD), Risk Reduction Engineering Laboratory's ''RREL Treatability Database'' (Version 4.0). The pollutant removal capabilities of the existing treatment systems and/or any proposed additional or supplemental systems were evaluated based on the following criteria: (1) The effluent levels that were being achieved currently at the facility; and (2) the levels that are documented in the EPA ''RREL Treatability Database.'' If this analysis showed that additional treatment was needed, unit processes that would achieve compliance with the projected WQBELs were chosen using the same documentation.

ii. Results for Stream Segments With Specific Use Designations and Unclassified Waters

EPA identified 46 facilities that possess NPDES permits to discharge to stream segments with specific use designations for which new use designations are being proposed in this rule. Of these 46 facilities, 12 are classified as major dischargers, and 34 are classified as minor dischargers. For purposes of sample selection, EPA grouped the facilities into six categories of dischargers, including mining, food products manufacturing, power plants, logging and lumber production, publicly owned treatment works (POTWs), and miscellaneous facilities (e.g., universities, agricultural supplies manufacturers, etc.). The following table presents the universe of facilities and the number of sample facilities randomly selected by EPA to represent each category. The number of sample facilities selected by EPA was based on ensuring adequate representation of the dischargers within the group (relative to other groups), as well as considering the time frame available to perform the analyses.

SUMMARY OF DISCHARGERS TO STREAM SEGMENTS WITH SPECIFIC USE DESIGNATIONS

Category	No. of point source dischargers		No. of sample facilities selected	
	Major	Minor	Major	Minor
Mining	7	1	1	1
Food Products Manufacturing	2	1	1	.....
Power Plants	.....	4	.....	1
Logging and Lumber Production	.....	1	.....	1
Miscellaneous	.....	11	.....	2
POTWs	3	16	1	4
Total	12	34	3	9

An exact number of NPDES permitted facilities that discharge to unclassified waters was not possible due to the court ordered schedule to propose the rule. However, EPA estimated the potential number of facilities that could be affected by the proposal through data and information contained in the EPA Permit Compliance System (PCS). Specifically, EPA manually subtracted from the entire list of NPDES permitted dischargers within Idaho, all dischargers to stream segments with specific use designations (including those stream segments for which EPA is proposing new use designations). Exclusion of a facility was based on the receiving water name for the discharge as contained in PCS. As a result of this effort, EPA estimates that 110 facilities have NPDES permits to discharge to unclassified waters within Idaho. Of the 110, eight are classified as majors and 102 are classified as minors. The following table presents the estimated universe of facilities discharging to unclassified waters and the number of sample

facilities randomly selected by EPA to represent each category. Again, the number of sample facilities selected by EPA was based on ensuring adequate representation of the dischargers within the group (relative to other groups), as well as considering the time frame available to perform the analyses.

SUMMARY OF DISCHARGERS TO UNCLASSIFIED WATERS

Category	No. of point source dischargers		No. of sample facilities selected	
	Major	Minor	Major	Minor
Mining	3	15	1	2
Food Products Manufacturing	.....	3	.....	1
Power Plants	.....	4	.....	1
Logging and Lumber Production	.....	3	.....	1
Miscellaneous	4	52	2	4
POTWs	1	25	1	3
Total	8	102	4	12

To estimate costs for each of the sample facilities, EPA obtained data from NPDES permit files (permit application, permit, fact sheet or Statement of basis), and downloaded effluent monitoring data from PCS.

For each sample facility, EPA performed an evaluation of reasonable potential to exceed water quality-based effluent limits (WQBELs) based on applicable water quality criteria to protect new use designations (i.e., cold water biota protection). EPA considered any pollutant for which water quality criteria existed and for which data were available. EPA assumed that reasonable potential existed if a permit limit for the pollutant of concern was included in the existing permit for the sample facility. In the absence of a permit limit, but where monitoring data were available, EPA evaluated reasonable potential based on the monitoring data and the procedures contained in the TSD (EPA 505/2–90–001; March 1991). It should be noted that evaluation of the reasonable potential to exceed the applicable dissolved oxygen criteria was not possible in most cases, due to the lack of data. However, there were several sample facilities that were discharging oxygen-demanding pollutants. To account for the possible effect of the oxygen demand potential from these facilities, EPA used a flow-based approach to determine the reasonable potential to exceed the dissolved oxygen criteria. In particular, if the discharge from a sample facility was to an effluent dominated stream (i.e., the effluent discharge flow from the sample facility was greater than 50 percent of the receiving stream flow), then EPA assumed that treatment was needed to meet the dissolved oxygen criteria.

To calculate WQBELs, EPA used the TSD procedures to derive maximum daily and monthly average limits. Background concentrations were based on the average of data contained in STORET for upstream monitoring stations (including nearby tributaries); in the absence of background data, EPA assumed zero. Critical low flows were calculated from data contained in the United States Geological Survey (USGS) Daily Flow file data base for nearby gage stations; the 1-day, 10-year low flow (1Q10) was used for acute aquatic life protection and the 7-day, 10-year low flow (7Q10) was used for chronic aquatic life protection. In the absence of stream flow data, EPA conservatively assumed zero low flow.

Once WQBELs were derived, EPA attempted to derive cost estimates that represent the cost to remove the incremental amount of pollutant(s) to levels needed to comply with WQBELs (based on the existing effluent limit or reported effluent quality in the absence of a limit). Ideally, this assessment would be based on an evaluation of the performance of existing treatment system units, as well as consideration of other possible control options (e.g., waste minimization, pollution prevention). However, the general lack of appropriate information and data, particularly for the minor sample facilities, prohibited EPA from assessing the feasibility of potential control options to reduce pollutant concentrations. Although EPA does not expect significant costs based on initial examination of the types and number of pollutants that would be affected by the proposed rule, any estimates made by EPA without an adequate information base would be speculation.

As a result of the significant data gaps for the sample facilities, EPA was unable to estimate costs for the sample facilities. The following table presents the facilities that were randomly selected as sample facilities for the cost analysis.

SAMPLE FACILITIES SELECTED BY EPA FOR COST ANALYSIS

Category	Sample facility name	NPDES permit No.
Stream Segments with Specific Use Designations		
Mining	Goldback Mines Corp	ID0026026
	Hecla Mining Co	ID0000167
	Star/Morning Mine and Mill.	
Food Products Manufacturing	Armour Fresh	ID0000787
Power Plants	Idaho Power—Swans Falls	ID0022551
Logging and Lumber Production	Boise Cascade Council Sawmill	ID0025631
Miscellaneous	University of Idaho Irrigation Lagoons	ID0027464
	Agway Inc. Seed Coop	ID0027464
POTWs	City of Preston	ID0020214

SAMPLE FACILITIES SELECTED BY EPA FOR COST ANALYSIS—Continued

Category	Sample facility name	NPDES permit No.
	City of Troy	ID0023604
	Clarkia Water & Sewer District	ID0025071
	Cambridge Sewer Association	ID0020338
	City of Franklin	ID0025569
Unclassified Waters		
Mining	Beartrack Gold	ID0027022
	Caladay Project—Daly Gulch	ID0025429
	Unnamed Discharge to Crooked Creek	ID0024881
Food Products Manufacturing	Wippco Processing Plant	ID0026794
Power Plants	Idaho Power Company	ID0027502
Logging and Lumber Production	Jaype Plywood	ID0000451
Miscellaneous	Niagara Springs Hatchery	ID0022381
	Snake River Hatchery	ID0000752
	Standal Ponds	ID0027782
	Yoder Farms	ID0024236
	Great Western Chemical	ID0027537
	Unnamed Discharge to Lapwai Creek	ID0025168
POTWs	Unnamed Discharge to American Falls Reservoir	ID0020176
	City of Kamiah	ID0027545
	Unnamed Discharge to Hangman Creek	ID0025101
	Unnamed Discharge to Four Mile Creek	ID0026310

EPA is requesting comments, data, and information for the sample facilities that could assist EPA in evaluating the potential indirect costs to the sample facilities, including, but not limited to, descriptions of existing treatment systems and pollutant control systems; pollutants expected in effluent discharge; long-term average discharge flow and pollutant effluent concentrations; long-term average receiving water pollutant concentrations; and critical low flow values for receiving water stream segments.

iii. Overview of Approach to Estimate Potential Costs Related to New Temperature Criteria

EPA is also including as part of today's proposed rule temperature criteria for threatened and endangered species. Due to the number of water body stream segments that are affected by this more stringent temperature criteria and lack of data, EPA was not able to project the potential costs to NPDES permitted dischargers associated with proposal of the more stringent temperature criteria. The water body stream segments with more stringent temperature criteria to protect threatened and endangered species can be found in Sections 131.33 (c) through (e) of today's proposed rule.

If sufficient data can be obtained, the approach EPA plans to use to estimate potential costs is similar to the approach used for estimating the costs for new use designations (i.e., randomly selecting sample facilities to represent the universe of affected facilities). The data requirements to evaluate the potential costs would include not only ambient and effluent temperature data for critical times of the year during which spawning and rearing occur, but also detailed operational information to evaluate the ability of a facility to comply with the more stringent temperature criteria.

This detailed data were not available to EPA within the time-frame to complete the cost analysis, and therefore EPA was not able to fully assess the impact to NPDES permitted dischargers. EPA is soliciting the above mentioned data for facilities located on water body stream segments identified in Sections 131.33 (c)–(e) of today's proposed rule.

K. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and 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.

It has been determined that this is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

L. Regulatory Flexibility Act as Amended By the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency publishes a rule under 5 U.S.C. § 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. §§ 604 & 605. The Administrator is today certifying, pursuant to § 605(b) of the RFA, that this proposed rule will not have a significant impact on a substantial number of small entities. Therefore, the Agency did not prepare a regulatory flexibility analysis.

Under the CWA water quality standards program, States must adopt water quality standards for their waters

that must be submitted to EPA for approval. If the Agency disapproves a State standard, EPA must promulgate standards consistent with the statutory requirements. These State standards (or EPA-promulgated standards) are implemented through the NPDES program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved State program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet State water quality standards.

Thus under the CWA, EPA's promulgation of water quality standards where State standards are inconsistent with statutory requirements establishes standards that are implemented through the NPDES permit process by authorized States, or, in the absence of an approved State NPDES program, by EPA. EPA implements the NPDES program in Idaho. EPA and authorized States have discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While State or EPA implementation of federally-promulgated water quality standards *may* result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule imposes obligations on EPA but, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of this action, EPA will need to ensure that permits issued in the State of Idaho include any limitations on discharges necessary to comply with the standards in the final rule. EPA and the State have a number of discretionary choices associated with permit writing and total maximum daily load (TMDL) calculations and waste load allocations (WLAs) which can affect the burden felt by any small entity as a result of EPA action to implement the final rule. While implementation of the final rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rules' requirements.* See *United States Distribution Companies* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule,*' '' *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

M. Unfunded Mandates Reform Act

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, EPA generally must prepare a written Statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written Statement is needed, section 205 of the UMRA generally requires 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 EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted.

Before 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 the 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.

As noted above, this proposed rule is limited to water quality standards for a limited number of waters within the State of Idaho. EPA believes that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA also believes that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

N. Paperwork Reduction Act

Today's rulemaking imposes no new or additional information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, no Information Collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act.

O. Executive Order 12875

In compliance with Executive Order 12875, EPA has involved State governments in the development of this rule. Prior to this rulemaking action, EPA met numerous times with representatives of Idaho's Division of Environmental Quality and Idaho's Attorney General's office to discuss our concerns with the State's water quality standards, possible remedies for addressing the disapproved sections of the water quality standards, and the rulemaking process. EPA has also corresponded with Idaho's Division of Environmental Quality and the Governor's office. EPA has held telephone conferences and meetings with U.S. Fish and Wildlife Service and the National Marine Fisheries Service to discuss Endangered Species Act consultation issues related to this action. In addition, EPA issued a notice on March 21, 1997, (62 FR 13567) outlining EPA's rulemaking plans and informing the public that EPA would be seeking information on specific streams in Idaho. EPA will continue to work with affected parties before finalizing water quality standards for Idaho.

EPA has scheduled two public hearings for May 12, 1997, in Boise, Idaho. EPA's public notification process is targeting interested parties, both within and outside of government, to ensure them the opportunity for involvement.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water Quality Standards.

Dated: April 21, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.33 is added to read as follows:

§ 131.33 Idaho.

(a) Prior to classification by the State, unclassified waters shall be protected for primary contact recreation and cold water biota.

(b) In addition to the State adopted use designations, the following water body segments in Idaho have the beneficial uses designated in paragraph (b)(1) of this section.

Idaho map code	Waters	Cold water biota	Salmonid spawning	Primary contact recreation
	(1) Panhandle Basin			
PB 11S	Granite Creek-source to mouth			x
PB 121S	Canyon Creek-below mining impact	x		x
PB 140S	South Fork Coeur d'Alene River-Daisy Gulch to mouth	x		x
PB 142S	Nine Mile Creek-below mining impact	x		x
PB 143S	Big Creek-below mining impact	x		x
PB 145S	Government Gulch-source to mouth	x		x
PB 146S	Pine Creek-below mining impact			x
PB 147S	Lake Creek-below mining impact	x		x
PB 148S	Shields Gulch-below mining impact	x		x
PB 220P	Trestle Creek-source to mouth			x
PB 322S	St. Maries-Fernwood to mouth	x		
PB 340S	Plummer Creek-source to mouth	x		x
PB 450S	Hangman Creek-source to Idaho-Washington border	x		x
PB 451S	Rock Creek-source to Idaho-Washington border	x		x
	(2) Clearwater Basin			
CB 152	Cottonwood Creek-source to mouth	x		
CB 170	Palouse River-Princeton to Idaho-Washington border	x		x
CB 171	So. Fork Palouse River-source to Idaho-Washington border	x		x
CB 210	Lindsay Creek			x
CB 1321	Three Mile Creek-source to mouth			x
CB 1322	Cottonwood Creek-source to mouth			x
CB 1421	Grasshopper Creek-source to mouth	x	x	
CB 1541	Little Bear Creek-source to mouth	x	x	x
CB 1711	Cow Creek-source to Idaho-Washington border	x		x
CB 1712	Paradise Creek source to Idaho-Washington border	x		x
	(3) Salmon Basin			
SB 130	Thompson Creek-source to mouth			x
SB 140	Squaw Creek-source to mouth			x
SB 421	Blackbird Creek-source to mouth	x	x	x
SB 430	Panther Creek-Blackbird Creek to mouth		x	x
SB 4211	West Fork Blackbird Creek-source to mouth	x	x	x
	(4) Southwest Idaho Basin			
SWB 10	Snake River-King Hill to Marsing	x		
SWB 20	Snake River-Marsing to Boise River	x		
SWB 30	Snake River-Payette River to Boise River	x		
SWB 271	Ten Mile Creek-source to mouth			x
SWB 271	Five Mile Creek-source to mouth			x
SWB 282	Indian Creek-below Sugar Avenue Nampa to mouth	x		x
SWB 410	Weiser River-source to Midvale	x		
SWB 421	Crane Creek-source to mouth	x		
	(5) Upper Snake Basin			
USB 235	North Fork Teton River-source to mouth			x
USB 236	South Fork Teton River-source to mouth			x
USB 320	Willow Creek-Ririe Dam to mouth			x
USB 360	Blackfoot River-Equalizing Dam to mouth	x		x
USB 411	Marsh Creek-source to mouth	x		x
USB 430	Bannock Creek-source to mouth	x		x
USB 730	Rock Creek-Rock Creek City to mouth			x
USB 740	Cedar Draw-source to mouth			x
USB 800	Mud Creek-Deep Creek Road to mouth			x

Idaho map code	Waters	Cold water biota	Salmonid spawning	Primary contact recreation
USB 810	Deep Creek-source to mouth			x
BB 310	Soda Creek-source to mouth	x		x
BB 430	Battle Creek—source to mouth	x		x
BB 420	Worm Creek-source to Idaho-Washington border	x		x
BB 450	Cub Creek-Mapleton to Idaho-Utah border	x		x
BB 470	Malad River-Little Malad River to Idaho-Utah border	x		x
BB 480	Deep Creek-source to Idaho-Utah border	x		

(c) Temperature Criteria for Bull Trout.

(1) The following seasonal temperature requirements and maximum weekly average temperature criteria apply to the Idaho waterbody segments identified in paragraph (c)(2) of this section.

Date	Maximum weekly average temperature (°C)
January	4
February	4
March	6
April	8
May	10
June	12
July	12
August 1–15	12
August 15–30	10
September	10
October	8
November	6
December	6

(2) **Note:** In paragraph (c)(2), ''[1]'' denotes waterbody segments included in the Interior Columbia Basin Ecosystem Management Project is ''Key Salmonid'' Database; ''[2]'' denotes waterbody segments included in the Idaho Department of Fish and Game Digital Bulltrout Distribution Database.

(i) Boise-Mores Basin: Boise River,[2] Devils Creek,[1 2] East Fork Sheep Creek,[1 2] Middle Fork Boise River,[2] North Fork Boise River,[2] Sheep Creek.[1 2]

(ii) Brownlee Reservoir Basin: Allison Creek,[1] Bear Creek,[1] Board Gulch,[1] Brownlee Creek,[1] Butterfield Gulch,[1] Calf Pen Gulch,[1] Cave Creek,[1] Cold Spring Creek,[1] Cottonwood Creek,[1] Cow Creek,[1] Crooked River,[1 2] Deer Creek,[1] Dick Ross Creek,[1] Doe Creek,[1] Dukes Creek,[1] Eckels Creek,[1] Fawn Creek,[1] Gladheart Gulch,[1] Grouse Creek,[1] Hoo Hoo Gulch,[1] Indian Creek,[2] Jackson Gulch,[1] Kinney Creek,[1] Lick Creek,[1] Little Bear Creek,[1] Raft Creek,[1] Sheep Creek,[1] Snake River,[1] Stevens Creek,[1] Sumac Creek,[1] Summit Gulch,[1] Swapit Creek,[1] Thorn Creek,[1] Thorn Spring Creek,[1] Trail Creek,[1] Wayle Creek,[1] Wickiup Creek,[1] Wolf Creek.[1]

(iii) Bruneau Basin: Bruneau River,[1] East Fork Jarbidge River,[2] Jarbidge River,[2] Stiff Tree Draw.[1]

(iv) Clearwater Basin: Beardy Gulch,[1] Big Canyon Creek,[2] Clearwater River,[1] Cole Canyon,[1] Cougar Creek,[1] Feather Creek,[1] Laguna Creek,[1] Lolo Creek,[2] Nikesa Creek,[1] North Fork Clearwater River,[1] Orofino Creek,[2] Rattlesnake Canyon,[1] Talapus Creek,[1] West Fork Potlatch River,[1] Wheeler Canyon.[1]

(v) Coeur D'Alene Lake Basin: Canary Creek,[1] Cataldo Gulch,[1] Cave Lake,[1] Clark Creek,[1] Coeur d'Alene Lake,[1] Coeur d'Alene River,[1] Cougar Creek,[1] Evans Creek,[1] Fernan Creek,[1] Fortier Creek,[1] French Gulch,[1] Hardy Gulch,[1] Hayden Gulch,[1] Kid Creek,[1] Killarney Creek,[1] Killarney Lake,[1] Lane Creek,[1] Medicine Lake,[1] Mica Creek,[1] Robinson Creek,[1] Rose Creek,[1] Skeel Gulch,[1] South Fork Mica Creek,[1] Squaw Creek,[1] Turner Creek,[1] Whiteman Draw,[1] Willow Creek.[1]

(vi) Hells Canyon Basin: Bear Gulch,[1] Bernard Creek,[1] Big Canyon Creek,[1] Big Sulphur Creek,[1] Brush Creek,[1] Camp Creek,[1] Caribou Creek,[1] Clarks Fork,[2] Corral Creek,[1] Deep Creek,[1] Devils Farm Creek,[1] Dog Creek,[1] Doug Creek,[1] Dry Creek,[1 2] East Fork Sheep Creek,[1] Fir Creek,[1] Getta Creek,[2] Granite Creek,[1 2] Highrange Creek,[1] Jones Creek,[1] Kirby Creek,[1] Klopton Creek,[1 2] Kurry Creek,[1 2] Left Fork Dry Creek,[1] Little Granite Creek,[1] North Fork Klopton Creek,[1] Oxbow Creek,[1] Salt Creek,[2] Sheep Creek,[1 2] Snake River,[1 2] Steep Creek,[1] Thorn Creek,[1] Trail Creek,[1] Two Creek,[1] Vance Gulch,[1] West Creek,[1] West Fork West Creek,[1] Wyley Creek,[1] Zigzag Creek.[1]

(vii) Lemhi Basin: Adams Creek,[1] Alder Creek,[1] Baldy Creek,[1] Basin Creek,[1] Bear Creek,[1] Bear Valley Creek,[1 2] Big Eightmile Creek,[1 2] Big Springs Creek,[1] Big Timber Creek,[1 2] Bray Creek,[1] Bull Creek,[1] Cabin Creek,[1] Canyon Creek,[1 2] Carol Creek,[1] Chamberlain Creek,[1] Clear Creek,[1] Climb Creek,[1] Cooper Creek,[1] Dairy Creek,[1 2] Deer Creek,[1 2] Deer Park Creek,[1] Divide Creek,[1] Dry Creek,[1] East Fork Hayden Creek,[1 2] East Fork Kenney Creek,[1] East Fork Kirtley Creek,[1] Eighteenmile Creek,[1 2] Falls Creek,[1] Ferry Creek,[1] Ford Creek,[1] Gary Creek,[1] Geertson Creek,[1 2] Goose Creek,[1] Grove Creek,[1] Hawley Creek,[1 2] Hayden Creek,[1 2] Haynes Creek,[1] Kadletz Creek,[1] Kenney Creek,[1 2] Kirtley Creek,[1 2] Lake Creek,[1] Lee Creek,[2] Lemhi River,[1 2] Little Eightmile Creek,[1 2] Little Mill Creek,[1] Little Sawmill Creek,[1] Little Timber Creek,[1 2] McGinty Creek,[1] McNutt Creek,[1] Meadow Creek,[1] Middle Fork Little Timber Creek,[1 2] Milk Creek,[1] Mill Creek,[1 2] Mogg Creek,[1] Muddy Creek,[1] Mulkey Creek,[1] Negro Green Creek,[1] North Fork Kirtley Creek,[1 2] North Fork Little Timber Creek,[1] Paradise Creek,[1] Patterson Creek,[1] Payne Creek,[1] Poison Creek,[1] Prospect Creek,[1] Reese Creek,[1] Rocky Creek,[1] Ryegrass Creek,[1] Short Creek,[1] Squaw Creek,[1] Squirrel Creek,[1] Texas Creek,[1] Tobias Creek,[1] Trail Creek,[1] Walter Creek,[1] Warm Spring Creek,[1] West Fork Hayden Creek,[1 2] West Fork Little Eightmile Creek,[1] Wright Creek.[1]

(viii) Little Lost Basin: Aspen Creek,[1] Badger Creek,[1 2] Barney Creek,[1] Bear Canyon,[1] Bear Creek,[1] Bell Mountain Creek,[1] Big Creek,[1 2] Bird Canyon,[1] Black Creek,[1] Buck Canyon,[1] Bull Creek,[1] Cedar Run Creek,[1] Chicken Creek,[1] Coal Creek,[1] Corral Creek,[1] Deep Creek,[1] Dry Creek,[1] Dry Creek Canal,[1] Firbox Creek,[1 2] Garfield Creek,[1] Hawley Canyon,[1] Hawley Creek,[1 2] Horse Creek,[1] Horse Lake Creek,[1] Iron Creek,[1 2] Jackson Creek,[1 2] Little Lost River,[1 2] Mahogany Creek,[1] Main Fork Sawmill Creek,[1 2] Massacre Creek,[1] Meadow Creek,[1] Mill Creek,[1 2] Moffett Creek,[1] Moonshine Creek,[1] Quigley Creek,[1] Red Rock Creek,[1 2] Sands Creek,[1] Sawmill Creek,[1 2] Slide Creek,[1] Smithie Fork,[1 2] Squaw Creek,[1 2] Summerhouse Canyon,[1] Summit Creek,[1 2] Timber Creek,[1 2] Warm Creek,[1 2] Wet Creek,[1 2] Williams Creek.[1 2]

(ix) Little Salmon Basin: Bascum Canyon,[1] Boulder Creek,[2] Brown Creek,[1] Campbell Ditch,[1] Castle Creek,[1] Clayburn Creek,[1] Copper Creek,[1] Granite Fork Lake Fork Rapid River,[1] Hard Creek,[1 2] Hazard Creek,[1 2] Hyatt Creek,[1] Jacks Creek,[1] Lake Fork Rapid River,[1] Little Salmon River,[1 2] Paradise

Creek,[1] Pony Creek,[2] Rapid River,[1 2] Squirrel Creek,[2] Trail Creek,[1] Warm Springs Creek,[1] West Fork Rapid River.[2]

(x) Lochsa Basin: Apgar Creek,[1] Badger Creek,[1] Bald Mountain Creek,[1] Bear Mtn. Creek,[1] Beaver Creek,[1 2] Big Flat Creek,[1 2] Big Stew Creek,[1] Boulder Creek,[1 2] Brushy Fork,[1 2] Cabin Creek,[1] California Creek,[1] Castle Creek,[1] Chain Creek,[2] Chimney Creek,[1] Cliff Creek ,[1] Colgate Creek,[1] Coolwater Creek,[1] Cooperation Creek,[1] Crab Creek,[1] Crooked Fork Lochsa River,[1 2] Dan Creek,[1] Deadman Creek,[2] Doe Creek,[1 2] Dutch Creek,[1] Eagle Creek,[1] Eagle Mountain Creek,[1] East Fork Papoose Creek,[1 2] East Fork Split Creek,[1] East Fork Squaw Creek,[1] Eel Creek,[1] Fern Creek,[1] Fire Creek,[2] Fish Creek,[1 2] Fish Lake Creek,[1 2] Fox Creek,[1 2] Freezeout Creek,[1] Gass Creek,[2] Gold Creek,[1] Greystone Creek,[1] Gypsy Creek,[1] Ham Creek,[1] Handy Creek,[1] Hard Creek,[1] Haskell Creek,[1] Heather Creek,[1] Helix Creek,[1] Hellgate Creek,[1] Heslip Creek,[1] Hidden Creek,[1] Holly Creek,[1] Hopeful Creek,[1 2] Hungery Creek,[2] Indian Grave Creek,[1 2] Indian Meadow Creek,[1] Jay Creek,[1] Kerr Creek,[1] Kinnikinnick Creek,[1] Kube Creek,[1] Lochsa River,[1 2] Lone Knob Creek,[1] Lost Creek,[1] Lottie Creek,[1] Macaroni Creek,[1] Maud Creek,[1] Middle Fork Clearwater River,[2] Mocus Creek,[1] No-see-um Creek,[1] North Fork Spruce Creek,[1] North Fork Storm Creek,[1] Nut Creek,[1] Old Man Creek,[1] Otter Slide Creek,[1] Pack Creek,[1] Papoose Creek,[1 2] Parachute Creek,[1] Pass Creek,[1] Pedro Creek,[1] Pell Creek,[1] Pete King Creek,[1 2] Placer Creek,[1] Polar Creek,[1] Postoffice Creek,[1 2] Queen Creek,[1] Robin Creek,[1] Rock Creek,[1] Rye Patch Creek,[1] Sardine Creek,[1] Selway River,[1 2] Shoot Creek,[1] Shotgun Creek,[1] Skookum Creek,[1] Snowshoe Creek,[1] South Fork Spruce Creek,[1] South Fork Storm Creek,[1] Split Creek,[1] Sponge Creek,[1 2] Spring Creek,[1] Spruce Creek,[1 2] Squaw Creek,[1 2] Storm Creek,[1 2] Tadpole Creek,[1] Tick Creek,[1] Tomcat Creek,[1] Tumble Creek,[1] Twin Creek,[1] Wag Creek,[1] Walde Creek,[1 2] Walton Creek,[1 2] Warm Springs Creek,[1 2] Weir Creek,[1 2] Wendover Creek,[1 2] West Fork Boulder Creek,[1] West Fork Papoose Creek,[1 2] West Fork Squaw Creek,[1 2] West Fork Wendover Creek,[1] White Sands Creek,[1 2] Willow Creek.[1]

(xi) Lower Clark Fork Basin: Cascade Creek,[1] Clark Fork,[1 2] East Fork,[1] East Fork Creek,[2] East Fork East Fork Creek,[1] Gold Creek,[1] Johnson Creek,[1 2] Lightning Creek,[1 2] Middle Fork Clark Fork,[2] Mosquito Creek,[1] North Fork Clark Fork,[2] Porcupine Creek,[2] Rattle Creek,[2] South Fork Clark Fork,[2] Spring Creek,[1 2] Twin Creek,[2] Wellington Creek.[1 2]

(xii) Lower Kootenai Basin: Ball Creek,[1] Boundary Creek,[2] Brush Creek,[1] Brush Lake,[1] Cabin Creek,[1] Caribou Creek,[1 2] Cascade Creek,[1] Cedar Creek,[1] Cooks Creek,[1] Cow Creek,[1] Curley Creek,[2] Deep Creek,[1 2] Fall Creek,[1] Grass Creek,[2] Hall Creek,[1] Highland Creek,[1] Jim Creek,[1] Kootenai River,[1 2] Lime Creek,[1] Long Canyon Creek,[1 2] Mack Creek,[1] Mission Creek,[2] Molar Creek,[1] Moyie River,[2] Myrtle Creek,[1 2] Peak Creek,[1] Roman Nose Creek,[1] Snow Creek,[1 2] Trout Creek.[1 2]

(xiii) Lower Middle Fork Salmon Basin: Acorn Creek,[1] Alpine Creek,[1] Anvil Creek,[1] Arrastra Creek,[1] Bar Creek,[1] Beagle Creek,[1] Beaver Creek,[1 2] Belvidere Creek,[1 2] Big Creek,[1 2] Birdseye Creek,[1] Bismark Creek,[1] Boulder Creek,[1] Brush Creek,[2] Buck Creek,[1] Bull Creek,[1] Cabin Creek,[2] Camas Creek,[1 2] Camp Creek,[1] Canyon Creek,[1] Castle Creek,[1 2] Cave Creek,[1] Chalk Creek,[1] Cinch Creek,[1] Clark Creek,[1] Coin Creek,[1] Color Creek,[1] Copper Creek,[1] Corner Creek,[1] Coxey Creek,[1] Crooked Creek,[1 2] Dame Creek,[1] Deer Creek,[1] Doe Creek,[1] Duck Creek,[1] East Fork Crooked Creek,[1] East Fork Holy Terror Creek,[1] Fall Creek,[1] Fawn Creek,[1] Flume Creek,[1] Fly Creek,[1] Forge Creek,[1] Furnace Creek,[1] Garden Creek,[1] Goat Creek ,[1] Gold Creek,[1] Government Creek,[1] Grouse Creek,[1] Hammer Creek,[1] Hand Creek,[1 2] Holy Terror Creek,[1] J Fell Creek,[1] Jackass Creek,[1] Jacobs Ladder Creek,[1] Jenny Creek,[1] Lake Creek,[1] Lewis Creek,[1] Liberty Creek,[1] Lick Creek,[1] Lime Creek,[1] Little Jacket Creek,[1] Little Marble Creek,[1] Little Ramey Creek,[1] Little White Goat Creek,[1] Little Woodtick Creek,[1] Logan Creek ,[1 2] Lookout Creek,[1] Loon Creek ,[2] Marttindale Creek,[1] Meadow Creek,[1] Middle Fork Salmon River,[1 2] Middle Fork Smith Creek,[1 2] Milk Creek,[1] Monumental Creek,[1 2] Moore Creek,[1] Mud Creek,[1] Mulligan Creek,[1] North Fork Smith Creek,[1] North Fork Stoddard Creek,[1] Norton Creek,[1] Pack Horse Creek,[1] Paint Creek,[1] Placer Creek,[1] Pole Creek,[1] Rams Creek,[1] Range Creek,[1] Roaring Creek,[1] Routson Creek,[1] Rush Creek,[1 2] Sawlog Creek,[1] Sheep Creek,[1] Sheldon Creek,[1] Shellrock Creek,[1] Ship Island Creek,[1] Shovel Creek,[1] Silver Creek,[1 2] Slide Creek,[1] Smith Creek,[1 2] Snowslide Creek,[2] Soda Creek,[1] Soldier Creek,[1] South Fork Camas Creek,[1] South Fork Chamberlain Creek,[2] South Fork Holy Terror Creek,[1] South Fork Norton Creek,[1] South Fork Rush Creek,[1] South Fork Sheep Creek,[1] Spider Creek,[1] Spletts Creek,[1] Spring Creek,[1] Stoddard Creek,[1] Tale Creek,[1] Telephone Creek,[1] Trail Creek,[1] Twin Creek,[1] Two Point Creek,[1] West Fork Beaver Creek,[1] West Fork Camas Creek,[1 2] West Fork Crooked Creek,[1] West Fork Monumental Creek,[1 2] West Fork Rush Creek,[1] Whiskey Creek,[1] White Goat Creek,[1] Wild Horse Creek,[1] Wilson Creek,[1 2] Woodtick Creek,[1] Yellowjacket Creek.[1]

(xiv) Lower North Fork Clearwater Basin: Adair Creek,[1] Anderson Creek,[1] Badger Creek,[1] Bathtub Creek,[1] Bear Creek,[1] Beaver Creek,[1 2] Bertha Creek,[1] Bingo Creek,[1] Black Creek,[1] Bonner Creek,[1] Brush Creek,[1] Buck Creek,[1] Butte Creek,[1] Canyon Creek,[1 2] Caribou Creek,[1] Cataract Creek,[1] Crampton Creek,[1] Crescendo Creek,[1] Crimper Creek,[1] Delate Creek,[1] Devils Club Creek,[1] Dip Creek,[1] Dog Creek,[1 2] Dworshak Reservoir,[1] East Fork Beaver Creek,[1] Elkberry Creek,[1] Elmberry Creek,[1] Elmer Creek,[1] Falls Creek,[1] Fern Creek,[1] Floodwood Creek,[1] Foehl Creek,[1] Goat Creek,[1] Grandad Creek,[1] Harlan Creek,[1] Hodson Creek,[1] Idaho Creek,[1] Isabella Creek,[1 2] John Creek,[1] Jug Creek,[1] Jungle Creek,[1 2] Ladds Creek,[1] Larkins Creek,[1] Len Creek,[1] Lightning Creek,[1] Little Lost Lake Creek,[1] Little Meadow Creek,[1] Little North Fork Clearwater River,[1 2] Lost Lake Creek,[1 2] Lund Creek,[1 2] Marquette Creek,[1] McKinnon Creek,[1] Meadows Creek,[1] Milk Creek,[1] Minnesaka Creek,[1] Montana Creek,[1] Mowitch Creek,[1] Mulligan Creek,[1] North Fork Clearwater River,[1 2] Northbound Creek,[1] Papoose Creek,[1] Pitchfork Creek,[1] Rocky Run,[1 2] Rooney Creek,[1] Rutledge Creek,[1 2] Salmon Creek,[1] Sawtooth Creek,[1] Sheep Mountain Creek,[1] Sourdough Creek,[1] Sousie Creek,[1] South Fork Beaver Creek,[1] Spires Creek,[1] Spotted Louis Creek,[1 2] Springs Creek,[1] Stoney Creek,[1] Thompson Creek,[1] Thrasher Creek,[1] Triple Creek,[1] Twin Creek,[1 2] West Fork Butte Creek,[1] West Fork Hodson Creek,[1] West Fork Meadows Creek,[1] West Fork Montana Creek,[1] West Fork Rooney Creek,[1] White Creek,[1] Willow Creek.[1]

(xv) Lower Salmon Basin: Baker Gulch,[1] Bear Gulch,[1] Berg Creek,[1] Chapman Creek,[1] Cottonwood Creek,[1] East Fork John Day Creek,[1] Elkhorn Creek,[2] Fiddle Creek,[2] French Creek,[1 2] Hagen Draw,[1] Hurley Creek,[1] John Day Creek,[1 2] Kelly Creek,[2] Klip Creek,[1] Lake Creek,[2] Little Salmon River,[2] Little Slate Creek,[2] Little Van Buren Creek,[1] No Buisiness Creek,[1] North Creek,[1] North Fork Baker Gulch,[1] North Fork Slate Creek,[1 2] North Fork White Bird Creek,[2] Partridge Creek,[2] Price Creek,[1] Salmon River,[1 2] Slate Creek,[1 2] Slide Creek,[1] South Fork Baker Gulch,[1] South Fork John Day Creek,[1] South Fork White Bird Creek,[2] Trough Creek,[1] Warm Springs Creek,[1] Waterspout Creek,[1] White Bird Creek,[1] Willow Creek.[1]

(xvi) Lower Selway Basin: Anderson Creek,[1] Bailey Creek,[2] Barren Creek,[1] Browns Spring Creek,[2] Buck Lake

Creek,[2] Butte Creek,[1] Butter Creek,[1] Cabin Creek,[1] Cedar Creek,[1 2] Chain Creek,[1 2] Chute Creek,[1] Crew Creek,[1] Dent Creek,[1 2] Disgrace Creek,[1] Double Creek,[2] East Fork Meadow Creek,[1] East Fork Moose Creek,[1 2] East Fork Sable Creek,[1] Elbow Creek,[2] Fitting Creek,[1] Fivemile Creek,[2] Fourmile Creek,[1] Freeman Creek,[1] Gate Creek,[1] Gedney Creek,[2] Goddard Creek,[2] Grotto Creek,[1] Heath Creek,[1] Higgins Creek,[1] Horse Creek,[2] Indian Hill Creek,[1 2] Isaac Creek,[1] Lark Creek,[1] Little Boulder Creek,[1 2] Little Creek,[1] Little Schwar Creek,[1] Lizard Creek,[1] Lone Creek,[1] Matteson Creek,[1] Meadow Creek,[1 2] Monument Creek,[1 2] Moose Creek,[2] Moss Creek,[1] Newsome Creek,[2] North Fork Moose Creek,[1 2] Pea Creek,[1] Porphyry Creek,[1] Rabbit Creek,[1] Rhoda Creek,[1 2] Sable Creek,[1] Saddle Creek,[1] Schwar Creek,[2] Selway River,[2] Shake Creek,[1] Simmons Creek,[1] Sled Creek,[1] Spook Creek,[1] Spur Creek,[1] Squirrel Creek,[1] Tamarack Creek,[1] Three Prong Creek,[1] Twomile Creek,[1] West Fork Anderson Creek,[1] West Fork Gedney Creek,[1 2] West Fork Sable Creek,[1] West Fork Three Links Creek,[1] West Moose Creek,[1 2] Wounded Doe Creek,[2] Wye Creek.[1]

(xvii) Lower Snake-Asotin Basin: Big Cougar Creek,[1] Buffalo Draw,[1] Cave Gulch,[1] China Garden Creek,[1] Cottonwood Creek,[1] Crowers Canyon,[1] First Creek,[1] Frenchy Creek,[1] Salmon River,[2] Snake River,[1 2] Thiessen Canyon.[1]

(xviii) Middle Fork Clearwater Basin: Baldy Creek,[2] Big Cedar Creek,[2] Browns Spring Creek,[1 2] Clear Creek,[1 2] Kay Creek,[1] Middle Fork Clear Creek,[1 2] Middle Fork Clearwater River,[2] Pine Knob Creek,[1 2] Solo Creek,[1] South Fork Clear Creek,[1 2] South Fork Clearwater River.[2]

(xix) Middle Fork Payette Basin: Albright Gulch,[1] Bell Creek,[1] Boom Creek,[1] Bridge Creek,[1] Bryan Creek,[1] Bull Creek,[1 2] Dash Creek,[1] Easley Creek,[1] Fool Creek,[1] Goat Creek,[1] Gooseberry Creek,[1] Ground Hog Creek,[1] Koppes Creek,[1] Lake Creek,[1] Lightning Creek,[1] Little Gooseberry Creek,[1] Middle Fork Payette River,[1 2] Oxtail Creek,[1 2] Pine Creek,[1] Pyle Creek,[1] Rattlesnake Creek,[1] Rocky Canyon,[1] Silver Creek,[2] Sixteen-to-one Creek,[1] Skull Creek,[1] Smith Creek,[1] South Fork Payette River,[2] South Fork West Fork Creek,[1] Tie Creek,[1] Trail Creek,[1] Warm Springs Creek,[1] West Fork Creek,[1] Wet Foot Creek.[1]

(xx) Middle Salmon-Chamberlain Basin: Arlington Creek,[1] Arrow Creek,[1] Bargamin Creek,[1 2] Basin Creek,[1] Bat Creek,[1] Bay Creek,[1] Bear Creek,[2] Bemis Creek,[1] Bend Creek,[1] Big Elkhorn Creek,[1] Big Harrington Creek,[1] Big Mallard Creek,[1 2] Big Squaw Creek,[1] Bleak Creek,[1] Bronco Creek,[1] Broomtail Creek,[1] Brown Creek,[1] Bull Creek,[1] Butts Creek,[1] Canyon Creek,[1] Cayuse Creek,[1] Center Creek,[1] Chamberlain Creek,[1 2] Cliff Creek,[1] Club Creek,[1] Colt Creek,[1] Corn Creek,[2] Cottonwood Creek,[1] Crooked Creek,[1 2] Deer Creek,[1] Dennis Creek,[1] Disappointment Creek,[1] Dismal Creek,[1] Dog Creek,[1] East Fork Fall Creek,[1 2] East Fork Horse Creek,[1] East Fork Noble Creek,[1] East Fork Sheep Creek,[1] East Fork Whimstick Creek,[1] Fall Creek,[1 2] Farrow Creek,[1] Filly Creek,[1] Fish Creek,[1] Fitz Creek,[1] Flossie Creek,[1] Game Creek,[1 2] Gap Creek,[1] Ginger Creek,[1] Green Creek,[1] Grouse Creek,[1] Guard Creek,[2] Hamilton Creek,[1] Hartan Creek,[1] Horse Creek,[1 2] Hot Springs Creek,[1] Hotzel Creek,[1] Houston Creek,[1] Hungry Creek,[1] Hurst Creek,[1] Iodine Creek,[1] Jack Creek,[1] Jersey Creek,[2] Kitchen Creek,[1] Lake Creek,[1 2] Left Fork Slaughter Creek,[1] Little Horse Creek,[1 2] Little Lodgepole Creek,[1] Little Mallard Creek,[1 2] Lodgepole Creek,[1] Mayflower Creek,[1 2] McCalla Creek,[1 2] Meadow Creek,[1] Moose Creek,[1 2] Moose Jaw Creek,[1] Mule Creek,[1] Mustang Creek,[1] My Creek,[1] No Name Creek,[1] Our Creek,[1] Owl Creek,[2] Peak Creek,[1] Plummer Creek,[1] Poet Creek,[1] Pole Creek,[1] Porcupine Creek,[1] Power Creek,[1] Prospector Creek,[1] Pup Creek,[1] Queen Creek,[1] Rainey Creek,[1] Ranch Creek,[1] Rattlesnake Creek,[1] Red Top Creek,[1] Reynolds Creek,[1] Richardson Creek,[1] Rim Creek,[1 2] Ring Creek,[1] Rock Creek,[1] Root Creek,[1] Runaway Creek,[1] Sabe Creek,[1] Saddle Creek,[1] Salmon River,[1 2] Salt Creek,[1] Schissler Creek,[2] Sheep Creek,[1 2] Short Creek,[1] Shovel Creek,[1] Skull Creek,[1] Slaughter Creek,[1 2] Slide Creek,[1] Smith Creek,[1] South Fork Cottonwood Creek,[1] South Fork Chamberlain Creek,[1 2] South Fork Kitchen Creek,[1] South Fork Salmon River,[2] South Fork Whimstick Creek,[1] Spread Creek,[1] Spring Creek,[1] Starvation Creek,[1] Steamboat Creek,[2] Steep Creek,[1] Stud Creek,[1] Wapiti Creek,[1] Warren Creek,[1 2] Webfoot Creek,[1 2] West Fork Butts Creek,[1] West Fork Chamberlain Creek,[1 2] West Fork Rattlesnake Creek,[1] West Fork Whimstick Creek,[1] West Horse Creek,[1] Whimstick Creek,[1 2] Wind River,[2] Woods Fork Horse Creek.[1]

(xxi) Middle Salmon-Panther Basin: Allan Creek,[1] Allen Creek,[1] Anderson Creek,[1] Arnett Creek,[1 2] Badger Creek,[1] Beaver Creek,[1 2] Big Deer Creek,[2] Big Jureano Creek,[1] Big Silverlead Creek,[1] Blackbird Creek,[1] Boulder Creek,[1 2] Cabin Creek,[1] Camp Creek,[1] Carmen Creek,[1 2] Chipps Creek,[1] Clear Creek,[1 2] Cliff Creek,[1] Colson Creek,[2] Copper Creek,[1] Corral Creek,[1] Cougar Creek,[1] Cove Creek,[1] Cow Creek,[2] Dahlonega Creek,[1] Daly Creek,[1] Deadhorse Creek,[1] Deep Creek,[1 2] Ditch Creek,[1] Dump Creek,[1] East Boulder Creek,[1] East Fork Indian Creek,[1] East Fork Owl Creek,[1] East Fork Pierce Creek,[1] East Fork Spring Creek,[1] Ebenezer Creek,[1] Elk Creek,[1] Elkhorn Creek,[1] Fawn Creek,[1] Fourth Of July Creek,[1] Freeman Creek,[2] Hammerean Creek,[1] Homet Creek,[1] Hughes Creek,[1 2] Hull Creek,[1 2] Humbug Creek,[1] Indian Creek,[1 2] Iron Creek,[1 2] Jackass Creek,[1] Jefferson Creek,[1] Jesse Creek,[1 2] Lake Creek,[1 2] Lemhi River,[2] Lick Creek,[1] Little Deep Creek,[1 2] Little Deer Creek,[1] Little Ditch Creek,[1] Little Hat Creek,[2] Little Moose Creek,[1] Little Sheep Creek,[1] Little Silverlead Creek,[1] Little Woodtick Creek,[1] McConn Creek,[1 2] McKim Creek,[1 2] Middle Fork Salmon River,[2] Mink Creek,[1] Moccasin Creek,[1] Moose Creek,[1 2] Moyer Creek,[1 2] Musgrove Creek,[1 2] Napias Creek,[1 2] Nez Perce Creek,[1] North Fork Hughes Creek,[1] North Fork Iron Creek,[1 2] North Fork McKim Creek,[1] North Fork Salmon River,[1 2] North Fork Williams Creek,[2] Opal Creek,[1] Otter Creek,[1] Owl Creek,[1 2] Panther Creek,[1 2] Park Creek,[2] Peel Tree Creek,[1] Phelan Creek,[1] Pierce Creek,[1] Pine Creek,[1 2] Pony Creek,[1] Porphyry Creek,[1 2] Pruvan Creek,[1] Quartz Creek,[1] Rabbit Creek,[1] Rancherio Creek,[1] Ransack Creek,[1] Rapps Creek,[1] Salmon River,[1 2] Salt Creek,[1] Salzer Creek,[1] Saw Pit Creek,[1] Sharkey Creek,[1] Sheep Creek,[1 2] Slide Creek,[1] Smithy Creek,[1] South Fork Cabin Creek,[1] South Fork Hull Creek,[1] South Fork Iron Creek,[1 2] South Fork Moyer Creek,[1] South Fork Phelan Creek,[1] South Fork Sheep Creek,[1] South Fork Williams Creek,[2] Spring Creek,[1 2] Squaw Creek,[1 2] State Creek,[1] Swamp Creek,[1] Thompson Gulch,[1] Threemile Creek,[1] Trail Creek,[1 2] Twelvemile Creek,[1 2] Twin Creek,[1 2] Vine Creek,[1] Votler Creek,[1] Wallace Creek,[1] Weasel Creek,[1] West Fork Anderson Creek,[1] West Fork Blackbird Creek,[1 2] West Fork Hughes Creek,[1] West Fork Hull Creek,[1] West Fork Indian Creek,[1] West Fork Iron Creek,[1 2] West Fork Nez Perce Creek,[1] West Fork Salmon River,[1] West Fork Squaw Creek,[1] Williams Creek,[2] Woodtick Creek.[1 2]

(xxii) Moyie Basin: Brass Creek,[1] Bussard Creek,[1] Copper Creek,[1] Deer Creek,[1 2] Faro Creek,[1] Keno Creek,[1] Kreist Creek,[1] Line Creek,[1] McDougal Creek,[1] Mill Creek,[1] Moyie River,[1 2] Placer Creek,[1] Rutledge Creek,[1] Skin Creek,[1] Spruce Creek,[1] West Branch Deer Creek.[1]

(xxiii) North and Middle Fork Boise Basin: Abby Creek1 , Arrastra Creek,[1] Bald Mountain Creek,[2] Ballentyne Creek,[1 2] Banner Creek,[1 2] Bayhouse Creek,[1] Bear Creek,[1 2] Bear River,[1 2] Big

Gulch,[1] Big Silver Creek,[1 2] Billy Creek,[1] Blackwarrior Creek,[1 2] Bow Creek,[1 2] Browns Creek,[1 2] Buck Creek,[1 2] Cabin Creek,[1] Cahhah Creek,[1] Camp Gulch,[1] China Fork,[1] Coma Creek,[1] Corbus Creek,[1] Cow Creek,[1] Crooked River,[1 2] Cub Creek,[1] Decker Creek,[1 2] Dutch Creek,[1] Dutch Frank Creek,[1] East Fork Roaring River,[1 2] East Fork Swanholm Creek,[1] East Fork Yuba River,[1] Flint Creek,[1] Flytrip Creek,[1] Gotch Creek,[1] Graham Creek,[1] Granite Creek,[1] Grays Creek,[1] Greylock Creek,[1] Grouse Creek,[1 2] Hot Creek,[1] Hungarian Creek,[2] Joe Daley Creek,[1] Johnson Creek,[1 2] Kid Creek,[1] King Creek,[1] La Mayne Creek,[1] Leggit Creek,[1] Lightening Creek,[1] Little Queens River,[1 2] Little Silver Creek,[1] Louise Creek,[1] Lynx Creek,[1] Mattingly Creek,[1] McKay Creek,[1] McLeod Creek,[1 2] McPhearson Creek,[1] Middle Fork Boise River,[1 2] Middle Fork Corbus Creek,[1] Middle Fork Roaring River,[1 2] Mill Creek,[1] Misfire Creek,[1] Montezuma Creek,[1] North Fork Boise River,[1 2] Phifer Creek,[1] Pikes Fork,[1 2] Quartz Gulch,[1] Queens River,[1 2] Rabbit Creek,[2] Right Creek,[1] Roaring River,[1 2] Robin Creek,[1] Rock Creek,[1] Rockey Creek,[1 2] Sawmill Creek,[1 2] Scenic Creek,[1 2] Scotch Creek,[1] Scott Creek,[1] Shorip Creek,[1] Smith Creek,[1] Snow Creek,[1] Snowslide Creek,[1] South Fork Corbus Creek,[1] South Fork Cub Creek,[1] Spout Creek,[1] Steamboat Creek,[1] Steel Creek,[1] Steppe Creek,[1] Swanholm Creek,[1] Timpa Creek,[1] Trail Creek,[1 2] Trapper Creek,[1] Tripod Creek,[1] West Fork Creek,[1] West Warrior Creek,[1 2] Willow Creek,[1 2] Yuba River.[1 2]

(xxiv) North Fork Payette Basin: Foolhen Creek,[1] Gold Fork River,[2] Lodgepole Creek,[1] North Fork Gold Fork River,[1 2] North Fork Payette River,[1] Pearsol Creek.[1]

(xxv) Pahsimeroi Basin: Anderson Spring,[1] Baby Creek,[1] Bear Creek,[1] Big Creek,[1 2] Big Gulch,[1] Burnt Creek,[1] Burnt Spring Gulch,[1] Christian Gulch,[1] Dead Cat Canyon,[1] Ditch Creek,[1] Donkey Creek,[1] Doublespring Creek,[1] Dry Canyon,[1] Dry Gulch,[1] East Fork Burnt Creek,[1] East Fork Morgan Creek,[1] East Fork Pahsimeroi River,[1 2] East Fork Patterson Creek,[1] Elkhorn Creek,[1] Ennis Gulch,[1] Falls Creek,[1 2] Goldberg Creek,[1 2] Grouse Creek,[1] Hillside Creek,[1] Inyo Creek,[1] John Short Springs,[1] Lawson Creek,[1] Long Creek,[1] Mahogany Creek,[1 2] Meadow Creek,[1] Middle Fork Lawson Creek,[1] Mill Creek,[1] Morgan Creek,[1 2] Morse Creek,[1 2] Mulkey Gulch,[1] North Fork Big Creek,[1 2] North Fork Lawson Creek,[1] North Fork Morgan Creek,[1] Pahsimeroi River,[1 2] Patterson Creek,[1 2] Rock Creek,[1] Rock Spring Canyon,[1] Salmon River,[1 2] Short Creek,[1] Snowslide Creek,[1] South Fork Big Creek,[1 2] South Fork Lawson Creek,[1] Spring Gulch,[1] Squaw Creek,[1] Stinking Creek,[1] Sulphur Creek,[1] Tater Creek,[1 2] West Fork Burnt Creek,[1] West Fork North Fork Big Creek,[1] West Fork Pahsimeroi River.[1]

(xxvi) Payette Basin: Buck Canyon,[1] Lava Gulch,[1] Middle Fork Payette River,[2] Poison Creek,[1] Pole Creek,[1] South Fork Payette River,[2] Squaw Creek,[1 2] Third Fork Squaw Creek.[1 2]

(xxvii) Pend Oreille Basin: Pend Oreille River,[1] South Salmo River,[1] Branch North Gold Creek,[1] Cheer Creek,[1] Chloride Gulch,[1] Dry Gulch,[1] Dyree Creek,[1] Flume Creek,[1] Gold Creek,[1 2] Granite Creek,[1 2] Grouse Creek,[1 2] Kick Bush Gulch,[1] North Fork Clark Fork,[2] North Fork Grouse Creek,[1 2] North Gold Creek,[1 2] Pack River,[1 2] Pend Oreille River,[2] Plank Creek,[1] Priest River,[2] Rapid Lightning Creek,[2] South Fork Grouse Creek,[1] Strong Creek,[2] Thor Creek,[1] Trestle Creek,[1 2] West Branch Pack River,[1] West Gold Creek,[1 2] Wylie Creek,[1] Zuni Creek.[1]

(xxviii) Priest Basin: Abandon Creek,[1] Athol Creek,[1] Bath Creek,[1] Bear Creek,[1] Bench Creek,[1 2] Blacktail Creek,[1 2] Bog Creek,[1] Boulder Creek,[1 2] Bugle Creek,[1] Canyon Creek,[1] Caribou Creek,[1 2] Cedar Creek,[1 2] Chicopee Creek,[1] Deadman Creek,[1] East Fork Trapper Creek,[1] East River,[2] Fedar Creek,[1] Floss Creek,[1] Gold Creek,[2] Granite Creek,[1 2] Horton Creek,[1] Hughes Fork,[1 2] Indian Creek,[1 2] Jackson Creek,[1 2] Jost Creek,[1 2] Kalispell Creek,[1 2] Kent Creek,[1] Keokee Creek,[1] Lime Creek,[1 2] Lion Creek,[1 2] Lost Creek,[1] Lucky Creek,[1] Malcom Creek,[1 2] Middle Fork East River,[1 2] Muskegon Creek,[2] North Fork Granite Creek,[1] North Fork Indian Creek,[1 2] Packer Creek,[1 2] Priest Lake,[1] Priest River,[2] Rock Creek,[1] Ruby Creek,[1] South Fork Granite Creek,[1] South Fork Indian Creek,[1] South Fork Lion Creek,[1] Squaw Creek,[1] Tango Creek,[1] Tarlac Creek,[1 2] The Thorofare,[1] Trapper Creek,[1 2] Two Mouth Creek,[1 2] Uleda Creek,[1 2] Upper Priest Lake,[1] Upper Priest River,[1 2] Zero Creek.[1 2]

(xxix) South Fork Boise Basin: Anderson Ranch Reservoir,[2] Badger Creek,[1] Bear Creek,[1] Bear Gulch,[1] Big Smoky Creek,[2] Big Water Gulch,[2] Boardman Creek,[1] Burnt Log Creek,[1] Cayuse Creek,[1] Corral Creek,[1] Cow Creek,[1] Edna Creek,[1] Elk Creek,[1] Emma Creek,[1 2] Feather River,[1] Fern Gulch,[1] Grape Creek,[1] Gunsight Creek,[1] Haypress Creek,[1] Heather Creek,[1] Helen Creek,[1] Johnson Creek,[1] Lincoln Creek,[1] Little Cayuse Creek,[1] Little Rattlesnake Creek,[1 2] Little Skeleton Creek,[1] Little Smoky Creek,[2] Loggy Creek,[1] Marsh Creek,[1] Mule Creek,[1] North Fork Ross Fork,[1] Pinto Creek,[1] Rattlesnake Creek,[1 2] Regina Creek,[1] Ross Fork,[1 2] Russel Gulch,[1] Salt Creek,[1] Shake Creek,[1] Skeleton Creek,[1 2] Slater Creek,[1] Smokey Dome Canyon,[1] South Fork Boise River,[1 2] South Fork Ross Fork,[1] Stevens Gulch,[1] Three Forks Creek,[1] Tipton Creek,[1] Vienna Creek,[1] Virginia Gulch,[1] Weeks Gulch,[1] West Fork Big Smoky Creek,[1] West Fork Salt Creek,[1] West Fork Shake Creek,[1] West Fork Skeleton Creek,[1] Willow Creek.[1 2]

(xxx) South Fork Clearwater Basin: American Creek,[1] American River,[1 2] Aubion Creek,[1] Baker Gulch,[1] Baldy Creek,[1 2] Baston Creek,[1] Bear Creek,[2] Beaver Creek,[2] Big Canyon Creek,[1] Big Elk Creek,[1 2] Blanco Creek,[1] Boundary Creek,[1 2] Box Sing Creek,[1] Boyer Creek,[1] Bridge Creek,[1] Cartwright Creek,[1] Cole Creek,[1] Crooked River,[1 2] Dawson Creek,[1] Deer Creek,[1] Ditch Creek,[1] East Fork American River,[1 2] East Fork Crooked River,[1 2] East Fork Trail Creek,[1] Elk Creek,[1 2] Fivemile Creek,[1] Flint Creek,[1] Fourmile Creek,[1] Fox Creek,[1 2] Frank Brown Creek,[1] French Gulch,[1] Galena Creek,[1] Gilmore Creek,[1] Gospel Creek,[1 2] Hagen Creek,[1 2] Hays Creek,[1] Johns Creek,[1 2] Jungle Creek,[1] Kirks Fork American River,[1 2] Leggett Creek,[1] Lick Creek,[1] Limber Luke Creek,[1] Little Elk Creek,[1 2] Little Moose Creek,[1] Little Siegel Creek,[1] Loon Creek,[1] Mackey Creek,[1 2] Meadow Creek,[2] Melton Creek,[1 2] Middle Fork Red River,[1] Mill Creek,[1 2] Monroe Creek,[1] Moores Creek,[1 2] Moores Lake Creek,[1 2] Moose Butte Creek,[1 2] Morgan Creek,[1 2] Mule Creek,[2] Newsome Creek,[2] Nuggett Creek,[2] Open Creek,[1] Otterson Creek,[1 2] Pat Brennan Creek,[1] Pilot Creek,[1] Quartz Creek,[1] Queen Creek,[1] Rabbit Creek,[2] Rainbow Gulch,[1] Red River,[1 2] Relief Creek,[1 2] Ryan Creek,[1] Sally Ann Creek,[2] Sawmill Creek,[1 2] Schooner Creek,[1] Schwartz Creek,[2] Sharmon Creek,[1] Shissler Creek,[1] Siegel Creek,[1 2] Silver Creek,[1 2] Sixmile Creek,[1 2] Sixtysix Creek,[1] Snoose Creek,[1] Soda Creek,[1] Sourdough Creek,[1] South Fork Clearwater River,[2] South Fork Gilmore Creek,[1] South Fork Red River,[1 2] Square Mountain Creek,[1 2] Swale Creek,[1] Swift Creek,[1] Taylor Creek,[1] Tenmile Creek,[1 2] Trail Creek,[1 2] Trapper Creek,[1 2] Trout Creek,[1] Twentymile Creek,[1 2] Twin Lakes Creek,[1 2] Umatilla Creek,[1] West Fork American River,[1] West Fork Big Elk Creek,[1] West Fork Crooked River,[1 2] West Fork Gospel Creek,[1 2] West Fork Newsome Creek,[2] West Fork Red River,[1] West Fork Twentymile Creek,[1 2] Whiskey Creek,[2] Whitaker Creek,[1] Williams Creek.[1 2].

(xxxi) South Fork Payette Basin: Archie Creek,[1] Ash Creek,[1] Baron Creek,[1] Basin Creek,[1] Bear Creek,[1] Beaver Creek,[1 2] Benedict Creek,[1] Big Gallagher Creek,[1] Big Pine Creek,[1] Big Spruce Creek,[1] Birch Creek,[1] Bitter Creek,[1] Black Bear Creek,[1] Blacks Creek,[1] Blue Jay Creek,[1] Bunch Creek,[1] Burn Creek,[1] Bush Creek,[1] Calderwood

Creek,[1] Camp Creek,[1] Canyon Creek,[1 2] Carpenter Creek,[1] Casner Creek,[1] Castro Creek,[1] Cat Creek,[1] Chapman Creek,[1] Charters Creek,[1] Clear Creek,[1 2] Cooley Creek,[1] Coski Creek,[1] Cup Creek,[1] Danskin Creek,[1] Dead Man Creek,[1] Deadwood Jim Creek,[1] Deadwood Reservoir,[1] Deadwood River,[1 2] Deer Creek,[1 2] East Fork Big Pine Creek,[1] East Fork Deadwood Creek,[1] East Fork Eightmile Creek,[1] East Fork Horn Creek,[1] East Fork Warm Springs Creek,[1 2] Eby Creek,[1] Eightmile Creek,[1] Elkhorn Creek,[1] Emma Creek,[1] Fall Creek,[1] Fence Creek,[1] Fern Creek,[1] Fine Flat Creek,[1] Fivemile Creek,[1] Fox Creek,[1] Garney Creek,[1] Gates Creek,[1] Goat Creek,[1 2] Grandjem Creek,[1] Grayback Creek,[1] Grouse Creek,[1] Habit Creek,[1] Hanks Creek,[1] Helende Creek,[1] Hiyu Creek,[1] Hole in the Wall,[1] Horn Creek,[1] Horse Creek,[1] Horseshoe Creek,[1] Huckleberry Creek,[1] Jackson Creek,[1] Josie Creek,[1] Julie Creek,[1] Kettle Creek,[1] Kirkham Creek,[1] Lake Creek,[1] Left Fork Danskin Creek,[1] Lick Creek,[1] Little Camp Creek,[1] Little Fall Creek,[1] Little Hole in the Wall Creek,[1] Little Sams Creek,[1] Little Tenmile Creek,[1] Logging Gulch,[1] Long Creek,[1] Long Gulch,[1] Lorenzo Creek,[1] MacDonald Creek,[1] Meadow Camp Creek,[1] Meadow Creek,[1] Middle Fork Big Pine Creek,[1] Middle Fork Warm Springs Creek,[1 2] Miller Creek,[1] Monument Creek,[1] Moulding Creek,[1] Nellies Bash Creek,[1] Nelson Creek,[1] Ninemile Creek,[1] No Man Creek,[1] No Name Creek,[1] North Fork Baron Creek,[1] North Fork Canyon Creek,[1] North Fork Deer Creek,[1 2] North Fork Whitehawk Creek,[1] O'Keefe Creek,[1] Packsaddle Creek,[1 2] Park Creek,[1] Pass Creek,[1] Pinchot Creek,[1] Pine Creek,[1] Pitchfork Creek,[1] Pole Creek,[1] Poorman Creek,[1] Pungo Creek,[1] Rae Creek,[1] Reservoir Creek,[1] Richards Creek,[1] Road Fork Rock Creek,[1] Rock Creek,[1] Rough Creek,[1] Sams Creek,[1] Scott Creek,[1 2] Silver Creek,[1] Sixmile Creek,[1] Slaughterhouse Creek,[1] Slide Gulch,[1] Slim Creek,[1] Smith Creek,[1 2] Smokey Creek,[1] South Fork Beaver Creek,[1 2] South Fork Canyon Creek,[1] South Fork Clear Creek,[1] South Fork Payette River,[1 2] South Fork Scott Creek,[1] South Fork Warm Spring Creek,[1] Spring Creek,[1] Steep Creek,[1] Stevens Creek,[1] Stratton Creek,[1] Sweet Creek,[1] Tenlake Creek,[1] Tenmile Creek,[1] Topnotch Creek,[1] Trail Creek,[1 2] Wapiti Creek,[1] Warm Spring Creek,[1] Warm Springs Creek,[1 2] Wash Creek,[1] West Fork Big Pine Creek,[1] West Fork Horn Creek,[1] Whangdoodle Creek,[1] Whiskey Creek,[1] Whitehawk Creek,[1] Wild Buck Creek,[1 2] Wills Gulch,[1] Wilson Creek,[1] Wolf Creek.[1]

(xxxii) South Fork Salmon Basin: Alez Creek,[1] Back Creek,[1] Bear Creek,[1 2] Bishop Creek,[1] Blackmare Creek,[1 2] Blue Lake Creek,[1] Buck Creek,[1] Buckhorn Bar Creek,[1] Buckhorn Creek,[1 2] Burgdorf Creek,[1] Burntlog Creek,[1 2] Cabin Creek,[1 2] Calf Creek,[1] Camp Creek,[1 2] Cane Creek,[1] Caton Creek,[2] Cinnabar Creek,[1] Cliff Creek,[1] Cly Creek,[1] Cougar Creek,[1 2] Cow Creek,[1] Cox Creek,[1] Curtis Creek,[2] Deep Creek,[1] Dollar Creek,[1 2] Dutch Creek,[1] East Fork South Fork Salmon River,[1 2] East Fork Zena Creek,[1] Elk Creek,[1 2] Enos Creek,[1] Falls Creek,[1] Fernan Creek,[1] Fiddle Creek,[1] Fitsum Creek,[1 2] Flat Creek,[1] Fourmile Creek,[1 2] Goat Creek,[1] Grimmet Creek,[1] Grouse Creek,[1 2] Halfway Creek,[1] Hanson Creek,[1] Hays Creek,[1] Holdover Creek,[1] Hum Creek,[1 2] Indian Creek,[1] Jeanette Creek,[1] Johnson Creek,[1 2] Josephine Creek,[1] Jungle Creek,[1] Knee Creek,[1] Krassel Creek,[1] Lake Creek,[1 2] Landmark Creek,[1] Lick Creek,[1 2] Little Buckhorn Creek,[1 2] Little Indian Creek,[1] Lodgepole Creek,[1 2] Loon Creek,[1 2] Maverick Creek,[1] Meadow Creek,[1 2] Middle Fork Elk Creek,[1] Missouri Creek,[1 2] Moose Creek,[1] Mormon Creek,[1 2] Nasty Creek,[1] Nethker Creek,[1] Nick Creek,[1] No Mans Creek,[1] North Fork Bear Creek,[1] North Fork Buckhorn Creek,[1] North Fork Camp Creek,[1] North Fork Dollar Creek,[1] North Fork Fitsum Creek,[2] North Fork Lake Fork,[1] North Fork Lick Creek,[1] North Fork Riordan Creek,[1] North Fork Six-bit Creek,[1] Oompaul Creek,[1] Paradise Creek,[1] Park Creek,[1] Peanut Creek,[1] Pepper Creek,[1] Phoebe Creek,[1] Piah Creek,[1] Pid Creek,[1] Pilot Creek,[1] Pony Creek,[2] Porcupine Creek,[1] Porphyry Creek,[2] Prince Creek,[1] Profile Creek,[1 2] Quartz Creek,[1 2] Reeves Creek,[1 2] Rice Creek,[1 2] Riordan Creek,[1 2] Roaring Creek,[1] Ruby Creek,[1] Rustican Creek,[1] Ryan Creek,[1] Salt Creek,[1 2] Sand Creek,[1 2] Secesh River,[1 2] Sheep Creek,[1 2] Silver Creek,[1] Sister Creek,[1] Six-Bit Creek,[1 2] South Fork Bear Creek,[1] South Fork Blackmare Creek,[1 2] South Fork Buckhorn Creek,[1 2] South Fork Cougar Creek,[1] South Fork Elk Creek,[1] South Fork Fitsum Creek,[1] South Fork Fourmile Creek,[1] South Fork Salmon River,[1 2] South Fork Threemile Creek,[1] Split Creek,[1 2] Steep Creek,[1] Sugar Creek,[1 2] Summit Creek,[1 2] Tamarack Creek,[1 2] Teepee Creek,[1] Threemile Creek,[1] Trail Creek,[2] Trapper Creek,[1 2] Trout Creek,[1] Tsum Creek,[1] Two-bit Creek,[1] Tyndall Creek,[1 2] Vein Creek,[1] Victor Creek,[1 2] Wardenhoff Creek,[1] Warm Lake,[1 2] Warm Lake Creek,[1 2] Warm Spring Creek,[1] West Fork Buckhorn Creek,[1] West Fork Elk Creek,[1 2] West Fork Enos Creek,[1] West Fork Zena Creek,[1] Whangdoodle Creek,[1] Willow Basket Creek,[1 2] Willow Creek,[1] Zena Creek.[1 2]

(xxxiii) St. Joe Basin: Bacon Creek,[1] Bad Bear Creek,[1] Basin Creek,[1] Bean Creek,[1 2] Bear Creek,[1] Beaver Creek,[1 2] Bedrock Creek,[1] Benewah Creek,[1] Berge Creek,[1] Big Dick Creek,[1] Bird Creek,[2] Blue Grouse Creek,[1] Boulder Creek,[2] Broadaxe Creek,[1] Bruin Creek,[1 2] Burnt Fork,[1] California Creek,[1 2] Cherry Creek,[2] Clear Creek,[2] Color Creek,[1] Coon Creek,[1] Copper Creek,[1] Daveggio Creek,[1] Davis Creek,[1] Dolly Creek,[1] Dump Creek,[1] Eagle Creek,[1 2] East Fork Bluff Creek,[2] East Fork Emerald Creek,[1] East Fork Gold Creek,[1 2] East Fork Mica Creek,[1] Emerald Creek,[1 2] Engstrom Creek,[1] Fishhook Creek,[2] Flat Creek,[1] Float Creek,[1] Fly Creek,[1 2] Fortynine Gulch,[1] Fuzzy Creek,[1] Gold Creek,[1 2] Grouse Creek,[1] Hammond Creek,[1] Heller Creek,[1] Indian Creek,[1] Kelley Creek,[1] Kyle Creek,[1] Long Liz Creek,[1] Malin Creek,[1] Marble Creek,[1 2] Medicine Creek,[1 2] Mica Creek,[1 2] Mill Creek,[1] Mosquito Creek,[1 2] My Creek,[1] North Fork Bean Creek,[1] North Fork Eagle Creek,[1] North Fork Saint Joe River,[1 2] North Fork Simmons Creek,[1] North Fork Tyson Creek,[1] Nugget Creek,[1] Packsaddle Creek,[1] Pass Creek,[1] Periwinkle Creek,[1] Plummer Creek,[1] Pokey Creek,[1] Pole Creek,[1] Prospector Creek,[1 2] Quartz Creek,[2] Red Cross Creek,[1] Red Ives Creek,[1 2] Renfro Creek,[1] Ruby Creek,[1 2] Saint Joe River,[1 2] Saint Maries River,[1 2] Setzer Creek,[1] Sheep Creek,[1] Sherlock Creek,[1 2] Simmons Creek,[1 2] Siwash Creek,[1 2] Skookum Creek,[1 2] Soldier Creek,[1] Squaw Creek,[1] Thomas Creek,[2] Thorn Creek,[2] Three Lakes Creek,[1] Timber Creek,[1 2] Tinear Creek,[1] Trout Creek,[1 2] Tumbledown Creek,[1 2] Tyson Creek,[1] Wahoo Creek,[1] Washout Creek,[1] West Fork Emerald Creek,[1] West Fork Mica Creek,[1] Willow Creek,[1] Wilson Creek,[1 2] Yankee Bar Creek,[1].

(xxxiv) Upper Coeur D'Alene Basin: Big Hank Creek,[1] Brett Creek,[1] Brown Creek,[2] Cinnamon Creek,[1] Coeur d'Alene River,[1 2] Debbs Creek,[1] Dry Creek,[1] Fall Creek,[1] Falls Creek,[1 2] Gold Creek,[1] Graham Creek,[2] Haystack Creek,[1] Hazendorf Gulch,[1] Lightner Draw,[1] McPhee Gulch,[1] Miners Creek,[1] North Fork Falls Creek,[1] Prado Creek,[1] Shoshone Creek,[1] South Fork Falls Creek,[1] Spion Kop Creek,[1] Thomas Creek,[1] Valitons Creek,[1].

(xxxv) Upper Kootenai Basin: Halverson Creek,[1] North Callahan Creek,[1 2] South Callahan Creek,[1 2] West Fork Keeler Creek,[1].

(xxxvi) Upper Middle Fork Salmon Basin: Asher Creek,[1] Automatic Creek,[1] Ayers Creek,[1] Baldwin Creek,[1] Banner Creek,[1] Bear Creek,[1] Bear Valley Creek,[1 2] Bearskin Creek,[1 2] Beaver

Creek,[1 2] Bernard Creek,[1] Big Chief Creek,[1] Big Cottonwood Creek,[1] Birch Creek,[1] Blue Lake Creek,[1] Blue Moon Creek,[1] Boundary Creek,[1 2] Bridge Creek,[1] Browning Creek,[1] Buck Creek,[1] Burn Creek,[1] Cabin Creek,[1] Cache Creek,[1 2] Camp Creek,[1] Canyon Creek,[1] Cap Creek,[1] Cape Horn Creek,[1 2] Casner Creek,[1] Castle Fork,[1] Casto Creek,[1] Cat Creek,[1] Chokebore Creek,[1] Chuck Creek,[1] Cliff Creek,[1] Cold Creek,[1 2] Collie Creek,[1] Colt Creek,[1] Cook Creek,[1] Corley Creek,[1] Cornish Creek,[1] Cottonwood Creek,[1] Cougar Creek,[1] Crystal Creek,[1] Cub Creek,[1 2] Cultus Creek,[1] Dagger Creek,[1 2] Deer Creek,[1] Deer Horn Creek,[1] Doe Creek,[1] Dry Creek,[1] Duffield Creek,[1] Dynamite Creek,[1] Eagle Creek,[1] East Fork Elk Creek,[1 2] East Fork Indian Creek,[1] East Fork Mayfield Creek,[1 2] East Fork Thomas Creek,[1] Elk Creek,[1 2] Elkhorn Creek,[1] Endoah Creek,[1] Fall Creek,[1] Fawn Creek,[1] Feltham Creek,[1] Fir Creek,[1 2] Flat Creek,[1] Float Creek,[1] Foresight Creek,[1] Forty-five Creek,[1] Forty-four Creek,[1] Fox Creek,[1] Full Moon Creek,[1 2] Fuse Creek,[1] Grays Creek,[1] Grenade Creek,[1] Grouse Creek,[1] Gun Creek,[1] Half Moon Creek,[1] Hogback Creek,[1] Honeymoon Creek,[1 2] Hot Creek,[1] Ibex Creek,[1] Indian Creek,[1 2] Jose Creek,[1] Kelly Creek,[1] Kerr Creek,[1] Knapp Creek,[1 2] Kwiskwis Creek,[1] Lime Creek,[1] Lincoln Creek,[1] Little Beaver Creek,[1 2] Little Cottonwood Creek,[1] Little East Fork Elk Creek,[1 2] Little Indian Creek,[1] Little Loon Creek,[1] Little Pistol Creek,[1 2] Lola Creek,[1] Loon Creek,[1 2] Lucinda Creek,[1] Lucky Creek,[1] Luger Creek,[1] Mace Creek,[1] Mack Creek,[1] Marble Creek,[1 2] Marlin Creek,[1] Marsh Creek,[1 2] Mayfield Creek,[1 2] McHoney Creek,[1] McKee Creek,[1] Merino Creek,[1] Middle Fork Elkhorn Creek,[1] Middle Fork Indian Creek,[1] Middle Fork Salmon River,[1 2] Mine Creek,[1] Mink Creek,[1] Moonshine Creek,[1] Mowitch Creek,[1] Muskeg Creek,[1] Mystery Creek,[1] Nelson Creek,[1] New Creek,[1] No Name Creek,[1] North Fork Elk Creek,[1 2] North Fork Elkhorn Creek,[1] North Fork Sheep Creek,[1] North Fork Sulphur Creek,[1 2] Papoose Creek,[1] Parker Creek,[1] Patrol Creek,[1] Phillips Creek,[1] Pierson Creek,[1] Pinyon Creek,[1] Pioneer Creek,[1 2] Pistol Creek,[1 2] Placer Creek,[1] Poker Creek,[1] Pole Creek,[1 2] Popgun Creek,[1] Porter Creek,[1 2] Prospect Creek,[1] Rabbit Creek,[1] Rams Horn Creek,[1] Range Creek,[1] Rapid River,[1 2] Rat Creek,[1] Remington Creek,[1] Rock Creek,[1] Rush Creek,[1] Sack Creek,[1 2] Safety Creek,[1] Salt Creek,[1] Savage Creek,[1] Scratch Creek,[1] Seafoam Creek,[1] Shady Creek,[1] Shake Creek,[1] Sheep Creek,[1] Sheep Trail Creek,[1 2] Shell Creek,[1] Shrapnel Creek,[1] Siah Creek,[1] Silver Creek,[1] Slide Creek,[1] Snowshoe Creek,[1] Soldier Creek,[1] South Fork Cottonwood Creek,[1] South Fork Sheep Creek,[1] Spike Creek,[1] Springfield Creek,[1] Squaw Creek,[1] Sulphur Creek,[1 2] Sunnyside Creek,[1] Swamp Creek,[1] Tennessee Creek,[1] Thatcher Creek,[1] Thicket Creek,[1] Thirty-two Creek,[1] Thomas Creek,[1] Tomahawk Creek,[1] Trail Creek,[1] Trapper Creek,[1] Trigger Creek,[1] Twenty-two Creek,[1] Vader Creek,[1] Vanity Creek,[1] Velvet Creek,[1] Walker Creek,[1] Wampum Creek,[1] Warm Spring Creek,[1 2] West Fork Elk Creek,[1 2] West Fork Little Loon Creek,[1] West Fork Mayfield Creek,[1] West Fork Thomas Creek,[1] White Creek,[1] Wickiup Creek,[1] Winchester Creek,[1] Winnemucca Creek,[1] Wyoming Creek,[1 2].

(xxxvii) Upper North Fork Basin: Adams Creek,[1] Avalanche Creek,[1] Bacon Creek,[1] Ball Creek,[1] Bar Creek,[1] Barn Creek,[1] Barnard Creek,[1 2] Barren Creek,[1] Bates Creek,[1] Bear Creek,[1 2] Beaver Dam Creek,[1] Bedrock Creek,[1] Bennett Creek,[1] Bill Creek,[1] Birch Creek,[1] Bostonian Creek,[1] Boundary Creek,[1] Bradbury Creek,[1] Burn Creek,[1] Burst Creek,[1] Bush Creek,[1] Butter Creek,[1] Cabin Creek,[1] Camp George Creek,[1] Canyon Creek,[1] Cave Creek,[1] Cayuse Creek,[1 2] Chamberlain Creek,[1] Chateau Creek,[1] Clayton Creek,[1] Cliff Creek,[1] Coffee Creek,[1] Cold Springs Creek,[1 2] Collins Creek,[1 2] Colt Creek,[1] Cool Creek,[1] Copper Creek,[1] Corral Creek,[1] Cougar Creek,[1] Craig Creek,[1] Crater Creek,[1] Cub Creek,[1 2] Davis Creek,[2] Dead Mule Creek,[1] Deadhorse Creek,[1] Deadwood Creek,[1 2] Death Creek,[1] Deception Gulch,[1] Deer Creek,[1] Dill Creek,[1] Doris Creek,[1] Drift Creek,[1] Eagle Creek,[1] Elizabeth Creek,[1 2] Fall Creek,[1] Fawn Creek,[1] Field Creek,[1] Fire Creek,[1] Fisher Creek,[1] Fix Creek,[1] Flame Creek,[1] Flat Creek,[1] Fly Creek,[1] Fourth of July Creek,[1 2] Fro Creek,[1] Frog Creek,[1 2] Frost Creek,[1] Gilfillian Creek,[1] Goose Creek,[1 2] Grass Creek,[1] Grasshopper Creek,[1] Gravey Creek,[1 2] Grizzly Creek,[1] Hanson Creek,[1] Heather Creek,[1] Hemlock Creek,[1] Henry Creek,[1] Hidden Creek,[1 2] Howard Creek,[1 2] Independence Creek,[1 2] Jackknife Creek,[1] Jam Creek,[1] Japanese Creek,[1] Johnagan Creek,[1 2] Johnny Creek,[2] Junction Creek,[1] Kelly Creek,[1 2] Kid Lake Creek,[1 2] Kinney Creek,[1] Kodiak Creek,[1 2] Lake Creek,[1 2] Larch Creek,[1] Larson Creek,[1] Laundry Creek,[2] Lightning Creek,[1 2] Little Moose Creek,[2] Little Washington Creek,[1] Little Weitas Creek,[1 2] Liz Creek,[1 2] Lodge Creek,[1] Long Creek,[1 2] Lookout Creek,[1] Lost Pete Creek,[1] Lower Twin Creek,[1] Marten Creek,[2] Meadow Creek,[1 2] Middle Creek,[1 2] Middle North Fork Kelly Creek,[1 2] Middleton Creek,[1] Mill Creek,[1] Mink Creek,[1] Mire Creek,[2] Monroe Creek,[1 2] Moose Creek,[1 2] Morgans Gulch,[1] Negro Creek,[1] Nettle Creek,[1] Never Creek,[1] Niagra Gulch,[1] North Fork Clearwater River,[1 2] Nub Creek,[1] Osier Creek,[2] Otter Creek,[1] Owl Creek,[1] Pack Creek,[1] Perry Creek,[1] Pete Ott Creek,[1 2] Placer Creek,[1] Polar Creek,[1 2] Pony Creek,[1] Post Creek,[1] Potato Creek,[1] Quartz Creek,[1 2] Rapid Creek,[1] Raspberry Creek,[1] Rawhide Creek,[1 2] Rettig Creek,[1] Roaring Creek,[1] Rock Creek,[1 2] Rock Garden Creek,[1] Rocky Ridge Creek,[1] Ruby Creek,[1 2] Saddle Creek,[1] Salix Creek,[1] Sand Creek,[1] Scofield Creek,[1] Scurry Creek,[1] Seat Creek,[1] Sheep Creek,[1] Short Creek,[1 2] Shot Creek,[1] Siam Creek,[1] Silver Creek,[1 2] Skull Creek,[1 2] Slick Creek,[1] Slide Creek,[1] Smith Creek,[1 2] Sneak Creek,[1] Snow Creek,[1] South Fork Kelly Creek,[1 2] Sprague Creek,[1] Spruce Creek,[1] Spud Creek,[1] Spy Creek,[1] Squaw Creek,[1] Stolen Creek,[1 2] Stove Creek,[1] Sugar Creek,[2] Swamp Creek,[2] Swanson Creek,[1] Tepee Creek,[1] Tinear Creek,[1] Tinkle Creek,[1] Toboggan Creek,[1 2] Trail Creek,[1] Trap Creek,[1] Tumble Creek,[1] Upper Twin Creek,[1] Vanderbilt Gulch,[1 2] Wall Creek,[1] Washington Creek,[1] Weasel Creek,[1] Weitas Creek,[1 2] Williams Creek,[1 2] Windy Creek,[1 2] Wolf Creek,[1] Yokum Creek,[1] Young Creek.[1]

(xxxviii) Upper Salmon Basin: Alder Creek,[1] Alpine Creek,[1 2] Alta Creek,[1] Alturas Lake,[1 2] Alturas Lake Creek,[1 2] Anderson Creek,[1] Aspen Creek,[1] Basin Creek,[1 2] Bayhorse Creek,[1] Bear Creek,[1] Bear Lake Creek,[1] Beaver Creek,[1 2] Big Boulder Creek,[1 2] Block Creek,[1] Blowfly Creek,[1] Blue Creek,[1] Boundary Creek,[1] Bowery Creek,[1 2] Broken Ridge Creek,[1] Bruno Creek,[1] Buckskin Creek,[1] Cabin Creek,[1] Camp Creek,[1] Cash Creek,[1] Challis Creek,[1 2] Chamberlain Creek,[1] Champion Creek,[1] Cherry Creek,[1] Cinnabar Creek,[1] Cleveland Creek,[1] Coal Creek,[1] Crooked Creek,[1] Darling Creek,[2] Deadwood Creek,[1] Decker Creek,[1] Deer Creek,[1] Dry Creek,[1] Duffy Creek,[1] East Basin Creek,[1] East Fork Herd Creek,[1] East Fork Salmon River,[1 2] East Fork Valley Creek,[1] East Pass Creek,[1 2] Eddy Creek,[1] Eightmile Creek,[1] Elevenmile Creek,[1] Elk Creek,[1] Ellis Creek,[1 2] Estes Creek,[1] First Creek,[1] Fisher Creek,[1] Fishhook Creek,[1 2] Fivemile Creek,[1] Fourth of July Creek,[1 2] Frenchman Creek,[1 2] Garden Creek,[2] Germania Creek,[1 2] Goat Creek,[1 2] Gold Creek,[1] Gooseberry Creek,[1] Greylock Creek,[1] Hay Creek,[1] Hell Roaring Creek,[1] Herd Creek,[1 2] Huckleberry Creek,[1 2] Ibex Creek,[1] Iron Creek,[1 2] Job Creek,[1] Jordan Creek,[1 2] Juliette Creek,[1] Kelly Creek,[1] Kinnikinic Creek,[1] Lick Creek,[1] Lightning Creek,[1] Little Basin Creek,[1] Little Beaver Creek,[1] Little Boulder

Creek,[1 2] Little West Fork Morgan Creek,[1] Lodgepole Creek,[1] Lone Pine Creek,[1] Long Tom Creek,[1] Lost Creek,[1] MacRae Creek,[1] Martin Creek,[1] McKay Creek,[1 2] Meadow Creek,[1] Meridian Creek,[1] Mill Creek,[1] Morgan Creek,[1 2] Muley Creek,[1] Ninemile Creek,[1] Noho Creek,[1] North Fork Bowery Creek,[1] Pack Creek,[1] Park Creek,[1] Pat Hughes Creek,[1] Pats Creek,[1] Perkins Lake,[1 2] Pig Creek,[1] Pole Creek,[1 2] Pork Creek,[1] Prospect Creek,[1] Rainbow Creek,[1] Redfish Lake,[1 2] Redfish Lake Creek,[1 2] Road Creek,[2] Roaring Creek,[1] Rough Creek,[1] Sage Creek,[1] Sagebrush Creek,[1] Salmon River,[1 2] Sawmill Creek,[1] Second Creek,[1] Sevenmile Creek,[1] Sheep Creek,[1] Short Creek,[1] Sixmile Creek,[1] Slate Creek,[2] Smiley Creek,[1] South Fork East Fork Salmon River,[1 2] Squaw Creek,[1 2] Stanley Creek,[1] Stephens Creek,[1] Summit Creek,[1] Sunday Creek,[1] Swimm Creek,[1] Taylor Creek,[1] Tenmile Creek,[1] Tennel Creek,[1] Thompson Creek,[1 2] Three Cabins Creek,[1] Trail Creek,[1] Trap Creek,[1] Trealor Creek,[1] Twelvemile Creek,[1] Twin Creek,[1] Valley Creek,[1 2] Van Horn Creek,[1] Vat Creek,[1] Warm Spring Creek,[1] Warm Springs Creek,[1 2] Washington Creek,[1] West Beaver Creek,[1] West Fork Creek,[1] West Fork East Fork Salmon River,[1 2] West Fork Herd Creek,[1 2] West Fork Morgan Creek,[1 2] West Fork Yankee Fork,[1 2] West Pass Creek,[1 2] White Valley Creek,[1] Wickiup Creek,[1] Williams Creek,[1] Willow Creek,[1] Yankee Fork,[1 2].

(xxxix) Upper Selway Basin: Bad Luck Creek,[1] Baldy Creek,[1] Barefoot Creek,[1] Basin Creek,[1] Bear Creek,[1 2] Big Creek,[1] Boxcar Creek,[1] Brave Creek,[1] Burn Creek,[1] Burnt Knob Creek,[1] Cactus Creek,[1] Camp Creek,[1] Canyon Creek,[1 2] Cayuse Creek,[1] Cedar Creek,[1] Cliff Creek,[1] Comb Creek,[1] Cooper Creek,[1] Crooked Creek,[1] Cub Creek,[2] Deep Creek,[1 2] Ditch Creek,[1] Eagle Creek,[2] East Fork Magruder Creek,[1] Eben Creek,[1] Echo Creek,[1] Elk Creek,[1 2] Fall Creek,[1] Fire Creek,[1] Flat Creek,[1] Fox Creek,[1] French Creek,[1] Fritz Creek,[1] Gabe Creek,[1] Gardner Creek,[1] Goat Creek,[1 2] Gold Pan Creek,[1] Granite Creek,[1 2] Grass Gulch,[1] Halfway Creek,[1] Haystack Creek,[1] Hells Half Acre Creek,[1] Indian Creek,[1 2] Kim Creek,[1] Lake Creek,[1] Langdon Gulch,[1] Lazy Creek,[1] Line Creek,[1] Little Clearwater River,[1 2] Little Creek,[1] Lodge Creek,[1] Lonely Creek,[1] Lonesome Creek,[1] Long Prairie Creek,[1] Lookout Creek,[1] Lunch Creek,[1] MacGregor Creek,[1] Magruder Creek,[1] Mist Creek,[1] Nick Creek,[1] North Fork Goat Creek,[1] North Star Creek,[1] Paloma Creek,[1] Paradise Creek,[1 2] Peach Creek,[1] Pete Creek,[1] Pettibone Creek,[1 2] Raven Creek,[1] Running Creek,[2] Saddle Gulch,[1] Salamander Creek,[1] Schofield Creek,[1] Scimitar Creek,[1] Selway River,[1 2] Short Creek,[1] Slow Gulch Creek,[1] Snake Creek,[1] South Fork Goat Creek,[1] South Fork Lookout Creek,[1] South Fork Running Creek,[2] South Fork Saddle Gulch,[1] South Fork Surprise Creek,[1] Spire Creek,[1] Spruce Creek,[1 2] Squaw Creek,[2] Steep Gulch,[1] Storm Creek,[1] Stripe Creek,[1] Surprise Creek,[1] Swet Creek,[1] Tepee Creek,[1] Test Creek,[1] Thirteen Creek,[1] Three Lakes Creek,[1] Throng Creek,[1] Triple Creek,[1] Vance Creek,[1] Wahoo Creek,[1 2] Wapiti Creek,[1] Washout Creek,[1] West Fork Crooked Creek,[1] White Cap Creek,[1 2] Wilkerson Creek,[1] Witter Creek,[1] Wynn Creek.[1]

(xxxx) Weiser Basin: Anderson Creek,[1 2] Boulder Creek,[1] Bull Corral Creek,[1] Cabin Creek,[1] Cold Spring Creek,[1] Dewey Creek,[1 2] East Fork Weiser River,[1 2] Fall Creek,[1] Little Fall Creek,[1] Little Weiser River,[1 2] Mica Creek,[1] Middle Fork Weiser River,[1] Sheep Creek,[1] Warm Spring Creek,[1] Wolf Creek.[1]

(d) Temperature Criteria for Kootenai River White Sturgeon.

(1) The following seasonal temperature requirements and maximum and minimum weekly average temperature criteria apply to that part of PB20K, Kootenai River, from Bonners Ferry to Deep Creek; That part of PB 30K, Kootenai River, from Deep Creek to downstream end of Shorty's Island:

Date	Minimum weekly average temperature (°C)	Maximum weekly average temperature (°C)
By May 21	8	.....
up through 8 weeks post-achievement of 8 °C temperature	.....	14
9 through 10 weeks post-achievement of 8 °C temperature	.....	16

(e) *Temperature Criteria for Snails.* (1) The waterbody segments identified in paragraph (e)(2) of this section shall not exceed a maximum daily average of 18 degrees C.

(2) USB 50—Snake River—American Falls Dam to Minidoka Dam; USB60A—Snake River—Minidoka Dam to Heyburn/Burley Bridge; USB 70—Snake River—Milner Dam to Buhl; USB 80—Snake River—Buhl to King Hill; that part of SWB 10—Snake River—from King Hill to the headwaters of C.J Strike Reservoir at rivermile 518.

(f) *Mixing Zones.* Water quality within a mixing zone is subject to the narrative surface water quality criteria contained in Idaho's water quality standards at 16.01.02.200.01.–03.

(g) *Antidegradation Policy.* (1) Outstanding Resource waters. Where Idaho identifies high quality waters as an outstanding national resource, such as waters of national and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.

(2) [Reserved]

(h) *Excluded Waters.* Lakes, ponds, pools, streams, and springs outside public lands but located wholly and entirely upon a person's land are not protected specifically or generally for any beneficial use, unless such waters are designated in Idaho 16.01.02.110. through 160., or are unclassified waters of the United States as defined at 40 CFR 122.2.

(i) *Water Quality Standard Variances.*

(1) The Regional Administrator, EPA Region X, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of this subsection are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction

or adverse modification of such species' critical habitat.

(3) A water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and (306) of the CWA would result in substantial and widespread economic and social impact.

(4) Procedures. An applicant for a water quality standards variance shall submit a request to the Regional Administrator not later than the date the applicant applies for an NPDES permit which would implement the variance. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (i)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall publish notice of the proposed variance. Notice of a final decision to grant a variance shall also be published. EPA will incorporate into the permittee's NPDES permit all conditions needed to implement the variance.

(5) A variance may not exceed 5 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance.

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Monday
April 28, 1997

Part IV

Northeast Dairy Compact Commission

7 CFR Chapter XIII

Compact Over-Order Price Regulation; Proposed Rule

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Compact Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Proposed rule.

SUMMARY: This rule proposes a compact cover-order price regulation for the territorial region of the six New England states, in the amount of $16.94 (Zone 1), for six months duration. The Northeast Dairy Compact Commission (Compact Commission) establishes this price regulation based on its determination that it is necessary to assure the viability of dairy farming in New England and to assure the region's consumers of a continued adequate, local supply of fresh and wholesome milk, reasonably priced.

DATES: Comments must be received by May 12, 1997.

ADDRESS: Comments should be submitted to the Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601. The complete file for this proposed rule is available for public inspection during normal business hours at the offices of the Commission.

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

SUPPLEMENTARY INFORMATION:

Background

The Compact Commission was established under authority of the Northeast Interstate Dairy Compact (Compact). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–370; Maine—Pub. L. 89–437, as amended, Pub. L. 93–320; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–184–A; Rhode Island—Pub. L. 93–336; Vermont—Pub. L. 89–95, as amended, 93–97. Consistent with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR ACT), Section 147, codified at 7 U.S.C. § 7256. Subsequently the United States Secretary of Agriculture, pursuant to the FAIR ACT, authorized implementation of the Compact.

Section 8 of the Compact empowers the Compact Commission to engage in a broad range of activities that are designed to ''promote regulatory uniformity, simplicity and interstate cooperation.'' For example, the Compact authorizes the Compact Commission to engage in a range of investigations of the existing milk programs of both the participating states and the federal milk marketing system, to make recommendations to participating states, and to improve industry relations as a whole. *See* Compact, Art. IV, § 8.

In addition to the powers conferred by Section 8, the Compact also authorizes the Compact Commission to consider adopting a compact over-order price regulation. *See* Compact, Art., IV, § 9. A ''compact over-order price'' is defined as:

> A minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

See Compact, Art. II, § 2(8); *see also* Compact, Art. IV, § 9 (''The Commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants and all other handlers receiving milk from producers located in a regulated area.'')

Such price regulation establishes the minimum procurement price to be paid by fluid milk processors to farmers used for New England fluid milk consumption. The regulated price established by the Compact Commission is actually an incremental amount above, or ''over-order'' (Federal Order #1) the minimum price for the same milk established by Federal Milk Market Order.

Section 11 of the Compact specifically delineates the procedures that the Commission must employ in the event it wishes to promulgate an over-order price regulation.

> Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection 9(f), or amendment thereof, as provided in Article IV, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section four of the Federal Administrative Procedures Act, as amended (5 U.S.C. § 553). In addition, the commission shall, to the extend practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public meeting. The commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

Pursuant to § 11 of the Compact, the Compact Commission issued a Notice of Hearing on December 13, 1996, and held public hearings on December 17 and 19, 1996. The Notice also invited the public to submit written comments through January 2, 1997. Following the close of this comment period, the Commission met on January 16, 1997 and established three working groups to consider the testimony and data submitted. The Commission issued a Notice of Additional Comment Period on March 14, 1997. This comment period closed on March 31, 1997; the reply comment period closed April 9, 1997.

Statement of Required Findings of Fact

§ 12(a) of the Compact directs the Commission to make four findings of fact as the basis for promulgating a compact over-order price regulation.

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553(c)), the commission shall make findings of fact with respect to:

> (1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.
> (2) What level of prices will assure that procedures receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.
> (3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.
> (4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section thirteen.

Compact Art. V. § 12.

For purposes of clarity, the analysis of the testimony and comment first addresses the substance of findings (2) above, or the level of price needed by producers to cover their costs of production and which will elicit an adequate supply of milk for inhabitants. The conclusion of that analysis is that the current pay price is not sufficient to cover cost of production or to elicit an adequate supply of milk for inhabitants. Based on that determination the

resulting analysis addresses the substance of finding (1) above, or whether the establishment of minimum milk prices to dairy farmers would serve the public interest.

Summary of Comment

I. Finding

What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.[1]

This finding requires consideration of the core issues regarding the financial health of the region's dairy farmers and the Compact's associated purpose of assuring the region's adequate supply of milk. More specifically, this finding requires the Commission to make a determination of the price level necessary both to ensure the continuing financial viability of New England dairy farms and to elicit an adequate supply for the region's fluid, or milk beverage, consumption.

Section 9(e) of the Compact provides guidance to the Commission with regard to the factors to be considered in analyzing the cost of production issue. That section directs the Commission.

> to consider the * * * costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense. Section 9(e) also guides this inquiry by requiring the Commission to consider ''the price necessary to yield a reasonable return to the producer and distributor.

Based upon this statutory guidance, the Commission sought testimony and comment on the following subjects and issues:

(1) Farmer costs of production, including the components identified by Compact Section 9(e), and the pay price needed to yield a reasonable rate of return to producers; and

(2) Prevailing pay prices received by dairy farmers in the New England region; and

(3) The balance between production and consumption of fluid milk products.[2]

A. Issue: Farmer Cost of Production and the Pay Price Needed To Yield a Reasonable Rate of Return to Producers

The comment received makes clear that, despite the approach of Section 9(e), there is very little agreement on what ''costs'' should be included in the cost of production, and even how they should be calculated. Beyond actual cash costs, there is considerable disagreement over whether to include or exclude, and how best to consider, depreciation, family living costs, return or equity, a reasonable value for the farmer's own labor, and debt service. There was no common definition throughout the testimony among farmers or economists. Farmers, themselves, quite frequently, excluded the value of their own labor and or depreciation in calculating their own costs of production.

The diversity of comment makes clear the difficulties of cost of production analysis. Cost of production can and do vary widely from farm to farm and year to year.[3] Even one commenter who opposed the adoption of a price regulation agreed that there is a lack of consensus on the amounts that should be considered in calculating costs of production.[4] University of Vermont dairy economist Rick Wackernagel suggests the difficulty of isolating the cost of producing a hundredweight of milk from what is typically a diversified farming operation, and that any such attempt is at best ''an approximation.[5]

As will be discussed, despite the diversity of their analytical approach, the comments do reflect near unanimous agreement on at least three important aspects of the cost of production equation:

(1) For an extended period of time prices have not covered the full costs of production, however defined,

(2) price instability has caused financial stress and made it impossible for farmers to plan financially; and

(3) over time, net, ''mail box'' price levels received by farmers have not kept up with inflation.

In addition, the Compact Commission will review the comments relating to the structure and health of the New England dairy industry.

The Compact Commission's review of comment under this section includes a comprehensive survey of the testimony and comment received from dairy farmers, and a response to opposing comments received. The Commission notes that very few conflicting comments were submitted for consideration.

(1) Price Insufficiency

Commenters indicated again and again that, in general, farmers in New England had done a good job of holding down costs of production in response to flat milk prices by increasing productivity and efficiency.[6] According to one survey of New England farmers, however, this efficiency and productivity has not equated to profitability. According to the survey conducted by the Farm Credit Services, forty-two percent of the farms had a negative cash margin in 1995.[7]

This survey included seventy-three New England farmers who participate in Agrifax, a financial accounting service provided to farmers by local Farm Credit Associations. Despite the relatively small size of the survey sample, the results are useful to the Commission because, according to the authors, survey participants are generally larger and perhaps better managed than the average dairy farm in New England. The survey indicates that the average adjusted cost of producing milk by New England farms in this survey in 1995 was $15.37 per hundredweight, when including a 4% rate of return on equity. Before the 4% rate of return on equity the net cost of production was 14.25.[8]

Smith concluded

> When you consider the average price received by farmers in our survey for New England was $13.70 per hundredweight in 1995, it is not surprising that many dairy farms are having financial difficulty.[9]

There was also abundant evidence in the record that costs of production for 1996 will likely be as high or even higher than in 1995 and again not be covered by the price received. Jim Putnam, a Senior Vice President with First Pioneer Farm Credit Bank, for

[1] The Compact Commission has determined that the findings here required need not contain any determination with respect to the provision of milk supplies utilized for manufactured purposes. Under current circumstances, the Compact Commission is authorized to regulate *only* the price of milk used for fluid consumption. *See* 7 U.S.C. § 7256(2) (''The Northeast Interstate Dairy Compact Commission *shall not regulate* Class II, Class III, or Class III-A milk *used for manufacturing purposes* or any other milk, other than Class I fluid milk, as defined by a Federal milk marketing order issued under 7 U.S.C. § 608c of this title, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.'') The Commission has concluded that the finding provision with regard to milk used for manufactured purposes stems from the Compact's alternative authority to regulate that additional milk supply with a Commission marketing order. *See* Compact, Article IV, § 9(c). Under the Compact, however, this authority could be utilized only in the event the federal Market Order System is eliminated. *See* Compact Article IV, §§ 9(a) and (c). This is not presently the case. Morever, this residual authority was struck by the Congress when it approved the Compact. Pub. L. 104–127(2). Accordingly, because the Commission has authority only to regulate the price of milk used for fluid milk purposes, its findings only deal with fluid milk supply and consumption issues.

[2] 61 CFR 65604.

[3] See December 19, 1996 hearing transcript (12/19/96 HT): Putnam at 141, 148–49; Stevens at 158–60; Carlson, at 232–34; Buelow, at 248; Beach at 288–90; Platt, at 292.

[4] Vetne, 12/19/96 HT at 264–66.

[5] Wackernagel, Compilation of January 2, 1997 Written Comment (1/2/97 WC) at 482–83.

[6] *See* DeGues, 1/2/97 WC at 74; Sciabarrasi, 1/2/97 WC at 309; and Smith, 12/17/96 HT at 36.

[7] *See* Smith, 12/17/96 HT at 36.

[8] *See* Smith, 12/17/96 HT at 36.

[9] Smith, 12/17/96 HT at 36.

example, testified that he ''would estimate probably a dime or more higher in 96'' primarily as a result of a 29% increase in purchased feed prices which can account for up to 50% of the cost of production in New England.[10] The average 1996 mailbox price in New England was measured as $14.25, leaving a shortfall of over $1.00, against this commenter's estimated cost of production.

Farmers consistently referred to the fact that low farm prices made it difficult for them to reach their ''break-even'' point, let alone generate any meaningful return.[11] As one witness testified:

> I have two young children and she'll say gee, Dad, we've had a break-even for less price this year for a lower milk price and let's go out and eat and I've got to explain to her that when you break even, you don't eat, that's just paying the operating expenses and says nothing about investing in your business and making it a long range commitment.[12]

Other farmer-witness testified that they, themselves, were living below the poverty line and were eligible to participate in the WIC program.[13]

The result of these depressed prices and the inability to make ends meet will, according to one commenter, cause farmers to ''tighten their belt'' or ''hunker down'' and ''wait out the point in time when they'll go back to breakdown.'' [14] Farmers, thus, are struggling to make ends meet.

The testimony and comments also made clear that this failure of milk prices to cover, or even meet, the costs of production is not a short-lived phenomenon, but rather, is part of a long-term trend that extends back into the mid-1980s. Numerous studies, which were corroborated by substantial anecdotal evidence from farmers, documented the chronic price insufficiency over the last decade.

The USDA Economic Research Service estimates that during the 1985 to 1990 period, cash receipts of Northeastern dairy farmers rose from $13.96 to $16.00 per hundredweight while the cost of production jumped from $12.06 to $16.46. In 1990, dairy farmers in the Northeast average a net loss of .46 cents per hundredweight of milk sold.[15]

Several other studies reached similar conclusions. For example, in a study commissioned by the Maine Milk Commission submitted by Mike Wiers, the Commission's Chair, economists Robert Milligan and Wayne Knoblauch analyzed total costs of production (cash costs, depreciation, a 5% return on equity, and a return on the farmer's labor) in Maine and the five Southern New England states of Vermont, New Hampshire, Massachusetts, Connecticut and Rhode Island—the six Compact states. They found that for Maine the total costs of production per hundredweight to be $17.24 in 1982 and $17.17 in 1987. For the Southern New England States, the costs were $16.65 and $16.62 respectively.[16] For these years, the Market Administrator's Report indicates that the blend prices for Order 1, Zone 21 were $13.61 and $12.56, reflecting pay prices below the costs of production.

University of Vermont Extension economist Rick Wackernagel submitted a study which relief upon an analysis of farm income and expense data from Agrifax and ELFAC farms to estimate costs of production for 1988 through 1990. The costs considered included cash operating expenses, capital costs (other than land) and the labor provided by the farm family; they did not provide for any return on the owner's equity in land. According to this study, net costs of production on these Vermont farms in 1988 were about $13 per hundredweight. In 1990, they had risen to $15 per hundredweight.[17] By comparison, the Market Administrator's Report indicates blend prices for 1988 and 1990, Order 1, Zone 21 were $12.22 and $13.95, respectively. This study again confirms the fact that prices were inadequate to enable farmers to meet the break-even point.

Economist Neil Pelsue submitted another study of the costs of production in Vermont, conducted by the Community Development and Applied Economics Department at the University of Vermont.[18] This study analyzed cost of production by considering all cash expenses, capital replacement costs, and unpaid farm labor, using a hired wage rate. For 1990, the study found the average cost of production to be $14.33 per hundredweight, or about $0.67 less than the Wackernagel study determination. When the economic or ''full ownership'' costs of production was analyzed, however, which included a residual return to management and risk, the measurement of cost of production ballooned to an average of $16.41 per hundredweight. This determination is substantially higher than the Wackernagel analysis and well above the reported blend price of $13.95 for the year.

The Pelsue study also determined that nearly two-thirds of the surveyed farms had negative residual returns. The study concluded, that ''[m]ore than half of the survey farms had economic costs of production that exceeded their receipts. This implies that if current market conditions do not improve, those farms may find it hard to continue operating in the long run.'' [19]

Vermont Department of Agriculture economist Reenie De Geus provided testimony indicating that:

> In 1995, the most recent year, costs of production averaged $14.06 for the group. (Vermont Dairy farmers) This is $0.83 lower [sic] than the actual milk prices received of $13.23. In fact, in each of the last 5 years, milk price received was lower than the cost of production by an average of $1.08.[20]

Finally, as mentioned above, there was near unanimous testimony from farmers that price levels were inadequate to enable them to cover their costs of production. As one commenter summarized, the result of these chronically depressed prices will be ''attrition.'' [21]

The evidence submitted to the Commission regarding the inadequacy of prices paid to farmers currently and over an extended period of time is persuasive. Although the degree of the price inadequacy varies from commenter to commenter, the evidence supports the conclusion that costs of production exceed prices paid to farmers. [22]

(2) Price Instability

Abundant testimony in the record indicates that price instability, and wide fluctuations in the price of milk, were significant sources of financial stress for the dairy industry. These wide

[10] Putnam, 12/19/96 HT at 148–149; *see also* Smith, 12/17/96 HT at 38; Andrew, 1/2/97 WC at 5.

[11] *See* Mason, 12/17/96 HT at 87; d'Boer, 12/17/96 at 192; Putnam, 12/19/96 HT at 144–45, 146.

[12] Holmes, 12/17/96 at 93.

[13] *See* Mason, 12/17/96 HT at 85–86.

[14] Putnam, 12/19/96 at 147–48.

[15] Pelsue, 1/2/97 W/C at 274.

[16] In reply comment, Bill Gillmeister indicated that the higher cost of production in southern New England was a significant issue that must be addressed. *See* Gillmeister, Reply Comment, (RC) April 9, 1997. The Commission agrees that the loss of milk supply nearest to the population centers is an issue of utmost concern, and the reasons for this particular decline should be most carefully scrutinized. As described at footnote 3, the Commission has concluded that it should initiate a regional cost of production study by the close of the regulation adopted under this rule. The comparative costs of production within the region will be a key part of this analysis.

[17] Wackernagel, 1/2/97 W/C at 515.

[18] Pelsue 1/2/97 W/C at 282.

[19] Pelsue, 1/2/97 W/C at 282.

[20] De Geus, 1/2/97 WC at 74.

[21] Putnam, 12/19/96 HT at 148.

[22] The Commission again notes the disparities in study methodologies. While repeating its belief in the broad breadth and strength of these studies for the conclusion that current prices are not covering costs of production, the Commission also has identified the need for a uniform, regional, cost of production study, to be initiated before the close of the regulation imposed by this rule.

variations in price made it difficult for farmers to make good business decisions and to plan financially. Robert Wellington, Vice President of Agri-Mark, testified that:

* * * data from the New England Market Administrator's office show*–*–*the price volatility exhibited in the past 12 months is triple that experienced in 1981 and much larger than most of the 1980's and nearly all of the 1990's. This combination of lower prices with unpredictable volatility has made business planning nearly impossible and has put severe financial strain on most farms. [23]

Robert Smith of the Farm Credit System testified with respect to price instability that:

The volatility in milk prices makes it very difficult for farmers to effectively plan and make the type of investment necessary to position themselves for the future. The Commission can play a major role in helping to reduce this volatility through establishing a higher minimum Class I price. This will help keep farmers and land in business and maintain a stronger agriculture industry in New England for future generations. It will enable dairy farmers to make necessary investments to enhance efficiencies and will benefit communities with enhanced economic activity. [24]

Comments from farmers expressing frustration over the wide swings in milk prices were abundant and adamant. Tom Magnant, a dairy farmer from Franklin Vermont testified: ''We find it very difficult to make ends meet with the milk prices that fluctuate between $11.00 and $15.00 a hundredweight.'' [25]

Jeffrey Holmes, a farmer from Langdon, New Hampshire testified that:

I think one of the key things that's going to be gained from this potential floor price and Mr. Smith alluded to that is the stability of the price to the producer. We have no say in what we get and that's been true for years and years, but in this day and age of tight margins we really need to plan on a certain price. We're making borrowing decisions on variations of ten, twenty and thirty cents a hundred and the last two months we dropped 2 dollars and I don't know what the figure is—$2.50 with a little over a month warning that was coming and it's really a farce that we have to make long range plans based on that type of marketplace. [26]

Jim Jenks, a farmer from Danville, Vermont, testified:

I regret that I'm not a more prudent businessman but one thing I know is if we're going to make a good decision with respect to putting my family's equity on the line, we need to know something about the stability of our markets and our future. So with regard to the Compact Commission and the price that they could set, one thing that we're really looking for is stability. We need price. And there's a lot of other factors. But stability and a price that goes with it is really critical.[27]

Ralph McNall, a dairy farmer and a Director of the Vermont St. Albans Cooperative Creamery testified that:

Price stability is the greatest potential benefit of the Compact. Within our own business costs have increased dramatically in the last five years. The improvements or expansions have been difficult to justify or prepare for with the fluctuations of the price paid for milk. I fully support the Compact and its potential to stabilize the milk price to allow my business to plan its future.[28]

Charles Telly, a dairy farmer from Dunstable Mass testifying on behalf of the National Grange: ''I am increasingly concerned about the fluctuating prices * * * It is difficult for me to plan out—to financially plan out my future three, five or ten years in advance because of the uncertainty I face each month with the ever changing milk price''.[29]

These comments are persuasive, and they demonstrate the need for price stability in the region in order to avoid the harmful effects of price volatility.

(3) Failure of Milk Prices to Account for Inflation

Both economists and farmers identified the failure of milk prices to keep up with inflation as a factor contributing to farm financial stress. A recent study conducted and submitted by University of Vermont dairy economist, Rick Wackernagel presented a comprehensive analysis of the impact of these two variables—price insufficiency and inflation—upon farm profitability.[30] Because of its comprehensive approach, the Commission finds this study persuasive and relies on it extensively.

The Wackernagel study analyzes the economic effects of three different price trajectories for two different farm sizes—an 80 cow herd and a 350 cow herd. Wackernagel's first trajectory used a macro-economic model developed by the Food and Agriculture Policy Research Institute (FAPRI) for 1997 modified to reflect local price levels and yields as a base. The base scenario is premised upon a Class I price of $16.17 per hundredweight at Zone 21 and a blend price of $14.70 per hundredweight. Under this scenario, both farms operate at low to modest levels of profitability. They are stressed financially during several periods of price instability and by a general downward trend in price, however. The financial results for these two farm sizes are ''marginal to somewhat unattractive'' at these price levels, providing ''an extremely modest return on investment of 0.4 to 3.0%''.[31]

The second trajectory attempts to moderate price instability by holding the Class I price constant. Wackernagel estimates that the Class I price accounts for about forty percent of the variation in the blend price and that stabilizing the Class I price could potentially reduce the variability of the blend price by about half. The economic impact of this approach upon farm income and survival, however, was similar to the base (first) trajectory, suggesting that price instability is not the only factor placing financial stress on these farming operations. Inflation, was a factor as well, as Wackernagel explains: ''The Consumer Price Index (CPI) shows a third source of financial stress for these farms, inflation. In contract to its steady upward progression, the first two trajectories have downward trends.[32]

Wackernagel's third price trajectory raises the Class I price to $17 per hundredweight (Zone 21), yielding a project blend price of $15.45, and increases the Class I price by one-half the rate of inflation in subsequent years. This price trajectory has the greatest positive impact on retention of equity, net farm income and survivability, even though its upward slope is less than that of the CPI.

Farmers also identified inflation as a significant source of financial stress. Ellen Paradee, a dairy farmer from Grand Isle, Vermont testified that:

Since 1985, our property taxes have increased two hundred percent. Our grain costs have increased one hundred percent. And our utility costs have increased one hundred and twenty five percent. In 1985, the average blend price for Zone 25 was $12.57 per hundredweight. In 1995, the average blend price was $12.56 per hundredweight. Essentially, there has been no increase in the blend price. If the price of milk had kept pace with inflation, it would be approximately $26 per hundredweight.[33]

Ralph McNall commenting on his own farm finances and inflation said:

* * * utility cost, electricity, for example, has gone from, in the year 1991 it's gone from $3,600 to $5,800 for an increase of fifty two percent.

Purchased feed is another example—$37,000 to $76,000 for an increase of one hundred and five percent. Fertilizer—$4,900 to $8,100 for an increase of sixty six percent . . . It is important to note that steps have been taken to reduce electricity costs, for

[23] Wellington, 3/31/97 AC.

[24] Smith, 12/17/96 at 39.

[25] Magnant, 12/17/96 at 227.

[26] Holmes 12/17/96 at 92–93.

[27] Jenks, 12/17/96 HT at 153.

[28] McNall, 12/17/96 HT at 221.

[29] Telly, 12/19/96 HT at 123.

[30] Wackernagel, 1/2/97 W/C at 467 et seq.

[31] Wackernagel, 1/2/97 W/C at 473.

[32] Wackernagel, 1/2/97 W/C at 473.

[33] Paradee, 12/17/96 HT at 232.

instance through plate coolers and heat reclaimers within the milk house and yet as I said before the cost went up fifty percent. Reliance on purchased fertilizer has been reduced, supposedly, through the installation and utilization of liquid manure.[34]

John Mordasky, dairy farmer and Legislator from Stafford, Connecticut, said:

I lost from eight to ten thousand dollars a year in the last four years and I feel that this has come about because the relative price of milk has stayed the same. Fuel has gone up, grain has jumped out of sight and it just—all the other costs that are involved—equipment, parts—have gone very, very, high and they're not relative anymore.[35]

(4) Structure and Health of the New England Dairy Industry

The comment received also makes clear the devastating impact that chronic price insufficiency, price instability, and the failure of milk prices to keep up with inflation over the last decade has had, and will continue to have, on the structure and health of the New England dairy industry absent intervention through regulation by the Compact Commission.[36]

According to the extensive testimony by University of New Hampshire Extension Specialist Michael Sciabarrasi, the character of the New England dairy industry is still predominantly family owned and operated, made up of mostly small to medium sized producers, and is heavily dependent on family labor.[37] Maintenance of this market structure premised on family farms is precisely the express purpose of the Compact. See Compact Article I, § 1.[38]

Mr. Sciabarrasi's conclusions were corroborated by much of the evidence adduced at the hearings. There is abundant evidence that many of the region's farms are small to medium-sized. Likewise, there is substantial anecdotal evidence of heavy dependency on family labor, much of which often goes unpaid.[39]

The testimony of Robert Smith, with the Yankee Farm Credit Bank and Farm Credit of Maine, described the effect of the industry's chronic distress upon this basic market structure. According to Smith, ''The number of dairy farms in New England declined by 41% over the past 10 years. (1985–1995) During this period the number of cows has declined 24%, total production has declined 4% and land used in farms fell by nearly 600,000 acres.'' [40] According to another commenter, New England has lost dairy farmers at a rate of about 40% faster than the national average, between 1987 and 1992.[41]

Statistics cited by another commenter indicate these problems are particularly severe in the southern portion of the Compact region. Massachusetts, the most populous state, has seen the greatest effect, showing a 35% decline in cow numbers and a 20% decline in milk production during the period of 1986 through 1995. Each of the two other southern New England states, Connecticut and Rhode Island, have also shown substantial declines in farms, cow numbers and production *See* New England Agricultural Statistics, 1995–96, USDA, Page 68.[42]

The economic literature submitted into the record addressing this issue likewise concludes that inadequate milk prices threaten the long-run survival of small and medium-sized farms. Quiroga & Bravo-Ureta, ''Short- and Long-Run Adjustments in Dairy Production: A Profit Function Analysis,'' 24 Journal of Applied Economics 607–16 (1992).[43] In this study, the authors extracted data from Vermont farms between 1966 and 1988 and applied that data to econometric models to test the effects of milk price reductions on several factors, including farm size. The results of their analysis were consistent with the view that low milk prices threaten the economic viability of small- and medium-sized dairy farms in the short run, and continue the trend towards fewer, and larger, dairy farms over the long run. Yet, it is precisely this fear of continuing attrition among the region's small rural dairy farmers that led to the enactment of the Compact, and prompted the Commission to undertake this proceeding. *See, e.g.*, Compact, Art. I, § 1.

(5) Comments and Testimony From Farmers

In the language of economists, the Commission was told that a farm can continue to operate in the short term only if market prices cover variable costs. In the long term, it must cover the total cost of production and marketing or the farm will cease operating.

(WC 282 Pelsue) Farmers were more likely to describe this situation as living off their depreciation or living off their equity, in terms evidencing both frustration and humor.

Connecticut dairy farmer, Mavis Collins, testified that:

People in fact used to ask us ''what will you do with all the money from selling your development rights'' and we jokingly would reply, ''We'll farm until the money is all gone.'' And unfortunately, that's almost what's happened. This year alone we had to use $24,000 of our savings plus $11,000 from creditors in order to keep up with current bills. * * *[44]

Wendy Kennedy a farm wife and owner of a farm accounting and tax service told the Commission:

I pulled out the full time dairy farmers from my files. (25 files) The average income from their Schedule F which is where you report farm income was a negative $5,263 for last year. (1995) * * * With a negative bottom line of $5,263 these families are living off their depreciation or selling off their assets to live * * * You can't run a business like that and be in business next year.[45]

Nowhere was the gap between cash receipts and costs of production more apparent than when farmers talked about family living expenses or any return for their family's labor: A Massachusetts dairy farmer testified: ''My brother Edward and I milk about one hundred cows in Westhampton, Mass. Ed and I take a draw of $300 per week and each of us work about one hundred hours per week (6 a.m.–8 p.m. 7 days).[46]

Jan d'Boer who milks 95 cows with his family told the Commission: ''We looked it over and we came up with about 35 hours of family labor a day * * * And the wages per hour we came up with after we figured it all out is $2.55 an hour.'' [47]

John Potter, a Washington, Connecticut dairy farmer: ''My costs show $7.17 to produce milk, January through November. That's not including anything for family living. That doesn't include anything for depreciation or paying back debt.'' [48]

[34] McNall, 12/17/96 HT at 222 and 223.

[35] Mordasky, 12/19/06 HT at 12.

[36] One commenter felt that the Commission should not take action because he believed that other regions of the country were losing dairy farmers at a faster rate than New England. *See* Tipton, WC 1/2/97 at 462. A finding that New England is losing farmers faster than any other part of the country is unnecessary to establishing an over-order price regulation.

[37] Sciabarrasi, 1/2/97 WC at 309.

[38] Three commenters expressed the opinion that the market should be left to work without regulation, even if this meant continued farm loss. (Baker, 12/17/96 HT at 185, Schnittker, 1/2/97 WC at 313 and Vetne, 12/19/96 HT at 269.) As one Commenter recognized, this is essentially a question of public policy. In response, the Commission refers to the Compact's Statement of Purpose, that ''dairy farmers are essential to the region's rural communities and character'' and are ''an integral component of the region's economy.'' Compact Article I, § 1.

[39] *See* 12/17/96 HT: Mason at 87; Olson at 146; d'Boer at 192.

[40] Smith, 12/17/96 at 34.

[41] Ed Barron, 12/17/96 HT at 60.

[42] William Zweigbaum, U–NH Extension 3/31/97 AC.

[43] Bravo-Ureta, 1/2/97 WC.

[44] Collins, 12/19/96 HT at 56.

[4] Kennedy, 12/19/96 HT at 239–240.

[46] Parsons, 1/2/97 WC at 236.

[47] d'Boer, 12/17/96 at 192.

[48] Porter, 12/19/96 HT at 226.

Joanne Reynolds, nurse and farm wife: ''In 1996, our milk price averaged $14.88, but our expenses averaged $12.73. These expenses do not reflect depreciation, debt principal or family living expense. What other segment of society works 4000 hours a year, has a $500,000 investment and is basically living off of depreciation.'' [49]

John Mordasky testified that: ''In the last four years, in order to support my wife and myself we lived on our depreciation and my legislative pay.'' [50]

John Devine of Devine farms of Massachusetts testified, '' * * * we had the accountant pull off the facts from April to November and we had a net loss of $12,877.23.'' [51]

Wayne Bissonette a dairy farmer from Hinesburg, Vermont told the Commission that:

> * * * long term decisions * * * [are] becoming increasingly difficult as milk prices swing more dramatically with no apparent link to other costs and market forces * * * ''I consider myself to be a fairly efficient farmer,'' he said, ''and I believe that I could make money with a blend price of $14.50. This does not allow for much return on my equity but at this level I would be paying income tax.''

Alice Allen a dairy farmer from Wells River, Vermont said:

> In 1973, when my husband and I first began shipping milk, we were receiving $7.50/cwt (federal Order 1) for milk. We were paying $60 a ton for excellent quality 2nd cut hay and $80 a ton for 20% protein. In 1996, we are receiving $15.37/cwt and paying $145 a ton for second cut hay and $250 a ton for 20% protein concentrate.[52]

Scott Mason, a registered jersey farmer from Coos County testified that:

> I'm looking at a break-even cost for my farm of $14.31. This price does not include any figure for return to equity or family labor. So 14.31 is I work 70 hours a week for nothing, my wife works approximately 30 hours a week on the farm for nothing, and we risked every last penny that we have for no return.[53]

Leon Berthiaume the general manager of the St. Albans Cooperative in St. Albans Vermont testified in summary with respect to the members of his cooperative that:

> * * the average size farm for the St. Albans Coop Creamery produces 1.6 million pounds of milk per year and through these statistics [UVM and USDA] we know the net cost of production, not including return on investment would be in the range of $13.50 to $14.25 per hundredweight.[54]

The strength and consistency of the evidence in the record with respect to the impact on farmers of their inability to cover their costs of production provides stark evidence to the Commission of the severity of the problems facing the region's dairy farmers, as well as the consequences of inaction.

B. Issue: Prevailing Pay Prices Received by Dairy Farmers in the New England Region

The issue of the pay prices received by New England dairy farmers is important because it bears directly on determining the necessary level of any Compact Over-order Price Regulation that might be imposed.

According to a review of the statistical data and the comment received, prevailing farm prices are a function of two computations: federally regulated uniform (or ''blend'') prices and net or ''mailbox'' price.

Statistics published by the Market Order # 1 Administrator provide comprehensive and complete data to address the first part of this issue—the market structure of federal, minimum, price regulation. These statistics are compiled by the Market Administrator as part of the regulation of the federal order, by law, and are published monthly, annually, and in ten-year compilation form. See 7 C.F.R. § 100.3(c)(4), (9). They serve as the common basis for all New England regional dairy marketing analysis and, together with similar statistics supplied for other regions, form the basis for national analysis.[55]

These statistics report the precise minimum uniform or ''blend'' prices paid to dairy farmers under federal regulation. According to the statistics, these prices are announced and paid monthly, using one hundred pounds (cwt) of milk as the unit of measure.

General managers and economists employed by cooperatives of dairy farmers which operate in the region described in comprehensive detail the integration of market forces at work in the regulated marketplace. According to these commenters, farmers receive from the marketplace a ''mailbox'' or net pay price, which accounts for a variety of market payments received and costs incurred for the sale of the milk they produce. [56]

The following chart illustrates these two price computations of prevailing pay prices of the region's dairy farmers.

[49] Reynolds, 1/2/97 W/C at 293.

[50] Mordasky, 12/19/96 HT at 10.

[51] Devine, 12/19/96 HT at 220.

[52] Allen, 1/2/97 W/C at 3.

[53] Mason, 12/7/96 HT at 87.

[54] Berthiaume, 12/17 HT at 93 *et seq.*

[55] submitted for reference by De Geus and Gilmeister, 3/3/97 AC.

[56] According to Wellington et al, (AC 3/31/97) and pursuant to federal Market Order # 1, the cost of transporting the bulk fluid milk from the farm to the processing plant is a key cost to farmers which reduces the prevailing farm price. This issue is discussed in more detail in the next finding section.

CLASS I, BLEND AND MAILBOX PRICES 1995–1996

[Per CWT]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1995												
Class I	15.10	14.62	14.59	15.03	15.13	14.4	14.36	14.66	14.47	14.79	15.32	15.85
Blend	13.12	13.13	13.25	13.19	13.27	12.84	12.83	13.24	13.32	13.7	14.24	14.43
Mail box	11.83	11.86	11.98	11.93	11.92	11.39	11.35	11.71	11.88	12.42	13.14	13.20
1996												
Class I	16.11	16.15	15.97	15.83	15.94	16.33	17.01	17.16	17.73	18.18	18.61	17.37
Blend	13.79	13.63	13.55	13.53	13.84	14.53	15.25	15.48	15.96	16.04	15.65	14.37
Mail box	13.38	13.23	13.14	13.08	13.49	14.08	14.77	15	15.55	15.83	15.37	14.12

C. Issue: The Balance Between Production and Consumption of Fluid Milk Products

As noted, the finding analysis regarding the price calculation simultaneously accounts for the level required to ensure the region's local supply of fluid milk products and the amount needed to cover cost of production. Section 9(e) of the Compact specifically requires the Compact Commission to consider the balance between production and consumption of milk and fluid milk products in the regulated area.

Inquiry under this issue assisted the Commission in determining whether the region presently is being supplied locally or has become dependent upon supply from distant sources, notwithstanding any present price disparity between cost of production and the pay price. This understanding allowed the Commission to determine the degree to which price regulation is needed to sustain current, sufficient, local supply, and the degree to which it is also needed to encourage and ensure new and added local supply.

According to data, the six state, New England, region draws approximately seventy percent of the raw product supply needed for the consumption of all milk products, fluid and manufactured, from New England farmers. The total volume of milk supplied for the region is approximately five billion pounds. The predominant remainder is supplied by New York farmers, who have traditionally made up a substantial portion of the New England milkshed. Less than three percent of the raw milk supply for the New England market is produced outside of the six state/New York milkshed.

According to the Market Order statistics, approximately fifty percent of this raw product milk supply is processed for consumption as fluid, or drinking milk, in the New England region. The raw product supply for this in-region fluid production and consumption draws from both the New England and New York farmers comprising the New England milkshed. At present, approximately 98 percent of the fluid milk products consumed in the region are produced by fluid processing plants located in New England. The remaining two percent of fluid milk consumption is supplied by packaged milk products imported by plants nearby to New England. A small percentage of the in-region fluid production is similarly exported for consumption in the immediate areas adjacent to New England.

The Market Order statistics also describe with particularity that the remainder of the raw product milk supply is processed within New England into manufactured dairy products. In contrast to fluid milk products, these manufactured dairy products are consumed both within and outside the New England region.

It is universally understood that the same raw product supply can be used for both fluid, processing and manufacturing purposes. Given this substitutability, and assuming reliance upon farmers in New York State as part of the milkshed, the Commission concludes that New England is, overall, presently in stable balance of regional production and consumption of fluid milk products.

At the same time, the Market Order statistics describe a marked decline in production over time in every individual New England state except Vermont.[57]

RECEIPTS OF MILK FROM PRODUCERS, BY STATES

[Thousand Pounds]

Year	CT	Me	MA	NH	NY	RI	VT	All States
1985	594,785	345,956	540,143	338,028	1,284,015	39,722	2,256,595	5,399,244
1986	574,279	333,124	506,773	343,806	1,280,331	36,912	2,266,222	5,341,447
1987	541,118	293,373	450,524	301,738	1,313,635	36,198	2,236,238	5,172,824
1988	515,512	262,059	418,055	281,403	1,391,994	34,490	2,214,116	5,117,629
1989	502,716	217,437	400,105	268,453	1,388,680	29,651	2,167,758	4,974,803
1990	494,619	216,586	407,704	280,201	1,455,463	29,805	2,229,961	5,114,341
1991	504,516	253,383	412,990	294,185	1,545,890	30,056	2,268,174	5,309,194
1992	525,702	260,759	427,407	307,159	1,560,245	28,853	2,367,566	5,477,691
1993	504,282	288,776	424,836	310,463	1,443,447	28,266	2,345,423	5,345,493
1994	491,495	296,500	398,271	299,911	1,283,684	27,161	2,301,044	5,098,521
1995	487,493	346,443	400,501	314,610	1,417,034	28,536	2,375,518	5,370,135
1996	457,230	388,684	388,227	312,293	1,459,469	26,850	2,350,348	5,383,101

Source: New England Market Order Administrator's Statistical Summaries.

MILK MARKETED BY PRODUCERS: SOLD TO PLANTS AND DEALERS: BY STATE

[Million Pounds]

YR	CT	ME	MA	NH	RI	VT	Total NE
1986	575	670	535	362	36.0	2405	4583.0
1987	540	654	480	314	36.0	2370	4385.0
1988	515	620	437	296	35.0	2350	4253.0
1989	500	585	422	286	30.0	2295	4118.0
1990	495	590	436	297	30.2	2330	4178.2
1991	505	600	440	313	33.4	2370	4261.4
1992	526	623	454	328	32.3	2474	4437.3
1993	527	645	452	320	31.9	2470	4445.9
1994	514	621	431	308	31.2	2422	4327.2
1995	508	625	426	322	32.1	2507	4420.1

Source: MILK: Annual Quantities Used and Marketed by Producers, 1986–1995 New England Agricultural Statistics, 1995–1996.

[57] See also New England Agriculture statistics, submitted by William Zweigbaum, A/C 3/31/97.

This statistical picture of decline is further corroborated by the previously cited testimony of Smith and Baron. According to Smith, ''The number of dairy farms in New England declined by 41% over the past 10 years. (1985–1995) During this period the number of cows has declined by 24%, total production has declined 4% and land used in farms fell by nearly 600,000 acres.'' [58] According to another commenter, New England has lost dairy farmers at a rate of about 40% faster than the national average, between 1987 and 1992.[59]

According to statistics cited by another commenter, problems are especially severe in the southern portion of the Compact region. Massachusetts, the most populous state, has seen the greatest effect, showing a 35% decline in cow numbers and a 20% decline in milk production during the period of 1986 through 1995. Each of the two other southern New England states, Connecticut and Rhode Island, have also shown substantial declines in farms, cow numbers and production.[60]

Another commenter indicates that milk production in New York state, the supplemental portion of the New England milkshed has also declined. Citing USDA statistics, this commenter states that ''New York milk production was down 4 percent in February 1997 compared to one year ago.'' [61]

This commenter also indicates that the milkshed has expanded in area as production closer to the production centers has declined:

> The milk supply area for the New England market has steadily increased over time as dairy farmers in the region have gone out of business. When the New England Order was promulgated more than twenty years ago, the supply area, or milkshed, covered all the six New England states and a dozen or so eastern New York counties. Recent information provided by the Market Administrator's Office shows that the New England market now receives milk from thirty four New York counties as far west as Ontario County. Ontario County is about 360 miles distance from Boston. This distant milk is primarily needed to satisfy the daily Class I needs of New England bottlers during the peak demand period in late summer and fall when schools go back into session and milk supplies are seasonably at their lowest level. The New England milkshed has increased in size by approximately 10 miles.[62]

From the comment and statistics, therefore, the Compact Commission concludes that production and consumption in New England, though presently in balance, are operating in a balance that is under tremendous stress. The supply most local to the population centers, or that provided by southern New England farms, has been greatly diminished and is in fact disappearing. Production at the outer reaches of the milkshed has been able to replace this loss of the most local supply. Yet this more distance supply is itself under stress and is in fact in decline, causing the outer boundaries of the milkshed to be expanded.

The Compact Commission consequently concludes that the present stress on the balance between the region's production and consumption must be relieved if the region is to continue to be provided an adequate, local supply of fluid milk. The Commission concludes that the present balance likely will not be maintained and could soon begin to significantly erode, which would threaten the region's supply, if the stress is not relieved. To ensure a continuing balance, the present, local supply must at least be stabilized, if not increased. Furthermore, the present, distant supply itself must be stabilized as well, to ensure that the milkshed does not reach further west.

D. Summary Analysis of Costs of Production and Sufficient Price

Based on this summary of comment and analysis under issues (1), (2) and (3) above, the Commission concludes the chronic loss of dairy operations in the region, and thereby the stress on the region's local supply of milk, is a direct result of the volatility of farmer milk prices and their chronic insufficiency, including the failure of prices to adjust for inflation.

The Commission further concludes, accordingly, that price regulation is necessary to address the chronic pricing problems and to continue the assurance of an adequate, local supply of milk for the region.

Price Volatility, Cost of Production and Chronic Insufficiency of Price, and the Failure of Price To Adjust for Inflation

1. Price Volatility

The concern with price volatility is described in detail above. The Commission concludes that this price volatility can and should be addressed directly by Compact Over-order price regulation. Compact Over-order price regulation can minimize and even eliminate price volatility by establishing a level, Class I, floor price that combines the Federal Order minimum price with a ''floating'' Over-order price. Such a combined floor price will serve to eliminate the volatile swings in federal Class I pricing.

More specifically, the precise amount of the ''floating'' component of the Compact Over-order Price Regulation will be the difference in amount between the federal, regulated, price that is announced monthly and the amount of Compact Over-order Price Regulation itself. As explained below, the Commission is adopting a combined, federal Order and Compact Over-order, Class I price of $16.94 (Zone 1). The ''floating'' or ''Over-order'' component of the Compact price regulation will be the difference between the announced Federal Order, Class I, Zone 1 price for each month and $16.94.

2. Cost of Production and Chronic Insufficiency of Price

The evidence in the record suggests that the costs of production in the New England states, within the meaning of the required finding, is best defined as a range. The Compact Commission draws this conclusion for two reasons. First, both the farm testimony and that of the region's dairy economists indicates that costs of production vary from farm to farm. Second, the testimony of the dairy economists themselves define a wide range of values.

The range presented in their study data varied widely, between approximately $13.50 and $17.24 per cwt. Leon Berthiaume testified that costs of production among members of a substantial Vermont cooperative ranged from $13.50–$14.25; on behalf of the Vermont Department of Agriculture, Reenie De Gues testified that Vermont production costs were $14.06; University of Vermont economist Rick Wackernagel testified that costs were at $15.00; Neil Pelsue testified of costs equaling $16.41; Bob Smith described costs of $15.37; The Economic Research Service provided an estimate of at $16.46; Milligan and Knoblauch concluded that production costs were as high as $17.24.

These variances can be explained by several factors, including the different time frames surveyed, the different data relied upon, and the different costs included in the survey evaluations. Despite the recognized, inherent, limitations resulting from this variability, this data base is still most comprehensive, and allows the Commission to settle upon a range of cost of production that is most reliable.

To establish its range, the Compact Commission has referred to the above series of summary numbers and eliminated the high and low values. The

[58] Smith, 12/17/96 HT at 34.

[59] Barron, 12/17/96 HT at 60.

[60] *See* New England Agricultural Statistics, 1995–96, USDA, Page 68.

[61] Wellington et al, 3/31/97 AC at 6.

[62] Wellington et al, 3/31/97 AC at 6.

Compact Commission then matched this range against the variety of anecdotal statements presented by dairy farmers in testimony and comment. Accordingly, the Compact Commission determines that, for purposes of analysis under this rule, the range of New England cost of production is reliably understood to be somewhere between $14.06 and $16.46 per cwt.

As described earlier in detail, the data, comment and testimony received demonstrated overwhelmingly that New England farmer pay prices are and have been chronically below this defined range of cost of production. The Compact Commission further concludes that the amount of this insufficiency is also best described as a range.

As described earlier, the USDA Economic Research Service estimate that during the 1985 to 1990 period, cash receipts of Northeastern dairy farmers rose from $13.96 to $16.00 per hundredweight while the cost of production increased from $12.06 to $16.46. This describes a deficiency in price range of $1.90–$0.46. Vermont Department of Agriculture economist Reenie De Geus provided testimony indicating that:

> In 1995, the most recent year, costs of production averaged $14.06 for the group. (Vermont Dairy farmers) This is $0.83 lower than the actual milk prices received of $13.23. In fact, in each of the last 5 years, milk price received was lower [sic] than the cost of production by an average of $1.08.[63]

Using the figures here identified, the Commission accepts this comment and concludes that cost of production exceeds farmer pay price by an amount in the range of $0.46–$1.90.

As cited earlier, Ms. De Gues provides some context for this apparent range in deficiency:

> In good years, we find that the cost of production tends to rise with the price of milk. With the extra cash farmers replace worn out equipment and make repairs that may have been delayed for years. When the price of milk drops below cost, they consume some of the equity in their farms to meet family living expenses and cash flow demands.[64]

3. Adjustment for Inflation—Determination of Specific Price Amount and Formula

As described earlier, the chronic insufficiency in price can be traced to a number of sources. The Compact Commission has determined that the single most readily identifiable basis of price insufficiency is the failure of farm prices to adjust to inflation over time.[65] Given this readily apparent concern from the hearing record, in the subsequent Notice of Comment, the Compact Commission specifically sought comment as follows:

> The Commission is considering a possible Compact over-order price regulation that will be based, at least in part, on an adjustment for inflation to the Class I, fluid milk price, over time. The Commission seeks comment on the advisability of such an approach, as well as possible methodologies for determining the impact that such an adjustment would have on the Class I, fluid milk price, over time.[66]

In response, the Commission received a combined comment from Reenie DeGeus and Bill Gillmeister, dairy economists for the Vermont and Massachusetts Departments of Agriculture, respectively, providing a detailed analysis on this point. They proposed a one-time adjustment of the Class I price, (Zone 1) using 1991 as the base year for the adjustment. They proposed using the 1990 CPI as the base index, given that the Compact expressly uses this base year for adjusting the cap on its regulatory authority. See Compact Section 9(b). They suggest further using the CPI–U Boston as the appropriate, more local indicator of the inflation factor.

This equation yields a Class I, Zone 1 price of $16.94 per cwt. for 1997.

The Commission accepts the recommendation of these two state agriculture department economists. 1991 is a reasonable year to use for the historic period; 1991 prices were markedly low, following an historic year of high prices. This erratic fluctuation in prices was of similar type to the recent swing of November, 1996–January, 1997, and thus provides a recent and analogous, relevant time period for the inflation adjustment. In addition, as the commenters note, using the low point, 1991, of this last pricing cycle ensures that the inflation adjustment will be appropriately limited.

Wellington, et al. also submitted comment in response, indicating concern with the use of an automatic inflation adjustment. They indicated that inflation must be accounted for as a dynamic factor of retail prices as well as farmer cost of production. They indicated that the price regulation, including all relevant factors, should be assessed every six to twelve months, rather than made to adjust to a single static indicator.[67]

The Compact Commission accepts this comment, as well. The Commission agrees that the inflation adjustment should not serve as the single, permanent, function of price adjustment. Rather, it serves as the initial, limited, regulatory response to the defined chronic market problems of price insufficiency and volatility.

The Compact Commission further agrees that the overall price regulation adopted by this rule must be revisited after the passage of some time rather than imposed permanently. As discussed throughout this summary of comment, the Commission has determined that the duration of the rule will be six months. This will allow the Commission to assess again the broader market circumstances in the manner contemplated by the commenters.

Accordingly, the Compact Commission has adopted the price/inflation adjustment presented by DeGues and Gillmeister, which accounts for this six month duration of the rule. Given that this six month period will be from July–December, 1997, the Commission adopts their calculation of price, adjusted for inflation for 1997, of $16.94 (Zone 1).

The Compact Commission recognizes that this price level, in itself, will not be sufficient to cover the defined range of deficiency between current farmer pay prices and cost of production. The Commission expects instead the combined benefits of price enhancement and stability to result in the positive impact on the region's milk supply, as contemplated by the finding analysis under this section.

The Commission here expressly refers to and relies upon the analysis of Professor Wackernagel, which assessed the impact on profitability of a Class I price of $16.89 (Zone 1) ($16.17 Zone 21). The price analyzed is thus directly in line with that adopted by the Commission. According to this analysis, farms operating in such a stabilized pricing environment would remain under stress financially, but would show some improved financial performance, able to operate at low to modest levels of profitability.[68]

The Commission, again, concludes that this price level is the appropriate, initial increment to establish, for the defined period of six months. This initial, limited duration of the regulation will allow the Commission

[63] De Geus, 1/2/97 WC at 74.

[64] De Geus, 1/2/97 WC at 75.

[65] The Commission here specifically notes the determination of Professor Wackerngel's analysis regarding the significance of inflation. Wackernagel, 1/2/97 WC at 473.

[66] 62 FR 12252.

[67] Wellington et al at 11. Another commenter expressed similar concern. See Vetne, 12/19/96 HT at 269.

[68] Wackernagel, 1/2/97 WC at 473.

soon to revisit again the issues raised by this finding analysis. For that next time, The Commission's inquiry will have the benefit of the performance of the existing price regulation. Such a record will aid the Commission's analysis.

II. Finding

Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

The Commission referred to the Compact's express Statement of Purpose in determining the intended meaning of ''public interest'', as used in this finding. The Statement of Purpose declares at the outset that:

> The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk.
>
> The participating states find and declare that the dairy industry is the paramount agricultural activity of the northeast. Dairy farms, and associated suppliers, marketers, processors and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

Compact Art. I, § 1.

Section 9(e) of the Compact provides further guidance with regard to the intended meaning of ''public interest''. This section provides a concise but non-exhaustive list of criteria for the Commission to consider ''in determining the price''. Compact Art. IV § 9(e). Pursuant to that section:

> [T]he commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price of milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

Based on the inclusion of this broad list of criteria, the Compact Commission determined that it must balance the interest of all market participants described by the Statement of Purpose—processors, retailers and consumers, along with farmers.[69] This necessarily requires a broad inquiry, one that takes into account the common interest of all market participants in the maintenance of dairy farming in the region.

The Compact Commission thereby identified four main components of the ''public interest'' contemplated by this Finding: (i) Assuring the continued viability of dairy farming in the region, (ii) assuring *simultaneously* the continued viability of associated suppliers, marketers, processors and retailers, (iii) benefiting consumers through the maintenance of an adequate supply of milk, reasonably priced, and (iv) maintaining a *local* supply of milk.

Based on this definition of ''public interest'', the Commission sought comment on the following subjects and issues:

(1) The balance between production and consumption in the region—the pay price needed to yield a reasonable rate of return to producers and to ensure an adequate supply of milk for the region.

(2) The prevailing farm prices for Class I, fluid milk, inside and outside the New England region,

(3) The prevailing processing and wholesale costs for Class I, fluid milk, inside and outside the New England region,

(4) The costs of transporting bulk fluid milk products to plants located within the New England region,

(5) The costs of delivering fluid milk products processed outside the New England region to outlets within the region,

(6) The purchasing power of the general public,

(7) The elasticity of demand for fluid milk products,

(8) The cost of retailing fluid milk products,

(9) The prevailing retail prices for Class I, fluid milk, inside and outside the New England region,

(10) The potential impact of a flat, combined, regulated, Federal Order and Compact Over-Order price on the wholesale market for fluid milk products,

(11) The potential impact of a flat, combined, regulated, Federal Order and Compact Over-Order price on the retail market for fluid milk products,

(12) The potential impact of a flat, combined, regulated, Federal Order and Compact Over-Order price on school lunch programs.

(13) The potential impact of a flat, combined, regulated, Federal Order and Compact Over-Order price on the Women, Infants and Children Special Supplemental Nutrition Program of the United States Child Nutrition Act of 1966.[70]

A. Issue: The Balance Between Production and Consumption in the Region—The Pay Price Needed To Yield a Reasonable Rate of Return to Producers and to Ensure an Adequate Supply of Milk for the Region

This issue is the premise for the remaining discussion of the public interest in regulated milk pricing.[71] The remaining discussion is triggered by the Compact Commission's determination that such farm price regulation is necessary, both to yield a reasonable rate of return to producers and to ensure an adequate, local, supply of milk for the region.

This issue was previously addressed in detail in the previous finding section. In summary, the Compact Commission concluded that farmer pay prices must be enhanced, stabilized and adjusted for inflation. The Commission thereby determined that a flat, combined, federal Class I and Compact Over-Order Price Regulation in the amount of $16.94 (Zone 1) per cwt was necessary to accomplish these objectives.

B. Issue: Prevailing Farm Prices Inside and Outside the New England Region

Compact Section 9(e) provides specifically for consideration of this issue. Mailbox price statistics allow for a determination of present comparison of milk prices in adjacent markets. The following chart submitted as part of a written comment describes these comparative prices.[72]

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[69] Neil Marcus, President of Marcus Dairy, Inc. emphasized the importance of considering the impact of the Compact on all market participants in his testimony. *See* HT 82–83; 12/19 Marcus.

[70] See 61 CFR 65604; 62 CFR 12252.

[71] As noted previously, this issue is raised specifically by Compact Section (e).

[72] Wellington et al, 3/31/97 AC appendix.

MAILBOX MILK PRICES FOR SELECTED FEDERAL MILK ORDERS

[Dollars per hundredweight]

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1995												
New England	$11.83	$11.86	$11.98	$11.93	$11.92	$11.39	$11.35	$11.71	$11.88	$12.42	$13.14	$13
NY/NJ	12.00	12.02	12.14	11.88	11.82	11.45	11.39	11.74	12.01	12.61	13.17	13
Middle Atlantic	12.15	12.07	12.06	11.83	11.86	11.50	11.60	12.14	12.26	12.82	13.50	13
1996												
New England	13.38	13.23	13.14	13.08	13.49	14.08	14.77	15.00	15.55	15.83	15.37	14
NY/NJ	13.44	13.29	13.18	13.16	13.70	14.10	14.82	15.05	15.68	15.68	14.82	13
Middle Atlantic	13.57	13.27	12.86	12.76	13.41	14.40	15.07	15.49	16.05	15.84	15.55	14

Source: Exhibit Co-op #1C & #1D, Additional Comment as submitted by Robert Wellington, on behalf of Agri-Mark Dairy Co-op, St. Albans Co-op Creamery, & Independent Dairymen's Co-op.

From this chart, it can be seen that 1995 mailbox prices for the New England market were consistently less than those for the New York-New Jersey and Middle Atlantic markets, but by relatively small amounts. This data further indicates that prices throughout the three-market area are presently in relative alignment.

C. Issue: Costs of Transporting Bulk Fluid Milk Products to Plants Located Within the New England Region

As made clear by comment received, and based on common knowledge, the cost of transporting bulk fluid milk products is most significant to the calculation of the cost of the delivered raw product to the processing plant, because of the significant expense involved. It is thus a critical input of the wholesale and, hence, the retail price.[73]

According to Wellington *et al,* ''[d]ue to its bulkiness, milk is expensive to transport. Back haul opportunities to lower transportation costs are also more limited with milk due to its sanitary standards and large volume which moves on a daily basis.'' [74]

According to the reported statistics, the regulated price itself accounts for the transportation costs of raw fluid milk supplies. Market Order #1 establishes a zone differential to account for this transportation cost. This differential is established per cwt. in an amount equal to 3.6 cents per ten miles transported. According to Wellington et al, this rate has not changed since 1982.

Market Order #1 uses zone 21 as the representative zone for farm pricing. 7 CFR 1001.50(a). This zone is 210 miles from the Boston, or city, zone. 7 CFR 1001.52(d). The cost of transportation from this representative zone 21 to the city, zone 1, is 72 cents per cwt. 7 CFR 1001.52(g).

Further, according to Wellington et al, a 1994 consolidation of federal orders in the southern market established a rate of 3.9 cents/cwt per ten miles transported. There is no explanation as to whether the higher rate for the new southern order better reflects costs in the Northeast, although that is the inference, or whether the higher cost is attributable to market conditions in the south. The comment does identify with specificity a higher cost of transportation for the Agri-Mark cooperative, which represents approximately half of all New England farmers. This cost is represented as 4 cents/cwt for each ten miles transported.

[73] The broader issues of impact on the wholesale and retail markets are analyzed at the end of this finding section.

[74] Wellington et al, 3/31/97 AC at 4.

D. Issue: Prevailing Processing and Wholesale Costs for Class I, Fluid Milk, Inside and Outside the New England Region

This issue is significant because processing and delivery are the only intermediate stops in the commercial channel for milk between farm and retail outlet other than transport of the raw supply. The delivered cost to the retail outlet can thus be determined as a function of a relatively few variables.

Although the Compact Commission requested comment on this issue, it did not receive data regarding processing and wholesale costs specific to the New England market. While two of the fluid milk processors doing business in the New England market did submit comment,[75] along with a trade organization from New York state,[76] none of these comments presented data with regard to costs of operation.

A very recent and comprehensive national study of 35 plant operations submitted by a group of dairy economists from Cornell University provides useful guidance to the Commission on this issue. R. Aplin, E. Erba, M. Stephenson, ''An Analysis of Processing and Distribution Productivity and Costs in 35 Fluid Milk Plants'', February 1997, R.B. 97–03, Cornell University. The study is particularly useful because fourteen of plants studied, though unnamed, are identified as being located in the Northeast.

The study indicates that the processing and wholesale costs for Class I milk are a function of three variables: (1) the procurement cost for the raw product supply, in significant part, combined with (2) processing, delivery and sales costs for servicing the retail outlet, and (3) return on capital.

An extract entitled ''Presentation at IDFA Annual Meeting in Dallas, Texas (October 1996) was also submitted. This extract provides ''estimated costs of marketing 2% lowfat milk through supermarkets, New York Metro Area, $ per gallon, 1995.'' In this extract, the raw product cost is identified as $1.31 per gallon. (This is in line with the net combined regulated and ''over-order'' Class I price for the New England market.) According to the study, there is an additional plant cost of $0.24 per gallon and a package cost of $0.10 per gallon. There are additional delivery, selling and general and administrative costs, totaling $0.22. Finally, the extract identifies a return for cost of capital in the amount of $0.06.

The study thus identifies a total, delivered, processing and wholesale cost of $1.93 per gallon.

The Economic Research Service of the United States Department of Agriculture also provides a breakdown of wholesale costs, nationally, per half gallon.[77] According to this study, for 1992, the farm value was $0.597; assembly and procurement totaled $0.058; the processing cost was $0.191; and wholesaling costs were $0.196. Total costs per half-gallon equal $1.042 according to this ERS study. For comparison purposes, assuming equal costs per gallon as the costs per half gallon in the study, this would mean a total delivered cost of $2.08 per gallon, or $0.15 more than shown in the Aplin study.

The ERS study further notes that ''processing costs have remained stable since 1986 (through 1992), after rising 16 percent from 1982 through 1986.[78]

Both the Aplin study and extract, and the ERS study, indicate that processing plants are covering their margins. The Aplin extract also provides a precise indicator of the ''return for cost of capital.'' This amount is identified by the extract as $0.06, or only a three percent return.

E. Issue: Costs of Delivering Fluid Milk Products Processed Outside the New England Region to Outlets Within the Region

This issue is significant for two reasons. First, these identified costs complete the description of delivered cost to the retail outlet. Second, the issue inquires into whether finished, Packaged milk products transported from plants located away from the region's population centers can serve as a substitute supply for the finished product provided by more local plants.

The Compact Commission requested but did not receive data regarding packaged product delivery costs specific to the New England market. The Cornell University study cited above [79] sheds light on this issue. According to the study, costs of delivery for packaged fluid milk products range from $0.216 to $0.541 per case, with an average cost of 38.8 cents per case, or about $0.097 cents per gallon. (There are 4 gallons/case.) [80]

[75] Neil Marcus on behalf of Marcus Dairy, 12/19/96 HT at 81 and 1/2/96 AC; Donald Turner, Turner's Dairy, 12/19/96 HT at 176.

[76] Bruce Krupke on behalf of New York State Dairy Foods, Inc. 3/31/97 AC; John H. Vetne, on behalf of New England Dairies, Inc. 3/31/97 AC.

[77] Food Cost Review, 1995/AER–729. (Submitted as reference source by DeGuess and Gilmeister, 3/31/97 AC.)

[78] AER 726 at 26.

[79] Aplin et al, R.B. 97–03, Cornell University, February, 1997.

[80] Aplin et al at 21.

With regard to the possibility of substitution of packaged milk supply, as discussed in the first finding analysis, the Market Order statistics makes clear that the major processing facilities servicing the New England region are currently located nearby the population centers of the region they serve. These plants currently provide for almost all of the market's supply of finished product. At present, then, there is almost no substitution for this local supply of finished packaged product with finished product imported from distant plants.

The detailed analysis of the Aplin study provides insight into this settled market pattern. Cost of operating a delivery vehicle contributed an average of 43 percent of the delivery cost per case. The remainder of the cost is attributable to driver labor cost. (Vehicle operating cost ranged from 21 percent to 53 percent.[81] The study further indicated that these costs were for routes serving large customers, and that route costs for serving smaller customers ''is expected to be much higher.''

Most significantly, route labor productivity was shown by the study to decrease substantially with greater distance traveled and on routes with numerous customer stops. A 1.0 percent increase in miles traveled per month increased direct delivery cost by 2.9 percent per case. A 1.0 percent increase in customer stops made per month increased the cost by 1.1 percent per case. Not surprisingly, the study concludes that plants located in more densely populated areas had lower direct delivery costs.[82]

This delivery cost analysis of the Cornell study thus explains the present market pattern: Plants located near population centers are the most cost effective. According to this pattern, the market should continue to consist of plants located nearby the population centers, plants which are supplied with raw product from the milkshed and which in turn provide finished product to the region's retail outlets.

F. Issue: The Price Needed to Yield a Reasonable Rate of Return to Processors of Fluid Milk Products

This inquiry is derived directly from Section 9(e) of the Compact and is significant in view of the Compact's emphasis on the financial health of the entire dairy industry. The focus of the inquiry is the determination of a price that ensures a reasonable rate of return. It is of present significance for the baseline determination of whether processing plants are currently covering costs of production.

The Compact Commission did not receive information with regard to the price required to yield a reasonable rate of return specifically to New England fluid processors. According to the extract of the Aplin et al, Cornell study cited above, return for cost of capital for the nearby New York metro area plant equaled $0.06 per gallon.

The Compact Commission concludes that this data may be relied upon to determine that the region's fluid processors are presently covering their costs with a return on capital, however slight. As noted, the Aplin study was a number of nationally representative fluid plants, of which fourteen were from the Northeast. It is reasonable to assume that a representative number of these region-wide plants in turn were from the New England area, and that the extract chosen by the authors may be understood as representing this group as a whole, including New England plants.

G. Issue: The Purchasing Power of the General Public

This inquiry is also drawn directly from Section 9(e) of the Compact. The Compact Commission concludes that the Compact focuses primary concern on the consumer interest because milk is a staple product. The impact of price regulation upon the consumer's ability to pay is thus a critical part of the Compact Commission's assessment of the public interest under this finding section.

To sharpen inquiry under this broader issue, the Compact Commission sought comment on a number of issues relating to the potential impact of price regulation on consumers. These issues include: The elasticity of demand for fluid milk products, the costs of retailing Class I, fluid milk in the New England region, the prevailing retail prices for Class I, fluid milk, inside and outside the New England region, the cost of retailing fluid milk products, and the potential impact of a flat, combined regulated, Federal Order and Compact Over-Order price on the retail market for fluid milk products.[83]

The Compact Commission also focused specific attention on the potential impact of price regulation on lower income consumers. Specifically, the Commission sought comment on the potential impact of a flat, combined, regulated, Federal Order and Compact Over-Order price on the Women, Infants and Children Special Supplemental Nutrition Program of the United States Child Nutrition Act of 1966, and the impact of such a price on the school lunch program.[84]

Each of these issues is addressed in turn.

H. Issue: The Elasticity of Demand for Fluid Milk Products

Citing recent studies, Wellington et al identify the demand coefficient for fluid milk as 3.1. This means that a ten percent increase in price will result in a 3.1 decrease in demand.[85]

In response to this comment, Thomas Conway, Esq., former Counsel and former Executive Director of the New York State Legislative Commission Dairy Industry Development, submitted a study of ''Consumer Response to the Unprecedented Rise in the Retail Price of Fluid Milk in 1989–1990'' (Consumer Response).[86] This study focused on the actual impact on consumption of a relatively large increase in retail milk prices during late 1989 and early 1990.

The study group was of four regions, including the Northeast. During this time, the price of milk rose to $2.67 a gallon, a $0.34 increase. Directly contrary to the traditional analysis of the elasticity of demand for milk, consumption actually increased rather than decreased in two of the regions studied. In the Northeast, the 15.04 percent price increase in the Northeast was matched by lower sales of only 0.98, or well below that expected based on any of the demand coefficients identified above.

The study concludes ''that other factors were more important than price to the determination of consumer demand for fluid milk''.[87] Other factors included growth in personal income, demographic factors, advertising and increased concerns over health and nutrition.

While this study is now dated, the Compact Commission accepts its basic premise that analysis of the impact must account for the market function as a whole, rather than focus upon a strict elasticity of demand equation. Nonetheless, the Commission remains aware of the importance of accounting for the direct impact on consumption that an increase in retail prices may have.

I. Issue: Costs of Retailing Class I, Fluid Milk in the New England Region

The Commission did not receive comment with specific regard to New England costs of retailing. As noted, the

[81] Aplin et al at 48.

[82] Aplin et al at 54

[83] See 61 CFR 65604; 62 CFR 12252.

[84] See 61 CFR 65604; 62 CFR 12252.

[85] Wellington et al, 3/31/97 AC.

[86] New York State Legislative Commission of Dairy Industry Development, August, 1990.

[87] Consumer Response at 11.

Aplin et al, extract of the Cornell study identified a total delivery cost of $1.93. Adding an identified supermarket cost and return of $0.19 establishes for this extract a retail cost of $2.12.

The ERS study identified a total delivered cost of $1.04 and a retailing cost of $0.35, for a total retail cost $1.39 per half gallon. The retail cost component for the ERS study is substantially higher than that for the Aplin study. The ERS study indicates part of this cost may represent wholesaling formerly performed by processors, which would explain at least part of the difference.

The Commission concludes that the more recent Cornell extract provides a useful benchmark for assessing New England costs of retailing.

J. Issue: Prevailing Retail Prices for Class I, Fluid Milk, Inside and Outside the New England Region

There are two significant concerns raised by this issue. First, the inquiry addresses the benchmark question of whether retail margins are covering costs, much as the earlier inquiry addressed whether processor margins were sufficient to cover costs. Second, the inquiry must consider the relative retail costs beyond the area subject to Compact Over-order Price Regulation, as part of the ongoing process of assessment of the potential impact of price regulation on the region's retail prices.

James G. Hines, Director of Dairy Services, submitted for the record copies of the tracking studies of retail prices conducted by The International Association of Milk Control Agencies. The Association tracks and publishes monthly price surveys from a number of markets nationwide. The following is an extract from three markets:

RETAIL PRICES—DIFFERENT MARKETS

[1995–1996]

	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1995												
MA (Boston)	$2.49	$2.09	$2.49	$1.99	$2.29	$2.39	$2.39	$2.49	$2.49	$2.49	$2.09	$2.49
NY (Albany)	2.18	2.18	2.18	2.16	2.16	2.15	2.17	2.17	2.17	2.17	2.19	2.23
NJ (North)	2.55	2.56	2.53	2.53	2.53	2.53	2.54	2.53	2.52	2.55	2.56	2.57
1996												
MA (Boston)	2.19	2.29	1.99	2.49	2.59	2.29	2.59	2.59	2.29	2.59	.....	.....
NY (Albany)	2.23	2.23	2.25	2.26	2.25	2.32	2.4	2.42	2.42	2.46	.....	.....
NJ (North)	2.56	2.57	2.59	2.59	2.58	2.58	2.65	.....	2.67	2.67	.....	.....

Source: International Association of Milk Control Agencies.

The Aplin et al extract identified a total, delivered cost of $1.93, and a total retail cost of $2.12, including combined retail cost *and* return on capital. The Compact Commission concludes from this survey of prices that, as measured against their identified delivered cost, New England retailers are currently covering their costs of production with an adequate return on capital.

The Commission further concludes that this on-going Agencies' study of markets both within and outside the New England region provides the basis for the Commission to monitor the impact of regulation on New England retail prices. The Commission will be able to utilize this study data and compare the current, relative alignment in prices between the New England and New York regions against the relative alignment once price regulation is in place.[88]

K. Issue: The Potential Impact of a Flat, Combined, Regulated Order and Compact Over-Order Price on the Wholesale Market for Fluid Milk in the Region

The purpose of this most critical inquiry is to address the potential impact on the wholesale market of price regulation. Commenters described a number of potential concerns and potential benefits. The benefits described were premised on the value of price stabilization. The concerns raised related to the potential for market distortion and competitive harm to current market participants.

In reply comment, Berthiaume[89] described the benefit of a stabilized pricing as imposed by this rule. He indicated that Compact Over-order price regulation would bring stability to the regulated Class I price, and not merely as a floor price. ''The value of a flat regulated minimum Class I price is that the wholesale cost of milk would and could be anticipated.''

The Commission agrees with this statement and adopts it as a finding with respect to this issue. As discussed above, farm prices have been marked by persistent, erratic fluctuations which translate directly into the wholesale price. The Commission concludes that, while processors are currently covering their margins, minimization of such persistent fluctuations in price can only serve as a benefit to stability of firm participants in the wholesale market.

Other commenters expressed concern about the potential for market distortion which price regulation could bring. Wellington et al expressed a concern that price regulation could distort the traditional, market driven, pattern of raw product supply provided by New England and New York farmers. The concern raised is that the Compact Over-order price regulation could create an incentive for increased milk supply from more distant portions of the milkshed in New York. This would represent a market distortion directly contrary to the intended purpose of the Compact.

These commenters qualified their concern by noting that processors ''will be reluctant to disrupt their current supply sources in reaction to a Compact program which is officially of limited duration.''[90] In his testimony at the hearing, Wellington also stated his opinion that such market change was not likely to occur as long as the Commission did not increase the regulated Class I price above $17.00.[91]

Neil Marcus, President of Marcus Dairy, Inc., described other potential market distortions that could result from price regulation. His concerns also centered on the alignment of a market subject to combined, Compact, and Federal Order regulation with adjoining markets regulated only under Federal Order.[92] The particular circumstances of the Marcus Dairy operation heightened his concern. According to the commenter, Marcus Dairy is located in Connecticut, on the border of New York. The commenter described the supply of packaged dairy products subject to price regulation under Federal Order 2 which is sold in New England and expressed concern that this milk must not escape regulations under the Compact. According to Marcus, such uniform regulation is necessary to ensure that the current, market, pattern of the supply of packaged product in the marketplace is maintained.

The Commission concludes that market alignment of prices and uniformity of regulation must be considered in establishing over-order price regulation. Present market patterns within the region and between the region and adjacent areas are derived from the integrated formula of Class I pricing in the federal Market Order System, which includes pricing under more than one federal Order. There is no doubt the Compact will introduce a new feature of market structure by adjusting the Class I price, in effect, for only one Order.

At the same time, even given that the Compact will introduce a novel feature of market structure, the Commission does not determine that market distortion will necessarily occur. The technical provisions of the Compact Over-order price regulation are precisely patterned upon the underlying federal Order System in significant part. This provides a structural basis for concluding that such distortion should not occur.

Nonetheless, the concerns raised by the commenters with regard to the potential for market distortion were a central consideration in the Commission's deliberations over price regulation. These concerns were also a controlling factor in the Commission's fashioning of the six months', limited duration, for the initial price regulation. The Commission here specifically notes Wellington et al's assertion that a ''limited duration'' of price regulation will minimize the potential for distortion of the market caused by the Compact Commission's initial price regulation.

L. Issue: The Potential Impact of a Flat, Combined, Regulated Federal Order and Compact Over-Order Price on Retail Prices for Fluid Milk Products

The Compact Commission sought comment on the critical issue of the potential impact, if any, of a flat, combined, regulated Federal Order and Compact Over-order price on retail prices for fluid milk products.

After reviewing all of the comments and testimony submitted, the Compact Commission concludes that the price regulation will have a positive impact on retail prices. The Commission determines that preventing further erosion of the milkshed through price regulation will itself have a positive impact on retail prices, in large part because of the avoidance of increased transportation costs. The Commission concludes that the further benefits of price stability will trace through the farm and wholesale markets to the end-point, retail market, and have a further, positive impact on retail prices.

The Commission bases its conclusion on the following analysis:

1. Change in the Epicenter of Milk Production and the Impact on Retail Prices

The Compact Commission previously determined that there has been a distinct movement away over time of the epicenter of the region's milk supply. The loss of dairy farms in the New England region, and in particular,

[88] Retail prices are also being monitored currently in Connecticut, Vermont and Maine. The Commission will have to establish a tracking program in Rhode Island.

[89] Berthiaume, Reply comment; April 8, 1997 (RC).

[90] Wellington et al, AC 3/3197 at 6.

[91] Wellington, 12/19/97 HT, pages 50–51.

[92] Marcus, 12/19/96 HT at 84–98.

in the Southern New England region, has forced the epicenter of the region's production further and further from the region's population centers. This movement has involved both the loss of supply by farms closest to the population centers and the replacement of that supply by more distant farms, primarily in New York and Vermont. The location of these more distant farms themselves, in turn, has moved ever father away from the region's population centers.[93]

This feature of the stressed circumstance of the region's milk supply described in the first finding analysis has had a direct, adverse impact on retail milk prices. The Commission bases this conclusion in part on the determination that transportation costs are a significant input of the retail price for milk. As noted, the federal Market Order System allows 72 cents per cwt to cover transportation costs from the representative ''country'' zone to the Boston, ''city'' zone.[94] This single cost input, alone, accounts for over three percent of the total delivered cost to the retail outlet, when measured against the Aplin et al extract identification of $1.93 for delivered cost/gallon. (11.6 gallons per cwt). It follows, by definition, that an increase in transportation costs attributable to greater hauling distance will result in an increase in retail prices.

The Commission's conclusion is also premised on a similar finding contained in the December 29, 1989 extension of the Massachusetts Milk Stabilization Order. This Order found that a 50 mile shift in milk prices causes a three cent increase in milk prices.

The evidence in the record thus demonstrates that the epicenter of the region's milkshed has moved away from the population center to a significant degree, and that this shift has had a measurable impact on retail prices. The Compact Commission concludes that this adverse impact on retail prices will continue as long as the milkshed is not stabilized.

2. Risk Avoidance in Commodity Purchasing—The Benefits of Price Stabilization

Senator Patrick Leahy submitted extended comment referencing studies in the economic literature of the adverse effects of commodity price uncertainty and, conversely, the utility of price stability.[95] One article described so-called ''risk avoidance'' pricing strategy in the wheat industry. The analysis indicated that increased price uncertainty and variability in the wheat industry led to significant increases in retail wheat marketing margins.[96] The article determined both theoretically and empirically that increased price variability results in higher margins. The authors theorized and then demonstrated empirically that the uncertainty created by wholesale price volatility, in essence, drives the retailer to retain a larger margin. The retailer acts to retain such a larger margin to avoid the risk created by the uncertainty in wholesale costs.[97]

The logical implication of this theory is that price stabilization reduces or eliminates the retailers' need to act in such a risk-avoiding manner, because the volatility and uncertainty that drove that behavior is reduced or eliminated.

The analysis of Hahn et al[98] demonstrates convincingly that price volatility within the meaning of the authors above cited defines market conduct and performance of the fluid milk industry. The pattern of pricing conduct described by these authors is consistent with the risk-avoidance strategy described by Brosen et al and Holt.

Based on this analysis, the Commission concludes that New England retail prices likely will respond positively to the stabilization of the wholesale price input which will result from imposition of Compact Over-order Price Regulation. The price established by this rule will be a certain one; Berthiaume suggests that the combined, federal Order and Compact Over-order price will not vary for the six month term of its duration. At least for the short-term duration of this price regulation, the uncertainty of price variability in the region's Class I market will have been significantly reduced if not eliminated. According to the analysis described above, the Compact Commission concludes that retail margins and, hence, prices, should positively adjust, accordingly.[99]

3. The Experience of the Southeast Region of the United States

Received comment and statistics indicate that the adverse experience of the southeast states could well serve as a model for the future of New England's supply pattern and retail prices, if the present stress on the milkshed is not abated. Many of those states have lost a significant measure of their local milk supply. For the southeast as a whole, between 1980 and 1995, the number of dairy farms declined from 33,900 to 7,250.[100] In Georgia, the percentage of milk supplied by Georgia farmers declined from 84% in 1973 to 50% in 1988.[101]

Two commenters, Ronald Harrell, Ph.D., of the Louisiana Farm Bureau Federation, Inc., and G.A. Benson, Ph.D., and Associate Professor and Extension Economist in the Department of Agriculture at North Carolina State University, voiced graphic concerns over the dwindling local milk supply patterns in the Southern states. According to Dr. Benson:

> Because milk production is decreasing, and because of seasonal imbalances between production and sales, more milk must be imported from out-of-region sources in the fall. The seasonal ''surplus'' in the spring months has virtually disappeared. Supplementary or other source milk is more expensive than locally produced milk because of give-up charges, transportation costs, and differences in classification in the originating and receiving orders. These statistics are not collected on a regular basis or published, but a reliable source in one of the regional cooperatives informed me that last year they imported an average of 8.5% of the total milk they needed to meet customer needs as supplementary milk at an average cost of $1.92 per 100 lb. above the cost of producer milk in the federal order. * * * On Average, this supplementary milk [reported by another cooperative] cost $2.58 per 100 lb. more than

[93] The 1989 Massachusetts Extension Order, at page 14, cites testimony that the transportation costs for this most distant supply ''would currently run $2.00 to $2.50/cwt (17–22 cents/gal) and would require capital investments that few truckers would be willing to undertake.'' Extension Order at 14.

[94] The discussion, supra, of transportation costs indicates that this regulated calculation of cost does not fully account for the true cost.

[95] Senator Patrick J. Leahy, WC 1/297.

[96] Brorsen, Chavas, Grant and Schnake, ''Marketing Margins and Price Uncertainty: The Case of the U.S. Wheat Market,'' Amer. J. Agr. Econ., (August, 1985) 521–527.

[97] The analysis is confirmed with regard to market conduct and performance in the beef industry. Holt, ''Risk Response in the Beef Marketing Channel: A Multivariate Generalized ARCH–M Approach'', Amer.

[98] See Hansen, Hahn, and Weimar, ''Determinants of the Farm-to-Retail Milk Price Spread'', Agriculture Information Bulletin Number 693 (March 1994). See also Kinnucan and Forker, ''Asymetry in Farm-Retail Price Transmission for Major Dairy Products'', Amer. J. Ag. Econ., 285–292 (May, 1987).

[99] The Commission recognizes that at least one comment suggested that the ''impact'' of any price regulation would be a straight dollar-for-dollar ''pass through'' from processors to consumers, resulting higher retail prices. Alan Rosenfeld, December 19, 1996 at pages 183 et seq. The Commission is not persuaded by Rosenfeld's predictions for several reasons. It is, in the Commission's view, contrary to the weight of the comments submitted and the prevailing economic literature and anecdotal evidence. More fundamentally, however, it is not descriptive and provides no reasoned explanation for the conclusion expressed therein. Nor does it respond in any way to the comprehensive literature suggesting precisely the opposite conclusion.

[100] National Agricultural Statistics Service, ''Milk Production'', 1970–1995.

[101] Gilmeister, 3/31/97 at 10.

local milk. It came from a variety of sources and the added costs ranged from a low of $1.52 per 100 lb. to a high of $4.15 per 100 lb.[102]

The comment indicated that dairy cooperatives were currently absorbing the cost as a loss rather than passing it on to customers, but that this is an unsustainable market pattern.[103]

The Commission is concerned that if the continued stress on the milkshed for the New England region continues unabated, without Commission intervention, then the New England states will begin to approach the increased market uncertainty currently facing the Southern states. Accordingly, the Commission bases its determination of the present need for Compact Over-order Price Regulation on the current experience on the southern states. The Commission concludes the Compact was designed precisely to avoid such a market pattern as currently experience by the southeast, and to permit the New England region to test the efficacy of the over-order price mechanism as a device for curtailing these very problems.

4. Summary Analysis

The Commission has analyzed the data and the comments submitted on the question of the impact of Compact Over-order Price regulation on retail prices and concluded the consumer component of the ''public interest'' will be served in the manner contemplated by the finding under this section. The Commission concludes that alleviating the stress on the milkshed will itself have a stabilizing impact on retail prices, if not result in outright reduction.

The Commission further determines that stabilization of the wholesale price will likely result in stabilized, and reduced, consumer prices. The Commission here notes, in summary, that an established price of $16.94 for July-December of 1997, in combination with the federal, Market Order #1 announced prices for January through May, 1997, would yield an average Class I (Zone 1) price for these 11 months of 1997 in the amount of $16.15.[104] This compares with the 1996 average price of $16.86.[105]

By contrast, as expressed by Gillmeister, there would be ''a considerable cost to consumers if nothing is done to assist farmers in New England.'' [106]

M. Issue: The Potential Impact of a Flat Combined Regulated Federal Order and Compact Over-Order Price on the School Lunch Program

Consistent with the need to protect the interests of consumers, the Commission sought comment on the impact, if any, of a flat, combined, federal Market Order price and Compact Over-order Price Regulation on the fluid milk procurement process in the context of the school lunch (and breakfast) programs. The comment received, while limited, does provide the Commission with an adequate basis to make an informed decision on this question.

Senator Jeffords submitted an analysis by the United States Department of Agriculture indicating total annual consumption of fluid milk by school districts amounted to 12,798,000 gallons.[107] This amounts to 148,456,800 pounds of milk, or approximately 5.9 percent of all fluid milk consumed in the region.

The comment also contained a discussion of a study by the General Accounting Office that described a comprehensive, 1980s Justice Department investigation into bid rigging associated with this market. The study describes how the school lunch program is designed to operate through a competitive bidding process, by which individual districts solicit bids for the supply of their milk program demands.

This description is, in effect, one of a competitive marketplace, despite the involvement of the government subsidization. The contracts between the districts and the suppliers result from a competitive bidding process, with price levels a function of market forces of supply and demand. The Compact Commission thereby concludes that the impact of Compact Over-order Price Regulation on the school lunch and breakfast programs can be understood as consistent with the impact of regulation on the larger, overall, retail market.

As discussed below, such analysis is distinctly different from the analysis of the potential impact of regulation on the Women, Infants and Children Special Supplemental Nutrition Program of the United States Child Nutrition Act of 1966, which is a capped reimbursement program.

N. Issue: The Potential Impact of a Flat, Combined, Regulated Federal Order and Compact Over-Order Price on the Women, Infants and Children Special Supplemental Nutrition Program of the United States Child Nutrition Act of 1966

Section 10 of the Compact sets forth a nonexhaustive list of issues that the Commission may, in its discretion, address in a Compact over-order price regulation. Subsection 10 therein provides that a price regulation may contain ''[p]rovisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.'' (WIC Program).

The Commission has been most concerned from the outset of its regulatory process with ensuring that this program is not adversely affected. Accordingly, the Commission sought, and received, testimony and both individual and joint written comments from each of the state WIC directors addressing the potential consequences of an over-order price regulation on the administration of the WIC Program.

The Commission is particularly impressed with the expertise and knowledge of these witnesses regarding the administration of the program. In light of the absence of any comments opposing the proposals set forth in the joint WIC directors' comments, the Commission hereby adopts that written statement, set forth in its entirety below.

About the WIC Program

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is a unique health and nutrition program serving women and children with—or at risk of developing—nutrition-related health problems. WIC provides access to healthcare, free nutritious food, and nutrition information to help keep low to moderate income pregnant women, infants and children under five healthy and strong.

WIC provides a monthly 'prescription' for nutritious foods tailored to supplement the individual dietary needs of each participant. Foods include milk, cheese, eggs, cereal, fruit juice and peanut butter. Included foods are specifically chosen to provide high levels of protein, iron, calcium, and Vitamins A and C—nutrients that have been scientifically shown to be lacking or needed in extra amounts in the diets of the WIC-eligible population. These five nutrients—plus calories and other essential nutrients provided by the WIC food prescription—are critical for good health, during periods of growth and

[102] Dr. G.A. Benson, 327/97 AC at 2.

[103] Gillmeister's analysis at 6–7 (sic) also indicates that southern retail costs are not reflecting these market conditions.

[104] Prices announced for Market Order 1, Zone 1 prices: January—$14.85; February—$14.58; March—$15.18; April—$15.70; May—$15.73.

[105] Wellington, Appendix to 12/19/96 HT Testimony, Table 1.

[106] Gillmeister comment, 3/31/97 at 8.

[107] RC 4/9/97.

development. Milk and other dairy products play a large and important role in every participant's food package. WIC also distributes coupons for fresh produce—redeemable at local farmers' markets—in conjunction with State Departments of Agriculture.

WIC is a prevention program designed to influence lifetime nutrition and health behaviors. Ongoing nutrition education—the centerpeice of WIC—is designed to ensure that program participants continue to make healthy choices at the grocery store even when they are no longer eligible.

WIC Works

WIC is widely acknowledged to be effective in the prevention of immediate health problems and in the improvement of long-term health outcomes. More than 70 evaluation studies have demonstrated the effectiveness of WIC and documented medical, health and nutrition successes for women, infants, and children:

- Women participating in the WIC Program have improved diets, received prenatal care earlier and have improved pregnancy outcomes
- Infants born to WIC mothers have better birth weights, larger head size, and are less likely to be premature
- WIC infants and children consume more iron, vitamin C and other nutrients, resulting in improved growth and nutritional status
- Children enrolled in WIC are more likely to have regular medical care and immunizations, and demonstrate better cognitive performance
- WIC families buy more nutritious foods than non-WIC families.

And WIC saves money! Studies have also shown that WIC *is* cost effective. Every WIC dollar spent on pregnant women produces $1.92 to $4.21 in Medicaid savings for newborns and their mothers.

How WIC Works

The WIC Program is a Federally funded program carried out according to provisions of the Federal Child Nutrition Act. The Program is funded through the Food and Consumer Service of the United States Department of Agriculture (USDA).

The Program is administered on the local level by State WIC Programs in the Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, the Vermont State Departments of Public Health (the States). State funds are also provided in Massachusetts. Participants are issued WIC checks or vouchers at local agencies for WIC authorized foods. The checks or vouchers—which do not have a predetermined value—are redeemed at authorized retail stores at current store prices in accordance with posted prices. The checks are processed through the banking system for reimbursement, except in New Hampshire where vouchers are paid through a state accounting system. Prepayment edits are performed on each check to ensure that specific food purchasing, pricing and payment requirements are met.

The average number of women and children provided WIC benefits and services in August, 1996 in the New England States was 212,760—individual State WIC participation was: Connecticut 47,673, Massachusetts 99,643; Maine 20,243; New Hampshire 14,700; Rhode Island 17,360; and Vermont 13,141 (Final August, 1997 FSC 298 Reports). These numbers do not include infants also served by the WIC Program.

WIC is not an entitlement program. As such, the number of participants that WIC is able to serve at any time is dependent upon availability of funds from Federal and State sources, and the costs of WIC food items. The national appropriation for WIC is capped by Congress. The amount of USDA funding each State received is determined through complex formulae taking into account such factors as the number of people served and the funding level of the previous year. The grant determines the number of people who can be serviced—not the number of people in need.

Since the amount of funds is fixed, any increase in the price of WIC foods has the effect of reducing the number of women and children the available grant dollars can serve. USDA estimated that there are 9.4 million women, infants, and children in the US who meet WIC's income eligibility guidelines (185% of the Federal poverty level.) The national WIC fiscal year 1997 Federal appropriation is approximately $4 billion. This sum would serve only about 5.5 million at full retail prices, about 60% of the eligible persons.

All the States have instituted measures to stretch food funds to the maximum, including restrictions on container size, brands and product price, requiring least expensive brands, competitive store selection procedures, and manufacturers' rebates on infant formula and infant cereal. Nationally, these measures have brought over $1 billion in savings, which are then used to provide services to an additional 1.9 million needy mothers and children. In New England, over 75,000 women and children receive WIC services as a direct result of these cost savings measures, the most significant of which are the result of cooperative projects of State WIC directors working together on an interstate basis.

Still, more than 20% of eligible women and children remain unserved. WIC's current funding is estimated to be $100 million short for this year, with several States reducing caseloads. Funding prospects for next year are not any better, and State WIC programs in New England are not eligible to receive funding to offset the impact of an Over-Order Price Regulation.

As such, it is imperative that WIC's funds be held harmless from adverse impact due to a Regulation.

The WIC Program and the Milk Over-Order Price Regulation

The WIC Program recognizes the important role that farms and farmers play in New England, including ensuring an ongoing supply of fresh milk at competitive prices, keeping important industry—and jobs—in our area, and providing open space that increases quality of life for all New England residents. The WIC Program also understands the need for dairy farmers' relief.

WIC is a major purchaser of locally produced dairy products in the New England region. Because, however, WIC recognizes the importance of dairy products at critical times of child development, and therefore, must continue its milk purchases, the Program must be concerned with the fact that food cost increases have a direct, inverse effect on the number of participants WIC is able to serve. An increase in milk prices is of particular concern because of the large quantity of milk WIC purchases each month.

Milk purchases are some 35% of WIC food dollars spent by participants. The number of quarts of Class 1 fluid milk purchased by WIC participants in New England in August 1996 was 3,779,015, which represents approximately 3.7% of the total amount sold by New England producers in the Region. WIC Class 1 fluid milk purchases in quarts by State were: Connecticut 1,100,000; Massachusetts, 1,481,163; Maine 457,852; New Hampshire 230,000; Rhode Island 300,000; and Vermont 210,000.

Given current WIC participation levels, a 1¢ per quart wholesale price increase in Class 1 Fluid milk reflected at the retail level would translate into an increase in monthly WIC program expenditures of $37,790 for New England as a whole. This increase would necessitate a decrease in monthly program funded participation of 1,260. A 5¢ per quart milk retail price increase would result in an increase in monthly

WIC expenditures of $189,950 and a participation decrease of 6,302.

In order to maintain services to eligible persons, without compromising the nutritional health effectiveness of its food benefits if food costs rise, WIC managers must achieve offsets to increased food benefit expenditures and use those offsets to serve a significant portion of the eligible women and children in need. Further, if the States in New England must reduce or limit participation levels due to higher Class 1 fluid milk costs, there will be negative impact on Federal WIC funding to the New England Region—and on the amount of milk purchased.

As important, low income women and children who WIC is not able to serve because of increased food costs will not receive the essential medical, health and nutritional benefits of WIC participation. It is critical, then, that the intended benefits to the regional economy and the continuation of dairy farming in New England not accrue at the cost of a significant risk to maternal and child health stemming from Regulation-related costs to WIC.

Retail Price Impact of An Over-Order

The Northeast Interstate Dairy Compact enables participating States collectively to regulate the New England farm price for Class 1 fluid milk, thereby enhancing and stabilizing dairy farmer income. This Regulation may have the effect of increasing the price paid for Class 1 fluid milk by WIC participants at retail stores, if the regulated farm price increase translates directly into an increase at the retail level. Other goals are to stabilize processor and retailer costs and consumer prices.

Concomitantly, the findings of Hansen et al [108] with regard to the variability of milk farm prices and asymmetric price transmission are the basis for the theory that an Over-Order Price Regulation of Class 1 fluid milk which brings about stable farm prices for Class 1 fluid milk will result in price stability—and potential price decreased—in Class 1 milk at the retail level for consumers over a period of time. Testing this concept, presented by US Senator Patrick Leahy of Vermont in public comment before the Northeast Dairy Compact Commission, would appear viable with regard to the impact of a Regulation on consumer milk prices.

[108] Hahn et al, ''Determinants of the Farm-to Retail Milk Price Spread'', Agriculture Information Bulletin #693, March 1994.

Demonstration Period and Continuing Assessment of Impact

The New England State WIC Programs understand that the Compact is considering an Over-Order Price Regulation on Class 1 fluid milk for a specific period of time. The State directors believe it appropriate that any initial Regulation be in effect for a limited period, such as six months. A potential outcome of such a demonstration could provide evidence which supports that milk farm price stability due to a Regulation will result in price stability, and perhaps decreases and related savings, on Class 1 fluid milk purchases by consumers—including WIC participants—over time.

To measure and document the impact of a Regulation, the Commission will need to develop systems and methodologies to gather, track and analyze Class 1 fluid milk retail price data in order to accurately assess and evaluate any Regulation-related adverse or beneficial impact on costs to consumers and WIC, and to make related adjustments to assure that the public interest is served and consumers and the WIC Program and its participants are protected. Such an analytical framework should include information which is appropriate to milk purchasing and pricing at both the New England Regional and individual State levels—including each State's WIC programs—comprising representative samples of market areas and retail store types, proportion of sales by package size (quarts, half falls and gallons), and the degrees to which retail price fluctuations differ for package sizes in relation to each other, since data reflect WIC operations and purchasing patterns in each State. WIC participants often purchase 2 half gallon containers, and the majority do not have ready access to supermarkets, especially for frequent purchase of a perishable product such as milk.

As important, analysis should include development of a baseline by which changes over time will be measured, as well as evaluation of the relationship between changes in the Regulation and Class 1 fluid milk prices at retail levels over time and the cost impact to WIC. WIC does not specify the fat content of milk purchased. Tracking and measuring product differentials based on fat content; therefore, it is not necessary to any WIC cost impact methodology.

Post Demonstration Reimbursement System

Given such analysis and evaluation and sufficient evidence, Commission reimbursement to WIC could be then based upon the Over-Order Price Regulation and—specifically, on the amount of any portion of the retail cost for Class 1 fluid milk to WIC attributable to the Regulation which would encompass and respond to individual state WIC programs.

Demonstration Period Reimbursement System

WIC recognized, however, that the theory and data which may justify the adoption of a demonstration period Regulation does not provide demonstrated, proven assurance that there would be no cost increase to WIC on its Class 1 fluid milk purchases. Notwithstanding any public interest or other justification for a Regulation, in the absence of such current evidence that a Regulation would be either cost neutral or beneficial to WIC's present year funding, the Commission should provide a way to protect and hold harmless the WIC Program—and its participants—in the New England States from potential increases in the Class 1 fluid milk retail price during a period of a demonstration Over-Order Price Regulation, for at least the period of any demonstration Regulation. It is clearly a part of the public interest under any Regulation to protect WIC's limited funds and the full number of women and children WIC would otherwise serve. WIC cannot support a Regulation which would leave women's and children's health and nutritional status at risk because appropriated WIC funds were diverted to pay higher milk prices, rather than remaining with the WIC Program to provide benefits to participants.

As such, the State WIC Programs in New England propose a method by which the WIC Program will be held harmless from any impact related to a demonstration of a Compact Over-Order Price Regulation for Class 1 fluid milk. The Commission would reimburse each respective State WIC Program. The amount of reimbursement would be based on (1) the quantities of milk purchased with WIC checks and (2) the amount of any Compact Over-Order Price Regulation.

This would allow the Commission to implement a Compact demonstration Regulation, providing essential relief to dairy farmers, and WIC could continue to serve the maximum number of participants in each State allowed by the grants during an Over-Order demonstration. This would also allow the Commission a period of time to develop a more finely attuned analysis of the impact of the Regulation, and the develop methods to most accurately

ascertain any cost to WIC and the most appropriate reimbursement levels.

The principles of the interim mechanism proposed by the State directors are:

1. The Commission should establish a Reserve Account, to assure that funds are on hand for timely reimbursement by the Commission to the States. This account will be funded from the Compact over-order price regulation based on the recent percentage of total milk sold in New England purchased by WIC participants.

2. Any Commission Over-Order Price Regulation in a given month will result in a cent for cent reimbursement for Class 1 fluid milk paid for by each State WIC Program in that month. The amount of reimbursement will be based on the quantities of milk actually paid for by each WIC state. Funds in the Reserve Account will only be drawn by individual States in proportion to the Over-Order Regulation. Unused funds would return to the Commission.

3. Each State WIC Program will invoice the Commission on a monthly basis for reimbursement due. When the refund amounts are small, individual States may elect to bill up to 3 months in one invoice to avoid unnecessary administrative costs for both parties.

Formal Agreement

Implementation will take place under the terms and conditions of a formal agreement between the Commission and the States, entered into by the State WIC Programs acting as a single entity. Such an agreement must contain the above provisions for interim reimbursement determination and procedures, continuing assessment of impact, how the parties will change to any post demonstration reimbursement system, conditions for mutual agreement for modifications to the agreement, term of the agreement and conditions for mutual or either party termination prior to expiration of the agreement.

The above proposal by the State WIC Programs in New England and any subsequent agreement are subject to approval by the Food and Consumer Service of the USDA. The State WIC Programs will collaborate with the Compact Commission and USDA Food and Consumer Service to develop and implement agreement provisions and operating procedures for any reimbursement system which meet the requirements of Compact legislation and Federal WIC guidance, rules and regulations.

Public Interest Finding—Summary Analysis

In view of this comprehensive marketwide analysis, the Compact Commission concludes that Compact Over-order Price Regulation in the amount of $16.94, for six months' duration, will ensure the ''public interest'' is served in the manner contemplated by the finding analysis under this section. The stated amount represents a limited market adjustment that accounts for its potential impact on all levels of the market, from farm to retail.

As noted throughout the analysis under this and the previous finding section, the Compact Commission has accounted for a number of potential market impacts in fashioning this initial, limited regulation. Most particularly, the Commission is concerned about the potential for market dysfunction in the wholesale market, and with regard to unanticipated impacts on consumer prices.

The Commission has concluded that the regulation should not adversely affect the wholesale market and should, indeed, have a positive impact on retail prices. Yet the Commission has purposefully limited the duration of the initial regulation to ensure against unanticipated consequences. As a final safeguard against unanticipated, adverse consequences, the Commission has acted to ''hold harmless'' the WIC program, despite its conclusion of the remoteness of such unanticipated consequences occurring.

The Compact Commission concludes further that the limited duration of this initial regulation ensures that its impact across markets can be carefully monitored and evaluated from the outset and then reconsidered as soon as a record has been established. Accordingly, the Commission will attempt specifically to monitor and assess the pattern of raw product supplies from New York and New England farms and the movement of packaged milk into the market from plants outside the region, as well as the impact of price regulation on retail prices, including the school lunch program, and the WIC program.[109]

III. Finding

Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

The Compact Commission's responsibility to consider the public interest with respect to the non-price aspects of regulation are evident in two areas: First, as required by Compact Article IV, Section 9(f), the Commission has acted to insure that its regulation does not create an incentive for dairy farmers to produce additional, surplus supplies of milk, and second, the Commission's regulation is uniform and equitable and does not unduly distort traditional markets and marketing channels.

1. Surplus Production

Compact Requirement

Compact Section 9(f) provides that ''when establishing a Compact over-order price, the Commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk.''

Compact, Article IV, § 9(f).

Accordingly, the Compact Commission sought comment on:

> The appropriate, necessary and feasible, action to take, as required by the Compact, to ensure that Compact Over-order Price Regulation does not result in additional supplies of milk.[110]

The Commission concludes that specific action is not necessary at the present time in light of the limited duration of the price regulation established by this rule. The Commission draws this conclusion from actual and projected data of regional and national production levels,[111] which indicate it is most unlikely that additional supplies of milk will be produced by New England as a region. The Commission also concludes from the testimony of farmers about their production planning decisions that it is unlikely individual farmers will make decisions to increase production based upon imposition of this price regulation.

The record contains abundant evidence demonstrating that farmers plan their activities based on the anticipated long-run rather than short-range changes in market structure. As cited previously, one dairy economist

[109] In reply comment, John Ghiorzi, Regional Director, supplemental Food Programs, Northeast Region, USDA, suggested that the demonstrational nature of the initial regulation would be better served if the initial period were eight or twelve months instead of six months. The Commission acknowledges this point. The Commission has determined still that a useful empirical record can be developed in six months', and that the relative efficacy of this record must be considered along with the other factors at issue in determining the proper duration of the initial regulation. The Commission has accordingly settled upon six months as the proper length of time.

[110] 62 CFR 12252.

[111] See discussion, infra, of CCC purchase requirement.

testified that price fluctuations and market instability ''makes it very difficult for farmers to effectively plan and make the type of investment necessary to position themselves for the future.'' [112] Jim Jenks, a dairy farmer from Vermont, echoed these sentiments. He testified, in essence, that the instabilities in the prices and in the market structure made such an investment too risky of a proposition to pursue. ''[I]f we're going to make a good decision with respect to putting my family's equity on the line, we need to know something about the stability of our markets and our future.'' [113]

Similar sentiments were expressed by Charlie Telly, a dairy farmer from Massachusetts. ''It is difficult for me to plan out—to financially plan out my future three, five or ten years in advance because of the uncertainty I face each month with the ever changing milk price.'' [114]

Combined with the statistical data of the lack of probability of region-wide production increases, this individual testimony leads the Commission to conclude that a price regulation of limited duration likely would not affect production behavior within the meaning of Section 9(f).[115]

Requirement of Enabling Legislation

Pub. L. 104–127(5) states that:

> [b]fore the end of each fiscal year that a Compact price regulation is in effect, the Northeast Interstate Dairy Compact Commission shall compensate the Commodity Credit Corporation for the cost of any purchases of milk and milk products by the Corporation that result from the projected rate of increase in milk production for the fiscal year within the Compact region in excess of the projected national average rate of the increase in milk production, as determined by the Secretary [of Agriculture].

7 U.S.C. sec. 7256(5). Accordingly, the Compact Commission requested comment on:

> The most appropriate means to account for the Compact Commission's responsibility to reimburse the Commodity Credit Corporation (CCC) for CCC purchases attributable to an increase in milk production in the New England region above the national average rate of increase.[116]

Although the comments received were few in number, they were sufficient to permit the Commission to address this issue.

For example, Wellington et al indicated the view that the appropriate response for the Commission was simply to monitor production levels and take action only if current circumstances changed markedly.[117] The comment is based on the assertion that the rate of increase in regional production is unlikely to exceed the rate of increase in national production. In the event of an unexpected change in circumstances, these commenters suggested a plan for the Commission to retain funds sufficient to cover any CCC purchases.

Statistical data and projections support the position set forth by these commenters. According to statistical data submitted, the national production average increased at a rate of 0.8768 percent between 1991 and 1996.[118] Production in the region increased 0.7121 percent over the same five-year time period.[119] According to projections, national production in1997 is expected to increase at a rate of between 1 and 2.07 percent. Regional production, however, for 1997 is projected to increase at a rate of only 0.6 percent, a rate that is significantly lower than the proposed projected national rate of increased production.[120]

The Commission notes that the CCC made no purchases of surplus milk in fiscal year 1996 or 1997. Therefore, in light of the comments submitted, the Commission agrees that action that is appropriate and necessary under these circumstances is presently limited to monitoring. The Commission concludes further, however, that it must be prepared in case production increases in an unexpected manner, and CCC purchases occur.

Accordingly, for each month price regulation is in place, in consultation with the United States Secretary of Agriculture, the Compact Commission will monitor the regional and national rates of production to determine whether the regional rate of increased production is within 0.25 percent of the national rate of increased production. If production does increase within this range, then for each such month, the Commission will estimate the potential cost of CCC surplus purchases of surplus which might occur should the rate of regional rate of increased production exceed the national rate. The Commission will retain a portion of the proceeds of the price regulation sufficient to cover such estimated cost, as necessary.

After the date of termination of the Compact Over-Order Price Regulation, if the Commission has retained any proceeds of the price regulation and no compensation has been made to the CCC for surplus purchases, the Commission will provide pro rata refunds to all pooled producers. The amount of each producer's refund will account for the marketing's of milk by each producer and the regulated price for such milk in effect for each month in which proceeds were retained.

If, after the date of termination, compensation has been made to the CCC and proceeds of the price regulation still remain, the Commission will provide refunds as follow: (1) A pooled producer shall become eligible to receive a refund by submitting to the Commission documentation that the producer did not increase marketing's of milk during the time that the price regulation was in effect as compared to the same period during the previous calendar year. Such documentation shall be filed with the Commission not later than 45 days after the date of termination of the over-order price regulation. (2) The Commission shall calculate the amount of refund to be provided to each eligible producer by taking into account the total amount of retained proceeds, the total marketing's of milk by all producers eligible for refunds, and the total amount of marketing's by each eligible producer.

Finally, the Commission notes, in accordance with 7 U.S.C. 7256(b)(5), that it is not required to take any action with respect to the CCC prior to its promulgation of a price regulation.

2. Technical Regulation

As described in the discussion on the potential impact of price regulation on the wholesale market, the Commission is most concerned that the price regulation established under this rule not cause market distortion. The Commission concludes that the technical regulation will avoid any such distortions.

The Commission's regulation is uniform and equitable, and will have a neutral impact on existing markets and marketing channels, other than operation of the regulated price. Assurance of this neutral impact promotes the public interest by preventing adverse consequences attributable to market distortions. The Commission has taken the following steps to insure the protection of the

[112] Smith, 12/17/96 HT at 38.

[113] Jenks, 12/17/96 HT at 153.

[114] Telly, 12/19/96 HT at 123.

[115] The rule's intended benefit regarding the maintenance and stabilization of the milkshed relates to promoting the viability of farming units rather than the promotion of increased production. It is expected that the rule will promote this benefit, despite its limited duration, by serving as a basis for existing producers to remain in production.

[116] 62 CFR 12252.

[117] 3/31/97 WC at 10–11.

[118] National Agricultural Statistics Service, Milk Production Summary.

[119] New England Agricultural Statistics, 1995–1996, ''Milk Production'', page 68.

[120] Northeast Regional Dairy Outlook Conference, November 6, 1996; Milk Production Worksheet and Food and Agricultural Policy Research Institute Staff Report #1–96, page 86.

public interest in this manner by carefully considering the following issues:

1. Proper construct of the definition of *pool plants* and *partially regulated plants* subject to regulation of the Compact. A *pool plant* is defined under Section 2(6) as *any milk plant located in a regulated area.* A *partially regulated plant* is defined in Section 2(7) as *a milk plant not located in a regulated area but having Class I distribution within such area, or receipts from producers located in such area.* Section 2(5) defines a *regulated area* as *any area within the region governed by and defined in regulations establishing a compact over-order price or commission market order.* Section 9(d) of the Compact establishes the Commission's authority to establish the minimum price for milk to be paid by pool plants, partially regulated pool plants and all other handlers receiving milk from producers located in a regulated area.[121]

2. Assuring that that Class I sales outside the New England region made by new England based plants or pool plants, are not subject to the regulation, through the use of the so-called ''competitive credits'' authorized by Section 10(4) of the Compact.

3. Providing for equitable distributions to producers shipping to pool plants and partially regulated plants. See Compact Section 9(d).[122]

4. Assuring the regulation does not disrupt the traditional pattern of raw product supply from New England and New York, and the existing market supply of packaged milk products. These issues are addressed comprehensively throughout the technical regulation.

5. Assuring complimentary operation of the Compact with the Federal Milk Market Order Program. The Compact's Statement of Purpose expressly declares this purpose. The technical regulation is expressly based on this principle. The Commission will also be utilizing the assistance of the Milk Market Administrator on an ongoing basis, as authorized by 7 U.S.C. § 7256(6), to ensure such efficient operation.[123]

Finally, the Compact Commission notes that one commenter argued that the Commission should regulate all classes of milk and not just Class I fluid milk (HT 177 12/19 Turner). The Commission's authority, however, is expressly limited by statute and by the Compact to the regulation of Class I fluid milk. *See* 7 U.S.C. § 7256(2); Compact, Art. IV, § 9(b).

IV. Administrative Assessment

Article VII, § 18(a) of the Compact provides that:

> if regulations establishing an over-order price * * * are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the Commission's ongoing operating expenses.

In accordance with this section, the Commission determined that this regulation will cost $400,000 to administer for its six month duration. Based on a projected total utilization of 1.25 billion pounds of Class I milk in the Compact region during this period, an assessment in the amount of $0.032 per cwt will be imposed. The funds will be held in an operating expense reserve account.

V. Required Findings of Fact

Pursuant to Compact Art. V. § 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) That, for purposes of this initial regulation, a level of price in the amount of $16.94 will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.[124]

List of Subjects in 7 CFR Parts 1300, 1301, 1303, 1304, 1305, 1306 and 1307

Milk.

For the reasons set forth in the preamble, the Commission establishes in title 7 of the Code of Federal Regulations a new chapter XIII to read as follows:

CHAPTER XIII—NORTHEAST DAIRY COMPACT COMMISSION

Part

1300 Over-order price.
1301 Definitions.
1303 Handlers reports.
1304 Classification of milk.
1305 Class price.
1306 Compact over-order producer price.
1307 Payments for milk.
1308 Commission assessment.

PART 1300—OVER-ORDER PRICE REGULATIONS

Sec.

1300.1 Compact Commission.
1300.2 Continuity and separability of provisions.
1300.3 Handler responsibility for records and facilities.
1300.4 Termination of obligation.

Authority: 7 U.S.C. 7256.

§ 1300.1 Compact Commission.

(a) *Designation.* The agency for the administration of the Pricing Regulation shall be the compact commission.

(b) *Powers.* The compact commission shall have the following powers:

(1) Administer the pricing regulation in accordance with its terms and provisions;

(2) Make rules and regulations to effectuate the terms and provisions of the pricing regulation;

(3) Receive and investigate complaints of violations;

(4) Recommend amendments.

(c) *Duties:* The compact commission shall perform all the duties necessary to administer the terms and provisions of the pricing regulation, including, but not limited to the following:

(1) Employ and fix the compensation of persons necessary to enable them to exercise their powers and perform their duties:

(2) Pay out of funds provided by the administrative assessment all expenses necessarily incurred in the maintenance and functioning of their office and in the performance of their duties;

(3) Keep records which will clearly reflect the transactions provided for in the pricing regulation;

(4) Announce publicly at their discretion, by such means as they deem appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:

(i) Made reports required by the pricing regulation;

(ii) Made payments required by the pricing regulation; or

[121] One commenter, in effect, challenged the Commission's authority to rely upon the provision in § 9(d) of the Compact which permits the Commission to regulate such ''partially regulated pool plants.'' Vetne, 3/31/97 AC. The Commission disagrees with this legal conclusion of the commenter.

[122] One commenter indicated the Commission should include all producers supplying partially regulated plants, without regard to the relative volume of milk sales by such plants in the Compact region. Marcus, 12/19/96 HT at 92. The Commission concludes that this approach would cause undue distortion of the outside markets, and declines to adopt it.

[123] One commenter described the need for a butterfat adjustment in the regulation. Vetne, 3/31/97 AC. This necessary adjustment is already provided for and established in the structure of the underlying federal Order.

[124] Whether the terms of the proposed regional order are approved by producers as provided in section thirteen, as required by finding 4 of this section, is contingent on final action by the Commission and the consequent conduct of a referendum.

(iii) Made available records and facilities as required pursuant to § 1300.3;

(5) Prescribe reports required of each handler under the pricing regulation. Verify such reports and the payments required by the pricing regulation by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda, of the handler, and the records of any other person that are relevant to the handler's obligation under the pricing regulation, by examining such handler's milk handling facilities; and by such other investigation as the compact commission deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the pricing regulation. Reclassify fluid milk product received by any handler if such examination and investigation discloses that the original classification was incorrect;

(6) Furnish each regulated handler a written statement of such handler's accounts with the compact commission promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(7) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information covering operation of the pricing regulation and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

§ 1300.2 Continuity and separability of provisions.

(a) *Effective time.* The provisions of this pricing regulation or any amendment to the pricing regulation shall become effective at such time as the compact commission may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The compact commission shall suspend or terminate any or all of the provisions of the pricing regulation whenever they find that such provision(s) obstructs or does not tend to effectuate the declared policy of the compact. The pricing regulation shall terminate whenever the provisions of the compact authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the pricing regulation there are any obligations arising under the pricing regulation, the final accrual or ascertainment of which requires acts by any handler, by the compact commission, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspensions or termination.

§ 1300.3 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the compact commission. If adequate records of a handler, or of any other person, that are relevant to the obligation of such handler are not maintained and made available, any fluid milk product required to be reported by such handler for which adequate records are not available shall not be considered accounted for or established as used in a class other than the highest price class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of his operations (including, but not limited to, records of purchases, sales, processing, packaging and disposition) as are necessary to verify whether such handler has any obligation under the pricing regulation and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of fluid milk product contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time and source of each receipt;

(ii) The utilization of all fluid milk product showing the respective quantities of such fluid milk product in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the compact commission deems necessary to verify or establish such handler's obligation under the pricing regulation.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operation and all facilities the compact commission finds are necessary to verify the information required to be reported by the pricing regulation and/or to ascertain such handler's reporting, monetary or other obligation under the pricing regulation. Each handler shall permit the compact commission to observe plant operations and equipment and make available to the compact commission such facilities as are necessary to carry out their duties.

(c) *Retention of records.* All records required under the pricing regulation to be made available to the compact commission shall be retained by the handler for a period of three years to begin at the end of the month to which such records pertain. If, within such a three year period, the compact commission notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding or court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the compact commission. The compact commission shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1300.4 Termination of Obligation.

The provision of this section shall apply to any obligation under the pricing regulation for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the pricing regulation shall terminate two years after the last day of the month during which the compact commission receives the handler's report of receipts and utilization on which such obligation is based, unless within such a two year period, the compact commission notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or such cooperative association, or if the obligation is payable to the compact commission, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the pricing regulation, to make available to the compact commission all records required by the pricing regulation to be made available, the compact commission may notify the handler in writing, within the two year period provided for in paragraph (a) of this section, of such failure or refusal. If the compact commission so notifies a handler, the said two year period with respect to such obligation shall not

begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the compact commission;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the pricing regulation to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Unless the handler files a petition to the compact commission to commence litigation within the applicable two year period indicated below, the obligation of the compact commission:

(1) To pay a handler any money which such handler claims to be due him under the terms of the pricing regulation shall terminate two years after the end of the month during which the fluid milk product involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the compact commission) shall terminate two years after the end of the month during which payment was made by the handler.

PART 1301—DEFINITIONS

Sec.
1301.1 Compact.
1301.2 Commission.
1301.3 Northeast Dairy Compact Regulated Area.
1301.4 Plant.
1301.5 Pool plant.
1301.6 Partially regulated plant.
1301.7 Non pool plant.
1301.8 Milk.
1301.9 Handler.
1301.10 Producer-handler.
1301.11 Producer.
1301.12 Producer milk.
1301.13 Exempt milk.
1301.14 Fluid milk product.
1301.15 Fluid cream product.
1301.16 Filled milk.
1301.17 Cooperative association.
1301.18 Person.
1301.19 Route disposition.
1301.20 Distributing plant.
1301.21 Supply plant.
1301.22 State dairy regulation.
1301.23 Diverted milk.

Authority: 7 U.S.C. 7256.

§ 1301.1 Compact.

Compact means the Northeast Dairy Compact as approved by section 147 of the Federal Agriculture Improvement and Reform Act (Fair Act), Pub. L. 104–127.

§ 1301.2 Commission.

Commission means the commission established by the Northeast Dairy Compact.

§ 1301.3 Northeast Dairy Compact Regulated Area.

Northeast Dairy Compact Regulated Area hereinafter called the *Regulated Area* means all territory within the boundaries of the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. All waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by any governmental installation, institution, or other similar establishment.

§ 1301.4 Plant.

Plant means the land and buildings, together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing or packaging of milk or milk products. The term plant shall not include:

(a) Distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants); or

(b) Bulk reload points (separate premises used for the purpose of transferring bulk milk from one tank truck to another tank truck while en route from dairy farmers' farms to a plant). If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the compact commission that the facility be treated as a reload point; otherwise it shall be a plant. The cooling of milk, collection or testing of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

§ 1301.5 Pool Plant.

Pool Plant means any milk plant located in the regulated area.

§ 1301.6 Partially Regulated Plant.

Partially Regulated Plant means a milk plant not located in the regulated area but having Class I distribution in the regulated area, or receipts from producers located in the regulated area.

§ 1301.7 Non Pool Plant.

Non Pool Plant means any milk plant that is not a pool plant pursuant to section 1301.5 and not a partially regulated plant pursuant to section 1301.6.

§ 1301.8 Milk.

Milk means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation of any other process and as defined pursuant to prevailing standards of identity.

§ 1301.9 Handler.

Handler means:

(a) Any person, except a producer-handler, who operates a pool plant;

(b) Any person who operates a partially regulated plant;

(c) Any person who operates any other plant, or a pool bulk tank unit as defined under the Federal order, from which fluid milk products are disposed of, directly or indirectly, in the regulated area;

(d) Any cooperative association with respect to the milk that is moved from farms in tank trucks operated by, or under contract to, the association to pool plants or as diverted milk to non pool plants for the account of, and at the direction of, the association. The association shall be considered as the handler who received the milk from the dairy farmers. However, the cooperative association shall not be the handler with respect to the milk moved from any farm if the association and the operator of the pool plant to which milk from such farm is moved both submit a request in writing, on or before the due date for filing the monthly reports of receipts and utilization, that the operator of the pool plant be considered as the handler who received the milk from the dairy farmer, and the pool plant operator's request states that the pool plant operator is purchasing the milk from such farm on the basis of the farm bulk tank measurement readings and the butterfat tests of samples of the milk taken from the farm bulk tank; or

(e) Any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets packaged fluid milk products received from any plant described in paragraph (a), (b) or (c) of this section.

§ 1301.10 Producer-handler.

Producer-handler means any person who, during the month is both a dairy farmer and a handler and who meets all of the following conditions:

(a) Provides as the person's own enterprise and at the person's own risk the maintenance, care, and management of the dairy herd and other resources and facilities that are used to produce milk, to process and package such milk at the producer-handler's own plant, and to distribute it as route disposition.

(b) The person's own route disposition constitutes the majority of the route disposition from the plant.

(c) The producer-handler receives no fluid milk products except from such handler's own production and from pool handlers, either by transfer of diversion.

§ 1301.11 Producer.

Producer means:

(a) A dairy farmer who produces milk in the regulated area that is moved to a pool plant or a partially regulated plant, having Class I distribution in the regulated area,

(b) A dairy farmer who produces milk outside of the regulated area that is moved to a pool plant *provided* that dairy farmer milk was moved to a plant located in the regulated area during December 1996. *Provided further:* to be considered a qualified producer, milk from the dairy farmer's farm must move to a pool plant during the current month and must have been moved to a pool plant for five (5) months subsequent to July of the preceding calendar year;

(c) A dairy farmer who produces milk outside of the regulated area that is moved to a partially regulated plant and allocated to Class I pursuant to § 1304.5. However, the term shall not include:

(1) A producer handler;

(2) A dairy farmer who is a local or state government that has non-producer status for the month under § 1301.13(c);

(3) A dairy farmer who is a governmental agency that is operating a plant from which there is route disposition in the regulated area;

(4) Dairy farmer milk received at a pool plant or a partially regulated plant which is rejected and segregated in the handler's normal operations for receiving milk and which receipts are accepted and disposed of by the handler as salvaged product rather than milk.

§ 1301.12 Producer milk.

Producer milk means milk that the handler has received from producers. The quantity of milk received by a handler from producers shall include any milk of a producer that was not received at any plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month. Such milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month, except that in the case of a cooperative association in its capacity as a handler under § 1301.9(d), the milk shall be considered as having been received at a plant in the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of the milk of the cooperative association in such capacity was moved during the current month or the most recent month.

§ 1301.13 Exempt milk.

Exempt milk means:

(a) Fluid milk products received at a pool plant in bulk from a non pool plant to be processed and packaged, for which an equivalent quantity of package fluid milk products is returned to the operator of the non pool plant during the same month, if the receipt of bulk fluid milk products and return of packaged fluid milk products occur during an interval in which the facilities of the non pool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm or similar extraordinary circumstances completely beyond the non pool plant operator's control;

(b) Packaged fluid milk products received at a pool plant from a non pool plant in return for an equivalent quantity of bulk fluid milk products moved from a pool plant for processing and packaging during the same month, if the movement of bulk fluid milk products and receipt of package fluid milk products occur during an interval in which the facilities of the pool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the pool plant operator's control;

(c) Milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer, if:

(1) The dairy farmer is a State or local government that is not engaged in the route disposition of any of the returned products, and

(2) The dairy farmer has by written notice to the compact commission and the receiving handler, elected non-producer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

(d) All fluid milk product disposed outside of the regulated area.

§ 1301.14 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than nine percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, low fat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, culture, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1301.15 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing nine percent or more butterfat, with or without the addition of other ingredients.

§ 1301.16 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skimmed milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than six percent nonmilk fat (or oil).

§ 1301.17 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary of Agriculture of the United States determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the ''Capper-Volstead Act'';

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales of, or marketing milk or its products for its members.

§ 1301.18 Person.

Person means individual, partnership, corporation, association, or other business unit.

§ 1301.19 Route disposition.

Route disposition means distribution of Class I milk by a handler to retail or wholesale outlets, which include vending machines but do not include plants or distribution points. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

§ 1301.20 Distributing plant.

Distributing plant means a processing and packaging plant.

§ 1301.21 Supply plant.

Supply plant means a plant at which facilities are maintained and used for washing and sanitizing cans and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled, or it is a plant to which milk is moved from dairy farmers' farms in tank trucks.

§ 1301.22 State dairy regulation.

State dairy regulation means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

§ 1301.23 Diverted milk.

Diverted milk means milk, other than that excluded under § 1301.11 from being considered as received from a producer, that meets the conditions set forth in paragraph (a) or (b) of this section and is not excluded from diverted milk under paragraph (c) of this section.

(a) Milk that a handler in its capacity as the operator of a pool plant reports as having been moved from a dairy farmer's farm to the pool plant, but which the handler caused to be moved from the farm to another plant, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of paragraph (a) (1) or (2) of this section have been met. Milk that is diverted milk under this paragraph shall be considered to have been received at the pool plant from which it was diverted.

(1) During any two (2) months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the month, all of the milk that the handler caused to be moved from that farm was physically received as producer milk at the handler's pool plant or at another of the handler's pool plants that is not longer operated as a plant.

(2) During the current month and not more than five (5) other months subsequent to July of the preceding calendar year, milk from the dairy farmer's farm was received at or diverted from the handler's pool plant as producer milk, and during the current month all of the milk from that farm that the handler reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant in accordance with the preceding provisions of this paragraph.

(b) Milk that a cooperative association in its capacity as a handler under § 1301.9(d) caused to be moved from a dairy farmer's farm to a partially regulated plant if the association specifically reports the movement to such plant as a movement of diverted milk, and the conditions of paragraph (b) (1) and (2) of this section have been met. Milk that is diverted under this paragraph shall be considered to have been received by the cooperative association in its capacity as a handler under § 1301.9(d).

(1) During any two (2) months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the cooperative association in its capacity as a handler under § 1301.9(d) caused milk to be moved from the farm as producer milk during the month, all of the milk that the association cause to be move from the farm was physically received at a pool plant.

(2) During the current month and not more than five (5) other months subsequent to July of the preceding calendar year, the cooperative association in its capacity as a handler under § 1301.9(d) caused milk to be moved from the dairy farmer's farm as producer milk, and during the current month all of the milk from that farm that the cooperative association in its capacity as a handler under § 1301.9(d) reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted by the association in accordance with the preceding provisions of this paragraph.

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmer's farms to partially regulated plants in excess of 35 percent in the months of September through November and 45 percent in other months, of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted milk. Such milk, and any other milk reported as diverted milk that fails to meet the requirements set forth in this section, shall be considered as having been moved directly from the diary farmers' farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk.

PART 1303—HANDLERS REPORTS

Sec.

1303.1 Reports of receipts and utilization.
1303.2 Other reports of receipts and utilization.
1303.3 Reports regarding individual producers and dairy farmers.
1303.4 Notices to producers.

Authority: 7 U.S.C. 7256.

§ 1303.1 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for such month to the compact commission, in the detail and on the forms prescribed by the compact commission as follows:

(a) Each handler, with respect to each of the handler's pool plants shall report the quantities of fluid milk products contained in or represented by:

(1) Receipts of producer milk (including the specific quantities of diverted milk and receipts from the handler's own production);

(2) Receipts of milk from cooperative association in their capacity as handlers under § 1301.9(d);

(3) Receipts of fluid milk products from other pool plants;

(4) Receipts of fluid milk products from partially regulated plants;

(5) Inventories at the beginning and end of the month of fluid milk products;

(6) All Class I utilization or disposition of milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler described in § 1301.9(d) shall report:

(1) The quantities of all fluid milk product contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler shall report bulk milk received at a handler's pool plant from a cooperative association in its capacity as the operator of a pool plant or as a handler under § 1301.9(d), if such milk was rejected by the handler subsequent to such handler's receipt of the milk on the basis that it was not of marketable quality at the time the milk was delivered to the handler's plant, and such milk was removed from the plant in bulk form by the cooperative association and was replaced in the other milk from the association. Except for purposes of this paragraph and § 1303.2(a), such milk that was so removed from the handler's plant shall be treated for all other purposes of the pricing regulation as though it had not been delivered to and received at the handler's plant.

(e) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to the handler's receipts and utilization of milk, filled milk, and milk products in such manner as the compact commission may prescribe.

(f) Any handler who operates a pool plant which has no Class I disposition and receives no milk from producers is exempted from reporting to the compact commission under this section.

§ 1303.2 Other reports of receipts and utilization.

(a) Each handler who intends to have a receipt of unmarketable milk replaced with the other milk in the manner described under § 1303.1 shall give the compact commission, at the request and in accordance with instructions of the compact commission, advance notice of the handler's intention to have such milk replaced.

(b) In addition to the reports required pursuant to paragraph (a) of this section and § 1303.1 and § 1303.3 each handler shall report such other information as the compact commission deems necessary to verify or establish such handler's oblitation under the order.

§ 1303.3 Reports regarding individual producers and dairy farmers.

(a) Each handler shall report on or before the 15th day after the end of each month the information required by the compact commission with respect to producer additions, producer withdrawals, changes in farm locations, and changes in the name of farm operators.

(b) Each handler that is not a cooperative association, upon request from any such association, shall furnish it with information with respect to each of its producer members from whose farm the handler begins, resumes, or stops receiving milk at his pool plant. Such information shall include the applicable date, the producer-member's post office address and farm location, and, if known, the plant at which his milk was previously received, or the reason for the handler's failure to continue receiving milk from his farm. In lieu of providing the information directly to the association, the handler may authorize the compact commission to furnish the association with such information, derived from the handler's reports and records.

(c) Each handler shall submit to the compact commission within ten (10) days after their request made not earlier than twenty (20) days after the end of the month, his producer payroll for the month, which shall show for each producer:

(1) The daily and total pounds of milk delivered and its average butterfat test; and

(2) The net amount of the handler's payments to the producer, with the prices, deductions, and charges involved.

§ 1303.4 Notices to producers.

Each handler shall furnish each producer from whom he receives milk the following information regarding the weight and butterfat test of the milk:

(a) Whenever he receives milk from the producer on the basis of farm bulk tank measurements, the handler shall give the producer at the time the milk is picked up at the farm a receipt indicating the measurement and the equivalent pounds of milk received;

(b) Whenever he receives milk from the producer on a basis other than farm bulk tank measurements, the handler shall give the producer within three (3) days after receipt of the milk a written notice of the quantity so received;

(c) If butterfat tests of the producer's milk are determined from fresh milk samples, the handler shall give the producer within ten (10) days after the end of each month a written notice of the producer's average butterfat test for the month. Such notice shall not be required if the handler has given the producer a written notice of the butterfat test for each of the sampling periods within the month; and

(d) If butterfat tests of the producer's milk are determined from composite milk samples, the handler shall give the producer within seven (7) days after the end of each sampling period a written notice of the producer's average butterfat test for the period.

PART 1304—CLASSIFICAITON OF MILK

Sec.
1304.1 Classification of milk.
1304.2 Classification of transfers and diversions.
1304.3 General classification rules.
1304.4 Classification of producer milk at a pool plant.
1304.5 Classification of milk at a partially regulated plant.

Authority: 7 U.S.C. 7256.

§ 1304.1 Classification of milk

All fluid milk products required to be reported by a handler pursuant to this section shall be classified as follows:

(a) Class I milk shall be all fluid milk products disposed of in the regulated area, and in packaged inventory of fluid milk products at the end of the month, except as otherwise provided in paragraphs (b), (c), and (d) of this section;

(b) Fluid Milk Products:

(1) Disposed of in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or six percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processor if the compact commission is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form:

(iii) Aerated cream, frozen cream, sour cream and sour half-and-half, sour cream mixtures containing nonmilk items, yogurt and any other semi-solid product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal

replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) All fluid milk products:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheeses of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat and butteroil;

(iii) Any milk product in dry form, except nonfat dry milk;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i)–(iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (v)(4) (i)–(iv) of this section, that are dumped by a handler. The compact commission may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use, if advance notification of such dumping is not possible, or if the compact commission so requires, the handler must notify the compact commission on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the compact commission.

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1301.14 and the fluid cream product definition pursuant to § 1301.15.

(d) All fluid milk products used to produce nonfat dry milk.

§ 1304.2 Classification of transfers and diversions

(a) *Transfers and diversions to pool plants.* Fluid milk products transferred or diverted from a pool plant to another pool plant or partially regulated plant shall be classified as Class I milk unless the operators of both plants request not to classify it Class I. In either case, the classification of such transfer or diversion shall be subject to the following conditions: The fluid milk products classified in Class I shall be limited to the amount of fluid milk products, respectively, remaining in Class I at the transferee-plant or diverted-plant.

(b) *Transfers and diversions to producers-handlers.* Fluid milk products transferred or diverted from a pool plant to a producer-handler shall be classified as Class I.

§ 1304.3 General classification rules.

In determining the classification of producer milk pursuant to § 1304.4, the following rules shall apply:

(a) Each month the compact commission shall correct for mathematical and other obvious errors all reports filed pursuant to § 1303.1 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1301.9(d) the pounds of skim milk and butterfat, respectively, in Class I in accordance with § 1304.1 and § 1304.2;

(b) The classification of producer milk for which a cooperative association is the handler pursuant to § 1301.9(d) shall be determined separately from the operations of any pool plant operated by such cooperative; and

(c) If receipts from more than one pool plant are to be assigned, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest-numbered zone for assignments to Class I milk.

§ 1304.4 Classification of producer milk at a pool plant.

For each month the compact commission shall determine the classification of producer milk of each handler described in § 1301.9(a) for each of the handler's pool plants separately and of each handler described in § 1301.9(d) by allocating the handler's receipts of fluid milk products to the handler's utilization pursuant to paragraphs (a) and (b) of this section.

(a) Fluid milk products shall be allocated in the following manner:

(1) Subtract from the total pounds of fluid milk products in Class I the pounds of fluid milk products in:

(i) Beginning inventory packaged fluid milk products;

(ii) Receipts of Class I fluid milk products from other pool plants and partially regulated plants;

(iii) Disposition of Class I fluid milk products outside of the regulated area;

(iv) Receipts of exempt fluid milk products pursuant to § 1301.13 (a), (b), and (c).

(b) The quantity of producer milk in Class I shall be the combined pounds of fluid milk product remaining in Class I.

§ 1304.5 Classification of producer milk at a partially regulated plant.

For each month the compact commission shall determine the classification of producer milk of each handler described in § 1301.9(b) for each of the handler's partially regulated plants separately by allocating the handler's receipts of fluid milk products to the handler's utilization pursuant to paragraphs (a) through (c) of this section.

(a) Fluid milk products shall be allocated in the following manner. Subtract from the total pounds of fluid milk product in Class I the pounds of fluid milk products in:

(1) Beginning inventory packaged fluid milk products;

(2) Receipts of Class I fluid milk products from other pool plants and partially regulated plants;

(3) Disposition of Class I fluid milk products outside of the regulated area;

(4) Receipts of exempt fluid milk product pursuant to § 1301.13 (a), (b), and (c).

(b) The quantity of producer milk in Class I shall be the combined pounds of fluid milk product remaining in Class I, not to exceed the total pounds of fluid milk products disposed of in the regulated area.

(c) Producer milk will be allocated pursuant to paragraph (b) of this section in the following manner:

(1) Receipts from producers located in the regulated area;

(2) Receipts of diverted pool milk;

(3) Receipts from producers not located in the regulated area shall then be assigned to any remaining Class I in the regulated area.

PART 1305—CLASS PRICE

Sec.
1305.1 Compact over-order class I price and compact over-order obligation.
1305.2 Announcement of compact over-order class I price and compact over-order obligation.
1305.3 Equivalent price.

Authority: 7 U.S.C. 7256.

§ 1305.1 Compact over-order class I price and compact over-order obligation.

The compact over-order Class I price per hundredweight of milk shall be as follows:

(a) The Class I price shall be announced pursuant to § 1305.2.

(b) The compact over-order obligation shall be computed as follows:

(1) The compact Class I price;

(2) Deduct Federal Order #1, Zone 1 price;

(3) The remainder shall be the compact over-order obligation.

§ 1305.2 Announcement of compact over-order class I price and compact over-order obligation.

The compact commission shall announce publicly on or before the 5th day of each month the Class I over-order price and the compact over-order obligation for the following month.

§ 1305.3 Equivalent price.

If, for any reason, a price specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the compact commission shall use one determined by the commission to be equivalent to the price that is specified.

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

Sec.
1306.1 Handler's value of milk for computing basic over-order producer price.
1306.2 Partially regulated plant operator's value of milk for computing basic over-order producer price.
1306.3 Computation of basic over-order producer price.
1306.4 Announcement of basic over-order producer price.

Authority: 7 U.S.C. 7256.

§ 1306.1 Handler's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1301.9(d) with respect to milk that was not received at a pool plant, as directed in this section: Multiply the pounds of Class I fluid milk products as determined pursuant to § 1304.1(a) by the compact over-order obligation.

§ 1306.2 Partially regulated plant operator's value of milk for computing basis over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk disposition in the regulated area by the operator of a partially regulated plant, as follows: Multiply the pounds of Class I fluid milk products as determined pursuant to § 1304.1(a) by the compact over-order obligation.

§ 1306.3 Computation of basic over-order producer price.

The compact commission shall compute the basic over-order producer price per hundredweight applicable to milk received at plants as follows:

(a) Combine into one total the values computed pursuant to § 1306.1 and § 1306.2 for all handlers from whom the compact commission has received at the compact commission's office prior to the 9th day after the end of the month the reports for the month prescribed in § 1303.1 and the payments for the preceding month required under § 1307.3(a).

(b) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund at the close of business on the 8th day after the end of the month;

(c) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1306.2 (a); and (d) Subtract not less than four (4) cents nor more than five (5) cents for the purpose of retaining a cash balance in the producer-settlement fund. The result shall be the basic over-order producer price for the month.

§ 1306.4 Announcement of basic over-order producer price.

The compact commission shall announce publicly on or before: The 13th day after the end of each month the over-order producer price resulting from the adjustment of the basic over-order producer price for such month, as computed under § 1306.3.

PART 1307—PAYMENTS FOR MILK

Sec.
1307.1 Producer-settlement fund.
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Authority: 7 U.S.C. 7256.

§ 1307.1 Producer-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the *producer-settlement fund*. They shall deposit into the fund all amounts received from handlers under § 1307.3, § 1307.7, and § 1307.8 and the amount subtracted under § 1306.3(d). They shall pay from the fund all amounts due handlers under § 1307.3, § 1307.7, and § 1307.8 and the amount added under § 1306.3(b) subject to their right to offset any amounts due from the handler under these sections and under § 1308.1

(b) All amounts subtracted under § 1306.3(d), including interest earned thereon, shall remain in the producer-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1306.3(b).

(c) The compact commission shall place all monies subtracted under § 1306.3(d) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

§ 1307.2 Handlers' producer-settlement fund debits and credits.

On or before the 15th day after the end of the month, the compact commission shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

(a) The producer-settlement fund debit for each plant and each cooperative association in its capacity as a handler under § 1301.9(d) shall be the value computed pursuant to § 1306.1 and § 1306.2.

(b) The producer-settlement fund credit for each plant and each cooperative association in its capacity as a handler under § 1310.9(d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of producer milk that were allocated to Class I pursuant to § 1304.4 and the quantities of route disposition in the marketing area by partially regulated plants for which a value was determined pursuant to § 1306.2(a) by the basic over-order producer price computed under § 1306.3.

(2) For any cooperative association in its capacity as a handler under § 1301.9(d), multiply the quantities of

milk moved to each pool plant by the basic over-order blended price computed under § 1306.3; and to the result add the value determined under § 1306.1.

(c) The producer-settlement fund debit or credit of any handler shall be the net of the producer-settlement fund debits and credits as computed for all of its operations under paragraph (a) and (b) of this section.

§ 1307.3 Payments to and from the producer-settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall pay to the compact commission the handler's producer-settlement fund debit for the month as determined under § 1307.2(a).

(b) On or before the 20th day after the end of the month, the compact commission shall pay to each handler the handler's producer-settlement fund credit for the month as determined under § 1307.2(b). If the unobligated balance in the producer-settlement fund is insufficient to make such payments, the compact commission shall reduce uniformly such payments and shall complete them as soon as the funds are available.

§ 1307.4 Payments to producers.

(a) On or before the 20th day after the end of the month, each handler shall make payment to each producer for the milk received from him during the month at not less than the basic over-order producer price per hundredweight computer under § 1306.3. If the handler has not received full payment for the compact commission under § 1307.3(b) by the date payments are due under this paragraph, he may reduce pro rata his payments to producers by an amount not to exceed such underpayment. Such payments shall be completed after receipt of the balance due from the compact commission by the next following date for making payments under this paragraph.

(b) If the handler's net payment to a producer is for an amount less than the total amount due the producer under this section, the burden shall rest upon the handler to prove to the compact commission that each deduction from the total amount due is properly authorized and properly chargeable to the producer.

(c) In making payment to producers under paragraph (b) of this section for milk diverted from a pool plant the handler may elect to pay such producers at the price of the plant from which the milk was diverted, if the resulting net payment to each producer is not less than the otherwise required under this section and the rate of payment and the deduction shown on the statement required to be furnished under § 1307.6 are those used in computing the payment.

(d) If a handler claims that the required payment cannot be made because the producer is deceased or cannot be located, such payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the compact commission shall make such payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) If not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the compact commission findings upon verification as provided above such payment shall be made to the producer-settlement fund and shall be held in reserve until such time as the above-mentioned proceedings have been completed or until the handler submits proof to the compact commission that the required payment has been made to the producer in which latter event the payment shall be refunded to the handler.

(f) At a partially regulated plant each handler shall make payments, on a pro rata basis, to all producers and dairy farmers for milk received from them during the month, the payment received pursuant to § 1307.3(b).

§ 1307.5 [Reserved]

§ 1307.6 Statements to producers.

In making the payments to producers required under § 1307.4, each handler and each cooperative shall furnish each producer, in addition to the information required under Federal and State regulations, a supporting statement, in such form acceptable to the commission, which shall show: The rate and amount of the compact over-order producer price.

§ 1307.7 Adjustment of accounts.

(a) Whenever the compact commission verification of a handler's reports or payments discloses an error in payments to or from the compact commission under § 1307.3 or § 1308.1, the compact commission shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 10th day of the prior month and ending with the 9th day of the current month shall be payable by the handler to the market administrator on or before the 18th day of the current month. Adjustment credits issued during that period shall be payable by the compact commission to the handler on or before the 20th day of the current month.

(b) whenever the compact commission's verification of a handler's payments discloses payment to a producer or a cooperative association of an amount less than is required by § 1307.4, the handler shall make payment of the balance due the producer not later than the 20th day after the end of the month in which the handler is notified of the deficiency.

§ 1307.8 Charges on overdue accounts.

Any producer-settlement fund account balance due from or to a handler under § 1307.3, § 1307.7 or § 1307.8 for which remittance has not been received in or paid from the compact commission office by close of business on the 18th day of any month, shall be increased one percent effective the following day.

PART 1308—ADMINISTRATIVE ASSESSMENT

Authority: 7 U.S.C. 7256

§ 1308.1 Assessment for pricing regulations administration.

On or before the 18th day after the end of the month, each handler shall pay to the compact commission his pro rata share of the expense of administration of this pricing regulation. The payment shall be at the rate of .032¢ per hundredweight. The payment shall apply to:

(a) The quantity of fluid milk products disposed in the regulated area from a pool plant for which a value is determined under § 1306.1;

(b) All receipts and beginning inventory of a cooperative association in its capacity as handler under § 1301.9(d) for the month less its ending inventory for the month; and

(c) The quantity distributed as route disposition in the regulated area from a partially regulated plant for which a value is determined under § 1306.2.

Daniel Smith,

Executive Director.

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April 28, 1997

Part V

Department of Health and Human Services

Centers for Diseases Control and Prevention

Goals for Working Safely With Mycobacterium Tuberculosis in Clinical, Public Health, and Research Laboratories; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Goals for Working Safely With Mycobacterium Tuberculosis in Clinical, Public Health, and Research Laboratories

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Request for comments.

SUMMARY: CDC requests comments concerning the updating of the Agent Summary Statement for M. tuberculosis, currently in the 3rd edition of *Biosafety in Microbiological and Biomedical Laboratories* published by CDC and the National Institutes of Health. The next edition is scheduled for the fall of 1998.

DATES: Written comments to this notice should be submitted to Vickie Rathel, Office of Health and Safety (OHS), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., MS–F05, Atlanta, GA, 30333. Comments must be received on or before June 27, 1997. Comments may also be faxed to Vickie Rathel at (404) 639–2294 or submitted by e-mail to (VIR1@CDC.GOV) as WordPerfect 5.0,5.1/.2,6.0,6.1, or ASCII files.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Jonathan Richmond, Ph.D. or Peg Tipple, MD, Office of Health and Safety, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., MS–F05, Atlanta, GA, 30333, telephone (404) 639–2453.

SUPPLEMENTARY INFORMATION: CDC is requesting comments concerning the update of the Agent Summary Statement for M. tuberculosis as published in the 3rd edition of the CDC/NIH publication, *Biosafety in Microbiological and Biomedical Laboratories.* The draft document ''Goals for Working Safely with Mycobacterium tuberculosis Complex Species in Clinical, Public Health, and Research Laboratories' presents background information for this update and is presented below for public comment. Comments or data may be submitted on the following topics (but not limited to these): Existing reports of (1) laboratory-acquired skin test conversions and infections, (2) causes of such conversions and infections, (3) biosafety practices and procedures for manipulating specimens containing M. tuberculosis, and (4) facility evaluations and recommendations for improvement, including cost estimates.

Dated: April 21, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Goals for Working Safely With Mycobacterium tuberculosis Complex Species in Clinical, Public Health, and Research Laboratories

Summary

The Mycobacterium tuberculosis complex includes four species: Mycobacterium tuberculosis, Mycobacterium bovis, Mycobacterium africanum, and Mycobacterium microti. With the exception of M. microti, all species are pathogenic for humans. The risk for becoming infected with species of the M. tuberculosis complex is high for those who work in mycobacteriological laboratories. Therefore, all cultures or specimens suspected of containing acid-fast bacilli must be manipulated in settings where specific engineering controls, administrative procedures and appropriate personal work practices ensure containment of the organism and protection of workers from exposure. When these controls and procedures are implemented and protective measures are followed, laboratorians can substantially reduce their risk for becoming infected. This report updates and expands those sections of Biosafety in Microbiological and Biomedical Laboratories (BMBL), published by CDC and the National Institutes of Health, that address precautions that must be taken to manipulate Mycobacterium species safely in the laboratory.

Introduction

CDC and the National Institutes of Health (NIH) jointly issue laboratory safety guidelines in a publication entitled Biosafety in Microbiology and Biomedical Laboratories (BMBL) (1). The BMBL is re-published, with updated information approximately every five years. It provides specific guidelines for laboratories that work with infectious organisms. The BMBL includes safety recommendations for laboratory managers and personnel who work with M. tuberculosis complex species. Because until recently there had been few changes in the techniques available to laboratorians working with M. tuberculosis, these recommendations have remained the same through the last 3 editions of the BMBL, with no significant revisions since 1981.

Recent changes in public health recommendations for use of rapid laboratory diagnostic procedures and the development of new technologies led CDC and a group of consulting laboratorians to review existing safety guidelines for working with M. tuberculosis (2,3,4). Revisions were presented and discussed at the Second National Conference on Laboratory Aspects of Tuberculosis, convened by the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) and the CDC in April 1995 (5).

This report updates and expands those sections of the BMBL that address engineering controls, administrative practices, and specific procedures for laboratorians who manipulate clinical specimens and purified cultures of M. tuberculosis, M. africanum, and M. bovis (the three species of the M. tuberculosis complex that pose an infectious hazard to personnel in clinical and research laboratories) (6).

Intended Use of This Document

This document is intended to be used in conjunction with the BMBL and the other references. Together these documents provide guidelines for persons responsible for the design, maintenance and use of laboratories doing diagnostic or research work with M. tuberculosis complex species. It is recognized that not all current TB laboratories have all of the facilities and equipment recommended, particularly for activities that should be carried out under biosafety level 3 (BL–3) conditions (1). Those laboratories should carefully review their facilities, equipment, policies and procedures to ensure that current activities are accomplished with the smallest risk to employees and others, and should proceed as quickly as possible to upgrade systems as necessary to meet the current recommendations. Those laboratories with seriously deficient facilities should discontinue high risk procedures until improvements are made.

Background

M. tuberculosis Complex in the Clinical Laboratory—Risks for Laboratory Workers

The M. tuberculosis complex species are usually transmitted by the aerosol route; percutaneous injection may lead to localized infections before dissemination. The infectious dose of M. tuberculosis is low for humans (i.e., 1–10 bacilli carried in 1–3 droplet nuclei (7,8)). Specimens considered to be potential sources for laboratory transmission are sputum, fluids collected by gastric or bronchial lavage, cerebrospinal fluid, urine, and caseous lesions in tissues (9,10,11).

The incidence of tuberculosis among persons who work with M. tuberculosis in the laboratory is three to five times greater than that among laboratory personnel who do not manipulate this bacterium (12,13,14,15). Data from one study indicate that the frequency of infection for persons who manipulate M. tuberculosis is 100 times greater than for the general population (12).

Kubica (16) described 13 separate incidents in which 80 of 291 (27%) exposed laboratorians developed positive tuberculin skin tests following specific incidents. Eight of the incidents involved poor directional airflow in the laboratory, five were associated with failures of the biological safety cabinets, one was associated with an autoclave failure, and the other was due to equipment failure. Two additional incidents of poor directional airflow in clinics resulted in 64/166 (39%) conversions.

Two reports of laboratory-acquired tuberculosis tuberculin conversions have been reported in Minnesota hospital laboratorians (17). One case of pulmonary tuberculosis (possibly due to inadequate compliance with safety guidelines) and a second laboratory-associated infection (an autoinoculation incident resulting in a granuloma) have been reported in 1995 in another hospital laboratory (18). A more recent report (19) indicates seven laboratory-acquired skin test conversions in nine diagnostic laboratories handling M. tuberculosis specimens.

Under-reporting of laboratory-acquired infections appears to be the rule, rather than the exception. Of the 15 incidents reported by Kubica, none had been previously reported in the literature; he further suggests from anecdotal reports that 8–30% of laboratories may experience tuberculin conversions (16). CDC continues to periodically receive requests to assist laboratories experiencing similar conversions, but the facilities have been reluctant to publish their experiences.

The risks to laboratory workers depend on how frequently specimens positive for M. tuberculosis are processed in the laboratory, the concentration of organisms in specimens, the number of specimens handled by an individual worker, and safety practices in the laboratory (19,20). Exposure to laboratory-generated aerosols created while performing routine procedures is the most serious of the hazards encountered by laboratory personnel (9,10,11,21,22,23). Some aerosol-generating procedures that produce droplet nuclei in the respirable range include: (a) Pouring liquid cultures and supernatant fluids, (b) using fixed-volume automatic pipettors, (c) mixing liquid cultures with a pipette, (d) preparing specimen and culture smears, (e) dropping tubes or flasks containing cultures, (f) spilling suspensions of bacilli, (g) breaking tubes during centrifugation, (h) preparing frozen sections, (i) cutting or sawing through tissue specimens that have not been fixed, and (j) homogenizing tissues for primary culture (24,25,26,27,27A).

Needle stick and other cutaneous injuries have been uncommon causes of laboratory acquired M. tuberculosis infection. However, with increasing use of rapid culture techniques (e.g., BACTEC™), recent needle stick-associated M. tuberculosis infections have been reported (19).

Until recently, blood has not been considered a source of laboratory transmission of M. tuberculosis (or M. bovis) partly because mycobacteremia is transient in immunocompetent hosts. However, with the emergence of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), mycobacteremia caused by M. tuberculosis has occurred more frequently and blood is now considered a potential source of transmission in the laboratory (29,30).

All clinical specimens suspected to be positive for M. tuberculosis must be considered potentially infectious and must be handled according to the recommended precautions for blood-borne pathogens (30) and in such a way that aerosolization is minimized (9,22,23,31).

Biosafety Levels

Microbiology laboratories are special, often unique, work environments that may pose identifiable infectious disease risks to persons in or near them. Infections have been contracted in these laboratories throughout the history of microbiology. A review of the literature on such laboratory acquired infections is included in the introductory chapter of the BMBL and in papers by Kruse and Sewell (1,9,31). The literature, along with considerable anecdotal information, suggests that most laboratory acquired infections occur when the mode of transmission is unknown (as may occur with a newly recognized pathogen), or as a result of error, accident, or carelessness in the handling of a known pathogen.

During the 1970's, in an effort to diminish the risks of infection in the laboratory, scientists devised a system for categorizing etiologic agents into groups based on the mode of transmission, type and seriousness of illness resulting from infection, availability of treatment (e.g., antimicrobial drugs), and availability of prevention measures (e.g., vaccination). The etiologic agent groupings were the basis for the development of guidelines for appropriate facilities, containment equipment, procedures and work practices to be used by laboratorians working with the various organisms. These guidelines are now referred to as biosafety levels (BL) 1–4.

BL–1

BL–1 defines conditions suitable for work involving well-characterized microorganisms not known to cause disease in healthy adult humans, and of minimal potential hazard to laboratory personnel and the environment. The laboratory is not necessarily separated from the general traffic patterns in the building. Work is generally conducted on open bench tops using standard microbiological practices. Special containment equipment or facility design is not required nor generally used. Laboratory personnel have specific training in the procedures conducted in the laboratory and are supervised by a scientist with general training in microbiology or a related science.

BL–2

BL–2 is similar to BL–1 and is suitable for work involving agents of moderate potential hazard to personnel and the environment. It differs from BL–1 in that: (a) Laboratory personnel have specific training in handling pathogenic agents and are directed by competent scientists; (b) access to the laboratory is limited when work is being conducted; (c) extreme precautions are taken with contaminated sharp items; and (d) certain procedures in which infectious aerosols or splashes may be created are conducted in a biological safety cabinet (BSC) or other physical containment equipment. There is no specification in the BMBL (1) for single-pass directional inward flow of air for BL–2. However, most microbiology laboratories also work with potentially hazardous chemicals. There are published recommendations (32) for preventing build-up of chemical vapors in laboratories; this can be accomplished by using chemical fume hood and/or having single-pass air when recirculation would increase the ambient concentration of hazardous materials.

BL–3

BL–3 is applicable to clinical, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents which may cause serious or potentially

lethal diseases as a result of exposure by the inhalation route. M. tuberculosis is representative of microorganisms transmissible by the aerosol route that are assigned to this level. Primary hazards to personnel working with these agents relate to exposure to infectious aerosols, autoinoculation, and ingestion. Laboratory personnel must have specific training in handling pathogenic and potentially lethal agents, and are supervised by competent scientists who are experienced in working with these agents.

More emphasis is placed on primary and secondary barriers at BL–3 to protect personnel in contiguous areas and in the community from exposure to potentially infectious aerosols, and to prevent contamination of the environment. The laboratory has special engineering and design features to provide a total environment aimed at the control of infectious aerosols.

The BL–3 laboratory is separated from other parts of the building by an anteroom with two sets of doors, or by access through a BL–2 area. Because of the potential for aerosol transmission, air movement is unidirectional into the laboratory (i.e., from clean areas into the BL–3 area) and all exhaust air from the BL–3 area is directed outside the building without any recirculation. All procedures at BL–3 involving the manipulation of infectious materials are conducted within BSCs or other physical containment devices. Personnel wear appropriate personal protective clothing and equipment while in the BL–3 laboratory.

BL–3 facilities have solid floors and ceilings and sealed penetrations. They are designed and maintained to allow appropriate decontamination in the event of a significant spill.

BL–3 laboratories have single pass air, i.e., non-recirculating air ventilation systems, to protect personnel. Filtration of exhaust air through high efficiency particulate air (HEPA) filters is neither required nor recommended in most situations. Single pass air that mixes with outside air allows for the rapid dilution of the small numbers of microorganisms that may be released in the laboratory.

All waste from the BL–3 laboratory must be autoclaved before being discarded into routine disposal containers.

BL–4

BL–4 is required for work with dangerous and exotic agents which pose a high individual risk of aerosol-transmitted laboratory infections and life-threatening diseases. Within work areas of the facility, all activities are confined to Class III biological safety cabinets, or Class II biological safety cabinets used by workers wearing one-piece positive-pressure body suits ventilated by a life support system. Members of the laboratory staff have specific and thorough training in handling extremely hazardous infectious agents; and they understand the primary and secondary containment functions of the standard and special practices, the containment equipment, and the laboratory design characteristics. They are supervised by competent scientists who are trained and experienced in working with these agents.

All wastes are decontaminated before leaving the BL–4 laboratory, and air is exhausted from the BL–4 area through HEPA filters.

Relationship of the BMBL BL to the American Thoracic Society Levels of Service

The current agent summary statement published in BMBL recognizes the ''levels of service'' concept for clinical mycobacteriology laboratories that was first proposed in 1967 (33) and accepted in 1983 by the American Thoracic Society (ATS)(21,34). The ''levels of service'' approach to laboratory services remains standard today, although increased workloads, new techniques, need for faster results for management of complicated cases, and economic considerations are forcing reconsideration of the concept (2,4, 5, 35, 36, 37). However, BSL recommendations are based on risks related to laboratory procedures, so if/when a laboratory changes the services it provides, laboratory activities can be re-assessed and facilities, equipment and work practices modified, if necessary, using the BMBL as a guideline.

Determining the Type of Tuberculosis Laboratory Needed for a Facility

Decisions on the type of laboratory for a given facility must be based on an assessment of the extent of tuberculosis activities that will be carried out in that laboratory. The assessment must include issues such as expected workload, personnel training and experience, risks of the various laboratory procedures, and availability of appropriate space and required equipment.

Assessment of Proficiency in the Mycobacteriology Laboratory

Although this document emphasizes appropriate facilities, equipment, and safe work practices, the laboratory workload must also be considered in deciding what to include in a new or renovated mycobacteriology laboratory.

Laboratories that receive fewer than 20 specimens per week to process for isolating, identifying, and testing for M. tuberculosis drug susceptibility are unlikely to maintain proficiency in the required procedures and would be unlikely to maintain proficiency at Mycobacteriology Level II. Usually 20 processed specimens per week will only produce an average of one M. tuberculosis isolation per week. If requests fall below this level, specimens should be sent to a laboratory that processes a larger number of specimens (5,36,37).

Assessment of Risk in the Mycobacteriology Laboratory

Specific risks associated with many laboratory activities that involve specimens and cultures of M. tuberculosis have been assessed in recent publications (22,38). These publications recommend that laboratory workers evaluate all procedures for risks related to aerosol generation and injury from contaminated sharp objects (e.g., needle sticks) and develop a strategy for safe, step-by-step manipulation of both specimens and cultures.

Recommendations for safe practices associated with specific procedures are detailed in other publications (1,22,39).

The Limited Service Laboratory

A small facility that only occasionally is asked to support the evaluation and management of possible M. tuberculosis cases may opt to package specimens for shipment to a reference laboratory. The originating laboratory will require personnel who can collect an adequate specimen and know how to handle the specimen properly. The required laboratory facility will be equivalent to the BL–2 space found in a general microbiology laboratory (1,36). Supplies for correctly packaging the specimen for shipment to the full-service laboratory must be available. See Shipment of Clinical Specimens and Cultures for more information on packaging and shipping specimens.

Some small hospital laboratories may opt to do smears for acid-fast bacilli (AFB) on inactivated specimens, then send additional specimens to a larger laboratory for culture. ''Stat'' laboratories in emergency rooms or other locations, where AFB status of a patient is urgently needed, but only the simplest equipment is available, can also be equipped to do direct AFB smears on inactivated samples. This allows prompt service and some diagnostic assistance to clinicians, without requiring a BL–3 laboratory.

The laboratory that intends to do only AFB smears on inactivated specimens will require only a BL–2 laboratory with a BSC, but will require knowledgeable personnel working under close supervision.

The Full-service Laboratory

The laboratory that provides all diagnostic services will require both BL–2 and BL–3 areas of sufficient size to accommodate all required equipment and personnel.

Facilities and Equipment

Relating Laboratory Activities to BL

Laboratory activities required for the evaluation of a patient with possible tuberculosis include: specimen collection; transport of specimens to the laboratory; verifying labels and logging in specimens; initial processing that may include transferring specimens to tubes for centrifugation; preparation, staining and reading of smears; preparation of specimens for culture; and preparation of isolates for further study, including antimicrobial susceptibility testing.

The Mycobacteriology Laboratory Facility and Equipment

The tuberculosis laboratory should be isolated from other laboratory areas (Figure 1). Access to the area should require passage through two doors equipped with self-closing devices. This may be achieved with an anteroom, by having the BL–3 isolation room accessible only from the BL–2 laboratory, or by other design arrangements (9).

The BL–2 laboratory area is where work with specimens that has a low potential for creating aerosols can be performed. A BSC is provided for working with the specimens (see Handling Specimens).

Work that may create infectious aerosols is performed in the BL–3 area. The BL–3 laboratory is also where M. tuberculosis complex species are cultured for identification, drug susceptibility testing, and other tests that require concentrated cell suspensions. Specific facility design recommendations are contained in Table 1 (1).

Air Handling in the Mycobacteriology Laboratory

The entire mycobacteriology laboratory suite should have a unidirectional negative air flow in relation to the corridor so that in case of an accident, no aerosols of infectious materials can escape into non-laboratory areas. Exhaust air must be discharged directly to the outside. Discharge from the outside exhaust must be directed away from occupied areas and air supply intakes of any building.

HEPA filtration of exhaust air is not routinely required for BL–3 laboratories. However, laboratory facility designers and managers should determine whether unusual or high risk situations are present (e.g., proximity of laboratory exhaust system outlet to air intake for patient care areas, with no way to correct problem), and make a site-specific determination on the need for HEPA filtration.

Similarly, different air pressure gradients within the laboratory are needed depending on the relative risk of the activities to be performed. For example, a ''clean room'' used for the preparation of media or other materials, is maintained at a slightly higher pressure than the BL–2 laboratory area. The ''isolation room'', or BL–3 laboratory area, is maintained negative to the BL–2 area. Thus, airflow is from the least contaminated to the most, and air is then exhausted to the outside without recirculation. Air movement can be tested with a simple indicator (e.g., a strip of tissue paper placed in a 1.5-inch by 12-inch slot in the door) or with more complex devices (e.g., magnehelic gauges) (2,9,39A,39B).

Ten to twelve exchanges per hour are recommended for laboratory facilities (39A,39B,39C).

Under ideal conditions of maximal air mixing (2), 12 changes of room air per hour will remove approximately 99% of airborne particulates in 23 minutes; in laboratories that have only six air changes per hour, 46 minutes are required to achieve 99% removal, assuming uniform mixing of air in the room. However, removal can be slowed even further by convectional mixing and by air turbulence resulting from furniture placement.

Air flow should be measured to determine the characteristic of aerosol clearance in the specific BL–2 or BL–3 laboratory. Ideal conditions for air mixing in laboratories rarely exist, and clearance may take 3–10 times longer than calculated, a factor that should be considered in determining when it is safe to reenter a laboratory after a spill.

Engineering personnel should document at least annually that the specified number of air changes occur.

Floors, Ceilings and Utilities—Building for Ease of Decontamination in Case of Spills

Interior surfaces of walls, monolithic floors and ceiling of the BL–3 laboratory should be sealed to allow for formaldehyde gas decontamination in the event of a major spill or aerosol release. All air spaces surrounding a pipe, electrical conduit, or other device that passes through a wall, floor, or ceiling should be sealed to prevent air from leaking out of the laboratory.

Biological Safety Cabinets in the Mycobacteriology Laboratory

The most crucial piece of equipment in all diagnostic mycobacteriology laboratories is the biological safety cabinet (BSC). BSCs are used at both BL–2 and BL–3.

BSC's are of several types. Class II BSCs, recommended for use in tuberculosis laboratories, provide a clean work environment, protect workers against potentially infectious aerosols, and keep infectious agents from entering the environment. A recent publication, Primary containment for biohazards: selection, installation and use of biological safety cabinets (40) details operating procedures for safely working in BSCs.

The installation of the BSC must conform to accepted specifications (41). It should be located away from doors, air-supply fans, drafts, and areas frequented by personnel (40). Improperly positioned BSCs have contributed to laboratory-associated skin-test conversions (16). A Class ll, Type A BSC that exhausts HEPA filtered air into the room is acceptable at BL–2 and BL–3 when a 12-inch or greater clearance exists above the cabinet and when the use of toxic chemicals (e.g., generation of cyanogen bromide in the niacin test) is strictly prohibited in the BSC. Thimble adaptors that loosely connect the BSC to the building exhaust system may be used.

Ensuring That Air Handling Systems and BSCs Work Properly

BSCs must be certified at least annually by personnel trained in the certification process (1,16,23,40).

More frequent BSC certification is recommended for laboratories in which operations create substantial aerosols or when dust accumulates on the HEPA filter, thereby rapidly decreasing the cabinet's efficiency. The uninterrupted operation of the BSC should be assured with a back-up source of power and, where applicable, redundant power supply to room air exhaust fans. Preventive maintenance operations that should be routine in every laboratory include daily monitoring of room and BSC air flow direction and, when present, the magnehelic gauge that measures the pressure differential across the exhaust HEPA filter (40).

Laboratory operations involving aerosolization or culture-amplified suspensions of bacilli must incorporate

additional preventive maintenance and safety checks, which can include smoke testing or other means for detecting direction of air flow and velocity. Anemometer readings should be taken before working with new configurations of instruments and devices in the BSC. Laboratorians working in BSCs must keep air intake and exhaust grilles free, avoid overcrowding of the cabinet, and understand the operational parameters of the cabinet (38,40). Where aerosolization of large volumes of culture-amplified fluids can occur, a Class III BSC may be used to ensure total containment of droplet nuclei (1,40).

Centrifugation and Other Aerosol-producing Procedures

As a rule, all procedures that can lead to aerosol production must be conducted inside a BSC in a BL–3 laboratory as specified in the BMBL (1). Centrifuges present unique problems for aerosol containment. Table-top centrifuges placed inside BSCs disrupt the cabinet's containment airflow. Were a tube to break or leak, aerosolized material would be expelled into the room with considerable force. Whenever (potentially) infectious materials are centrifuged, bioaerosol-containing equipment should be used.

At a minimum, tubes should be equipped with O-rings. Floor-standing centrifuges that have bioaerosol containment heads are currently available. Centrifuges can also be placed in secondary containment devices (especially constructed cabinets/enclosed areas) equipped with HEPA-filtered exhaust air systems (23,38).

New Growth Detection and Molecular Biological Techniques

After two decades with relatively few changes, new techniques and new equipment are being added to tuberculosis laboratories. Biosafety issues related to newer equipment have been reviewed recently (22). As additional equipment and procedures become available, and they are considered for inclusion in clinical and research laboratories, a risk assessment should be done, reviewing manufacturer's specifications and warnings, adequacy of existing facility for new equipment, need for revision of existing procedures, and personnel training. As with older equipment, potential for aerosol generation and risk of needle stick or other injury should be specifically addressed.

Policies and Procedures in the Mycobacteriology Laboratory

Handling Specimens—Tasks and Risks

Risks associated with many laboratory activities that involve specimens and cultures of M. tuberculosis have been assessed in recent publications (22). These publications recommend that laboratory workers evaluate procedures for relative risk of aerosolization and develop a strategy for safe, step-by-step manipulation of both specimens and cultures. The guidelines published in the BMBL (1) and here are considered to be adequate, based on current knowledge and standard practice. However, laboratory directors should routinely evaluate the risks and adjust the level of safety upwards as indicated.

Specimen Collection

Collection of appropriate and adequate specimens and prompt transport of those specimens to the laboratory are critical first steps in the laboratory evaluation of the tuberculosis patient. These procedures involve very significant bio-containment and personnel protection issues. Guidelines for these activities are included in (2,9,10,11).

Specimen Receipt and Initial Processing

Sputum specimens collected from patients who have clinical signs of tuberculosis (2,36) are sent to the laboratory in closed containers that are opened in a BSC. Transfer of patient information, labeling containers, and other paperwork can be done safely by trained laboratory personnel at BL–2.

AFB Smears

The first step in the diagnostic process is to determine if the specimen contains AFB. In most U.S. laboratories, smears are prepared—either directly from specimens (e.g., sputum judged likely to have large numbers of AFB), or after digestion, decontamination of other microorganisms in the specimen, and centrifugation to concentrate the mycobacteria in the specimen. Use of rapid-detection systems may eventually reduce the need to make smears, but may pose a new set of potential hazards.

Direct Smears

Direct smears are useful only for the examination of specimens likely to contain large numbers of AFB (e.g., sputum). Because of the potential for aerosol generation, specimen containers must be opened and direct smears prepared and air dried in a Class I or II BSC. Smears may be dried and heat-fixed by placing the slide on a warmer in the BSC and heating it at 65–75° C (149–167° F) for at least 2 hours. Heat-fixed smears may contain viable tubercle bacilli (Allen), but they are not easily aerosolized if dried on a slide. Personnel may remove fixed slides from the BSC and stain them without wearing respiratory protective devices or following special engineering controls (i.e., in the BL–2 laboratory). Stain reagents for both light and fluorescence microscopy contain phenol, which kills tubercle bacilli during the staining process (42).

Smears From Concentrated Specimens

Specimens concentrated by centrifugation may contain very large numbers of AFB. These specimens may be handled in one of two ways.

Use of Tuberculocidal Agents To Allow Processing of Concentrated AFB Smears in the BL–2 Laboratory

A working group of the 1995 ASTPHLD/CDC Conference (5) affirmed that if AFB smears are made at BL–2, specimens must have been treated with a tuberculocidal disinfectant. Specimen containers must be opened and disinfectant added in the BSC. Specimens treated with an equal volume of 5% sodium hypochlorite solution (i.e., undiluted household bleach) for 15 minutes (43,44) may be centrifuged and subsequently handled outside the BSC at BL–2. Other tuberculocidal agents may affect staining characteristics; if such agents are used, the laboratory must confirm that the stain result is accurate. The major disadvantage to this method is that the treated specimen cannot subsequently be used for cultures.

Preparation of Concentrated AFB for Smear and Culture in the BL–3 Laboratory

Sputum specimen containers must be opened, chemicals for digestion added, and the processed specimen placed in appropriate centrifuge tubes in a BSC.

Centrifugation of diagnostic specimens suspected of containing live tubercle bacilli must be done in a BL–3 laboratory. Centrifuge tubes must be placed into rotors or biocontainment cups designed to contain aerosols that will be generated if a tube leaks or breaks; tubes must be removed from the cups only in the BSC. O-rings on the centrifuge caps must be examined daily to assure that the seal is intact and that the integrity of the unit is maintained; cracked or otherwise faulty O-rings must be replaced before equipment is reused. (23,38) Concentrated specimens should be returned to a properly maintained and certified BSC (40) (see Biological Safety Cabinets) in the BL–3 laboratory. In the BSC the centrifuge

tubes can be removed from the safety cups, and smears can be made or primary cultures can be inoculated. As with direct smears (above), smears made from concentrated material may be dried and heat-fixed by placing the slide on a warmer in the BSC and heating it at 65–75° C (149–167° F) for at least 2 hours.

AFB Cultures—Conventional Techniques

BL–3 practices, containment equipment, and facilities are required for manipulating cultures known or suspected to be positive for AFB.

In addition to centrifugation, other aerosol-generating procedures such as blending, mixing, pipetting, inoculation of media, and sonication must be performed in a BSC at BL–3. A working group of the ASTPHLD/CDC Conference (5) recognized that activities such as inoculation of both liquid and solid medium for primary isolation, identification of all Mycobacterium species using rapid methods, and susceptibility testing of M. tuberculosis must be done at BL–3.

When tubercle bacilli are inoculated onto a solid medium contained in a test tube, the screw cap is left loose for up to one week to allow water vapor, oxygen, and carbon dioxide to diffuse. Droplet nuclei do not form in the undisturbed tube.

Examining closed culture vessels (e.g., slant tubes, sealed agar plates) may be done at BL–2. All cultures of specimens must be assumed to contain M. tuberculosis until tests prove otherwise, and specimens from patients having mixed infections with two Mycobacterium species can occur.

AFB Culture and Identification—Newer Techniques

Droplet nuclei may be formed while centrifuging or vortexing liquid culture materials (as might be done in preparing suspensions before examination with a probe or high-performance liquid chromatography [HPLC]) and disrupting cells by sonication or shearing procedures (as required for some procedures of molecular biology), and such activities must be done in a BL–3 laboratory using BL–3 procedures.

Waste Disposal

All cultures, glass and plasticware, used protective clothing and other potentially contaminated materials from the tuberculosis laboratory must be decontaminated before disposal or reprocessing. Waste should be decontaminated as close to the point of use as possible, ideally before materials are removed from the laboratory area. Materials to be decontaminated outside of the laboratory must be placed in a durable leakproof container and closed for transport from the laboratory. Materials to be decontaminated off site must be packaged in accordance with applicable local, state, and federal regulations before removal from the facility.

Autoclaves

The BMBL (1) recommends that an autoclave be located in the facility containing the BL–3 laboratory. If this is not possible, all wastes that contain mycobacteria should be placed in a leak-proof discard pan (the pan can be lined with an autoclavable plastic bag) that contains disinfectant solution to a depth of approximately 2–3 cm; the pan should be covered with a solid lid before being removed from the BSC. The lid should be adjusted to allow steam penetration during autoclaving.

The autoclave must be of sufficient size to handle infectious waste generated by the laboratory without undue delay, and located so it can be loaded and unloaded safely and conveniently. Laboratories that are adding or renovating BL–3 space may wish to consider equipping the laboratory with through-the-wall autoclaves to minimize movement of infectious materials throughout the facility.

An improperly operated autoclave contributed to at least one laboratory-acquired tuberculin skin-test conversion (16). Proper training in the use of autoclaves and routine proficiency testing are necessary components of the laboratory safety program.

Safety Strategies

Prevention of Aerosols

In most cases, the ''laboratory accident'' that results in an exposure and thus a tuberculin skin-test conversion is not as overt as the breakage of a bottle; more often, lapses in technique allow droplet nuclei to be released from culture-amplified materials. Therefore, all laboratory equipment and procedures should be evaluated when put into use and periodically thereafter to ensure that opportunities for generation of aerosols are minimized.

Spill Avoidance

A spill can occur at any time during the processing of specimens. If a culture containing M. tuberculosis complex, whether in liquid or on solid medium, is dropped and broken, an aerosol is generated.

Laboratory personnel should avoid practices that can result in spills (e.g., hand-carrying tubes, vials, and bottles, or improperly stacking racks or baskets). All tubes, plates, and other containers should be transported on carts in protected racks or baskets.

Spill Response Plan

A written exposure-control plan should be prepared by the director of the mycobacteriology laboratory. Specified clean-up materials and personal protective equipment (PPE) should be stored and a copy of the plan posted outside of the appropriate rooms in both BL–2 and BL–3 laboratories. Although plans will vary according to individual facilities and practices, all plans should contain the following information (9,13,22,31):

- Instructions on evacuation of the laboratory;
- Instructions for notifying the biosafety office, building engineers, security personnel and others needed to manage the spill;
- Instructions on how to manage air-handling equipment, particularly in the event that a space-decontamination is needed (e.g., the cubic volume of the room would be required);
- Spill clean-up procedures that will be employed in various spaces in the laboratory, the sequencing of each procedure, and the relevant administrative controls, engineering controls, and personal protective equipment required (1);
- Other decontamination procedures, including steps to control associated problems (e.g., formaldehyde fumes that may not be contained in the sealed rooms during gas decontamination);
- Provisions for follow-up tuberculin skin testing and other medical intervention procedures;
- Provision for spill-response drills to ensure appropriate action in response to an emergency.

Recommended Management of a Spill

When a spill occurs, all persons should leave the room immediately so that an assessment of the spill and exposure can be made without further personnel exposure. Two hours or more later, depending on the number of air changes in the laboratory, the degree of convectional mixing in the room air and the turbulence resulting from furniture and equipment placement, a person wearing a HEPA or N100 respirator (National Institute for Occupational Safety and Health (45), Occupational Safety and Health Administration (46)) and protective clothing should reenter the room to cover the spill with towels soaked with a tuberculocidal disinfectant. After soaking for at least 2 hours, the spill should be cleaned up by

a person wearing a respirator and protective clothing. When more intensive aerosolization of culture-amplified fluids occurs, the room should be sealed and decontaminated with formaldehyde gas.

Personnel Protection

Principles

The fundamental principle of personal protection is the consistent use of appropriate personal protective equipment while manipulating materials that might contain infectious tubercle bacilli. Training, monitoring, and medical surveillance are integral to personal protection. Laboratory supervisors are responsible for educating all laboratory personnel in the concepts of biosafety and for ensuring that safety procedures are followed; when a new procedure is introduced, each step of the operation should be evaluated for potential biohazards.

Training and Monitoring of Equipment

Laboratorians who manipulate M. tuberculosis complex species must be taught appropriate procedures and be trained to monitor all equipment (especially the BSC) for proper operation. Personnel must confirm that air flow is unidirectional through the facility and that negative air-pressure gradients are maintained (9,23,40).

Medical Surveillance

Tuberculin Skin Testing

Personnel should be monitored for delayed-type hypersensitivity to tuberculin. All new personnel should receive a two-step tuberculin skin test by the Mantoux procedure (2,47); if the tuberculin skin-test results are positive, a reference chest roentgenogram should be made. Tuberculin-positive personnel should be advised of the symptoms of active tuberculosis so that they will know to seek medical attention if such symptoms occur.

Tuberculin skin test by the Mantoux procedure (but not roentgenogram) should be performed at least annually and should be used for surveillance of laboratory personnel whose tuberculin skin test results were negative. This frequency of skin testing is adequate for persons who manipulate specimens from tuberculosis patients or who perform simple procedures on cultures that are unlikely to generate aerosols.

When the risk for aerosolizing bacterial cultures and suspensions is high, performing a skin test at shorter intervals is necessary (i.e., every 3–6 months depending on the degree of exposure).

Records of tuberculin skin-test application, the results of the reaction (measurement of the zone of induration in millimeters) and the reference chest roentgenogram should be maintained in the employee health clinic or in the laboratory's safety records.

If a tuberculin skin-test conversion occurs, the laboratory supervisor must schedule retesting of all laboratory personnel at 3-month intervals until no further conversions are found. The standard interval of testing may then be resumed. Engineering controls, laboratory procedures, and safety practices must be carefully reviewed when a tuberculin skin-test conversion occurs in laboratory personnel. New procedures, additional training, or other appropriate administrative controls may be indicated as a result of this review.

Certain immunocompromised persons (including HIV-positive persons with or without AIDS-defining illness) are at increased risk for developing active tuberculosis when infected with M. tuberculosis. Supervisors of personnel who work in laboratories that process specimens for isolation of M. tuberculosis should educate their workers about the risk of occupationally-acquired tuberculosis to immunocompromised persons.

BCG Vaccine

An attenuated live vaccine strain derived from M. bovis (Bacille de Calmette et Guerin {BCG}) is used in many countries as a live vaccine against tuberculosis. BCG is not routinely used to vaccinate laboratory personnel or other health care workers in the United States (48). However, when health care workers are employed in workplaces where the risk of infection with multiple drug resistant strains of M. tuberculosis is high and where other infection control measures have been unsuccessful, ACET/ACIP recommends consideration be given to BCG immunization for persons who have a reaction of <5 mm induration after skin testing with 5 TU of PPD tuberculin.

Work With BCG in the Laboratory or Clinical Setting

BCG is administered for cancer immunotherapy, as well as to protect against tuberculosis. The infectious vaccine is often prepared in a hospital pharmacy or clinic rather than in a laboratory. Personnel can develop delayed-type hypersensitivity to tuberculin as a result of inhalation of aerosols containing the bacilli; therefore reconstitution of the vaccine in open containers must be done aseptically by persons wearing gloves and working in a Class I or II BSC. The package insert provides instructions for safe vaccine administration.

The BCG strain of M. bovis may be done safely in a BL–2 facility using BL–2 practices and procedures. However, should laboratories be asked to attempt culture of BCG from clinical materials, these should be handled as though they contained M. tuberculosis organisms.

Personal Protective Equipment

Certain protective clothing and equipment must be worn by personnel entering BL–2 and BL–3 laboratories.

Supervisors must emphasize the availability and use of personal protective equipment through training and control procedures.

Clothing

BL–2 Laboratory

Laboratorians working at BL–2 should wear a laboratory coat or gown over their street clothes; the coat or gown must be removed when leaving the laboratory. Gloves must be worn when handling specimens or any other vessel that may contain tubercle bacilli.

BL–3 Laboratory

Laboratorians working at BL–3 must wear protective laboratory clothing such as a solid-front or wrap-around gown. Scrub suits may be worn under the protective gowns, particularly in research or other situations where there is potential exposure to large volumes of liquid culture material. The scrub suits should be changed daily. The protective gown worn in BL–3 laboratories must have long sleeves with snug (knit) cuffs. Gloves must be worn and must be long enough to overlap the sleeves of the gown. Caps and booties are recommended. Laboratorians should remove all outer protective clothing when leaving the BL–3 laboratory and place the clothing into bags for autoclaving.

Respirators

Recommendations for respirator use are based on recently published guidelines for particulate respirators (NIOSH) and evaluations of the risk for infection by aerosol inhalation associated with work performed. Engineering controls, safe work practices, including use of personal protective equipment (Table 2), and common sense are combined to minimize risk.

OSHA Standard

The respiratory protection standard of the Occupational Safety and Health Administration (46) requires that all respiratory protective devices used in the workplace be certified by the

National Institute for Occupational Safety and Health (45). CDC published recommendations for selection of respirators for protection against tuberculosis in 1994 (2). Four criteria govern the use of these respirators:

- The ability of an unloaded respirator to filter particles 0.3 μ in size with a filter efficiency of 95% (i.e., filter leakage of 5%), given flow rates of up to 50 L per minute.
- The ability to be qualitatively or quantitatively fit-tested to obtain a face-seal leakage rate of no more than 10%.
- The ability to fit different facial sizes and characteristics, which can usually be attained by making the respirators available in at least three sizes.
- The ability to check for face piece fit by the person wearing the respirator each time it is worn in accordance with OSHA standards.

NIOSH Procedures for Certification of Respirators

Since publication of the CDC recommendations for selection of respirators for M. tuberculosis in 1994, the NIOSH procedures for certification of respirators have been revised (45). The revised guidelines for certification of air-purifying respirators enable users to select from a broader range of certified models that meet the performance criteria. NIOSH certifies three classes of filters, designated as the N-, R-, and P-series, using newly available particulate filter tests. Each series contains three levels of filter efficiency, 95%, 99%, and 99.97%, respectively. All tests for classification of the filter employ the most penetrating aerosol size (i.e., 0.3 μ aerodynamic mass median diameter). Respirators in the N-series are tested against an aerosol of sodium chloride (NaCl), and the R- and P-series filters are tested against an aerosol of dioctylphalate (DOP). Currently available HEPA respirators or any of the respirators that are certified by NIOSH for use in laboratory settings under the Code of Federal Regulations 42, Part 84 are recommended (45).

Respirator Program in the Mycobacteriology Laboratory

The respirator program, in accordance with the OSHA standard (46), should be implemented by the laboratory's safety officer or person designated to perform this task and should include written procedures concerning how to: (a) select the appropriate respirator, (b) conduct fit-testing, and (c) train personnel on the use, fit checking, and storage of the respirator. Surgical masks are not NIOSH certified respirators and must not be worn to provide respiratory protection.

Use of Respirators in the Mycobacteriology Laboratory

When sputum specimens are collected in a laboratory setting, either the patient must be in a negative air-pressure booth equipped with a HEPA filter on the exhaust, or the laboratorian must wear a HEPA respirator (which may be a powered air purifying respirator equipped with N100 respirator cartridges (2)).

All manipulations of M. tuberculosis cultures create splatter or aerosol and must be performed in a BSC located in a BL–3 facility. All workers in BL–3 laboratories should wear an N95 respirator and other protective clothing (see Clothing) to minimize potential exposure when infectious materials are being manipulated. Laboratory infections are nearly always caused by either poorly monitored BSCs or a BSC in which normal aerosol containment capability is compromised, thereby permitting escape of droplet nuclei (38,40). The respirator then acts as an additional barrier to reduce the likelihood that tubercle bacilli will enter the lung.

Research

Research procedures involving the M. tuberculosis complex species should be carefully evaluated. Large volumes of fluids and suspensions of concentrated mycobacteria must be manipulated at BL–3 using procedures approved by the institution's biosafety representative knowledgeable in containment of M. tuberculosis. Filtering exhaust laboratory air is not required; however, overriding local conditions may make it prudent to install HEPA filters.

Research Involving Animals

Experiments involving induced M. tuberculosis or M. bovis infections in animals pose hazards during certain stages of the study. The animals are challenged (i.e., intentionally infected with tubercle bacilli) by either intravenous injection (mice) or by inhalation of an aerosol (mice and other animals). During this process, laboratory personnel are at risk for being self-inoculated or exposed to aerosols.

Primates are likely to produce an infectious aerosol by coughing. Therefore, all infected primates must be housed in an animal biosafety level 3 (ABL–3) facility (1).

Rodents are unlikely to produce aerosols by coughing, but they should be housed in bonnet-top or similar containment cages because of the risk for aerosolizing AFB from contaminated bedding. Rodent cages can be held in an Animal Biosafety Level 2 (ABL–2) facility (1) that has single-pass, unidirectional inward air flow and that exhausts all air to the outside. Litter must be handled as if infectious. Laboratory and animal-care personnel should always follow ABL–3 practices and procedures. An ABL–3 facility also may be used for work with other rodent species.

Shipment of Clinical Specimens and Cultures

Specimens that may contain species of the M. tuberculosis complex, including clinical specimens and cultures, must be packaged, labeled, and shipped in accordance with Public Health Service (PHS), Department of Transportation (DOT), and International Air Traffic Association (IATA) regulations (50,51,52,53). PHS shipping regulations are being revised to reflect varying risks of disease transmission during shipment of infectious agents, and to conform more closely to DOT and IATA regulations. An NPRM will be published for comments in mid-1997.

Under the proposed PHS shipping regulation, clinical specimens sent for initial diagnosis should be placed in a water-tight primary container (e.g., screw-capped container). The primary container should be placed in a watertight secondary container (e.g., sealable plastic bag). The primary container should be surrounded by sufficient absorbent material to completely soak up the liquid in the clinical specimen. The secondary container should be placed into a sturdy outer container that bears the address label and a label indicating ''clinical specimen''.

Mycobacterial cultures, and other materials known to contain M. tuberculosis complex species should be enclosed in a watertight primary container (e.g., a screw-capped tube or plastic vial). The primary container should be placed in a watertight, durable secondary container (e.g., rigid aluminum can with a sealable top). The space between the primary container and secondary container should contain sufficient absorbent material to completely soak up the liquid in the culture or specimen in the event of leakage or breakage. The secondary container should be placed into a sturdy outer container that bears the address label and PHS infectious substance label. Packages containing cultures of M. tuberculosis species must also bear DOT's infectious substance label on the outer package. All packages containing infectious substances must meet DOT performance standards.

The importation of materials containing species of the M. tuberculosis complex into the United States requires an import permit (50). An application to import etiologic agents or vectors, federal regulations regarding importation, and other information may be obtained by calling CDC/OHS voice/FAX information system at (404) 639–3883.

Packages containing M. tuberculosis complex species should be opened in a BSC in the receiving laboratory. Damaged packages should be reported to CDC/OHS at (800) 232–0124.

The Mycobacteriology Laboratory in Need of Improvement

It is recognized that some laboratories may not currently meet these guidelines because of certain facility limitations, (e.g., not having a complete BL–3 laboratory). In those laboratories, the laboratory director and biosafety officer should evaluate the facility, available equipment and work practices to determine what services can be provided without compromising employee health and safety. Activities must be modified or discontinued if necessary. For example, personnel working in a BL–2 laboratory can inactivate the tubercle bacilli before centrifugation and other activities that could generate aerosols. Some laboratory directors may choose to temporarily refer some work to other laboratories until improvements to their own facility have been made.

In some situations, it may not be possible to suspend or significantly alter current laboratory activities. In that case, the laboratory director and biosafety officer should develop policies and procedures to allow those activities to continue following full BL–3 practices and procedures while working in a BL–2 laboratory (1). However, the pursuit of achieving optimum good laboratory practices must include the timely development of a plan to achieve appropriate facility upgrades. When a temporary program is implemented to continue routine work in a BL–2 facility with BL–3 procedures, all work practices should be closely monitored, and all employees should receive tuberculin skin tests at recommended intervals.

Conclusions

Although the incidence of tuberculosis is higher in laboratory workers than for the general population, the risk of becoming infected with M. tuberculosis in the laboratory can be minimized through the use of the engineering controls, administrative procedures, and specific work-place practices that are presented in these guidelines.

Full biosafety level 3 is recommended for laboratories performing work with live tubercle bacilli that may generate infectious aerosols. Currently available procedures for preparing AFB smears, preparing samples for culture, identification and antimicrobial susceptibility testing of AFB all have the potential for generation of aerosols and must be done using BL–3 practices and procedures.

Biosafety level 2 facilities and procedures are sufficient for laboratories performing direct AFB smears on samples that have been treated to inactivate the tubercle bacilli.

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48 CDC. The role of BCG vaccine in the prevention and control of tuberculosis in the United States: a joint statement by the Advisory Council for the Elimination of Tuberculosis and the Advisory Committee on Immunization Practices. MMWR 1996;45,RR–4.

50 U.S. Department of Health and Human Services, Public Health Service; Foreign Quarantine; Etiologic Agents and Vectors. 42 CFR Part 71, 54, 1996.

51 U.S. Department of Health and Human Services, Public Health Service; Interstate Shipment of Etiologic Agents. 42 CFR Part 72, 1980.

52 International Air Transport Association (IATA). Dangerous Goods Regulations, 1996

53 U.S. Department of Transportation; Hazardous Materials Regulations (HMR). 49 CFR Part 171–180, 1996.

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TABLE 1. Laboratory safety requirements for persons who manipulate *Mycobacterium tuberculosis* complex species

ATS Level	BSL	Activity	Facility	Safety equipment	Practices and procedures
I	2	• Collecting clinical specimens (including aerosol-induced sputa). • Transporting specimens to a higher level laboratory for isolation and identification. • Preparing and examining smears of killed tubercle bacilli for presumptive diagnosis and or following the progress of tuberculosis patients. on chemotherapy.*	BSL-2 and/or BSL-3 requirements including the availability of: • a hand washing sink. • an autoclave. • an eyewash facility.	• All specimens from patients suspected of having tuberculosis must behandled in a Class I or Class II BSC. • Personal protective equipment must be used as indicated (see *Personal Protective Equipment).	Standard microbiological practices including: • Limited access to the laboratory. • Biosafety manual available describing procedures for waste decontamination, emergency responses, and medical surveillance policies • Adherence to "sharps" precautions.† • Annual tuberculin skin test for all laboraorians.
II	3	Performing functions of ATS Level I laboratory § and • Processing specimens as necessary for microscopy and culture on standard egg- or agar-based media. • Identifying *M. tuberculosis*. • Performing optional drug susceptibility studies against *M. tuberculosis*. • Retaining mycobacterial cultures for additional or repeat tests (for up to 6 months).	BSL-3 facility requirements including: • Physical separation from access corridors. • Access via two self-closing doors (e.g., through an anteroom, or a BSL-2 area). • Single-pass air system; exhaust air not recirculated. • Directional air flow through the laboratory following a negative pressure gradient.	Class II or III BSCs must be used for all manipulations of specimens and cultures that may contain *M. tuberculosis*. Personal protective equipment required includes gloves gown/lab coat, and respirator; eye protection required for persons who wear contact-lenses.	BSL-3 practices and procedures including: • Controlled access to laboratory. • Decontamination of all waste before removal from the laboratory. • Personal protective equipment removed before leaving the laboratory. • Decontamination of laboratory clothing before laundering or disposal. • Baseline serum stored (for blood-borne-pathogen surveillance procedures).
III	3	Performing functions of ATS level I and II laboratories including: • Identifying all *Mycobacterium* species from clinical specimens • Performing required drug susceptibility studies against mycobacteria. • Conducting research and providing training to other laboratorians.	Same as for ATS Level II.	Same as for ATS Level II.	Same as for ATS Level II.

* Proficiency in reading smears may be maintained by examination of 10-15 specimens per week.
† These precautions include a) no recapping of needles, and b) use of puncture- and leak-proof waste containers.
§ Proficiency in culture and identification of *M. tuberculosis* may be maintained by digestion and culture of 20 specimens per week.
NOTE: ATS=American Thoracic Society; BSL=Biosafety Level; BSC=Biosafety Cabinet.

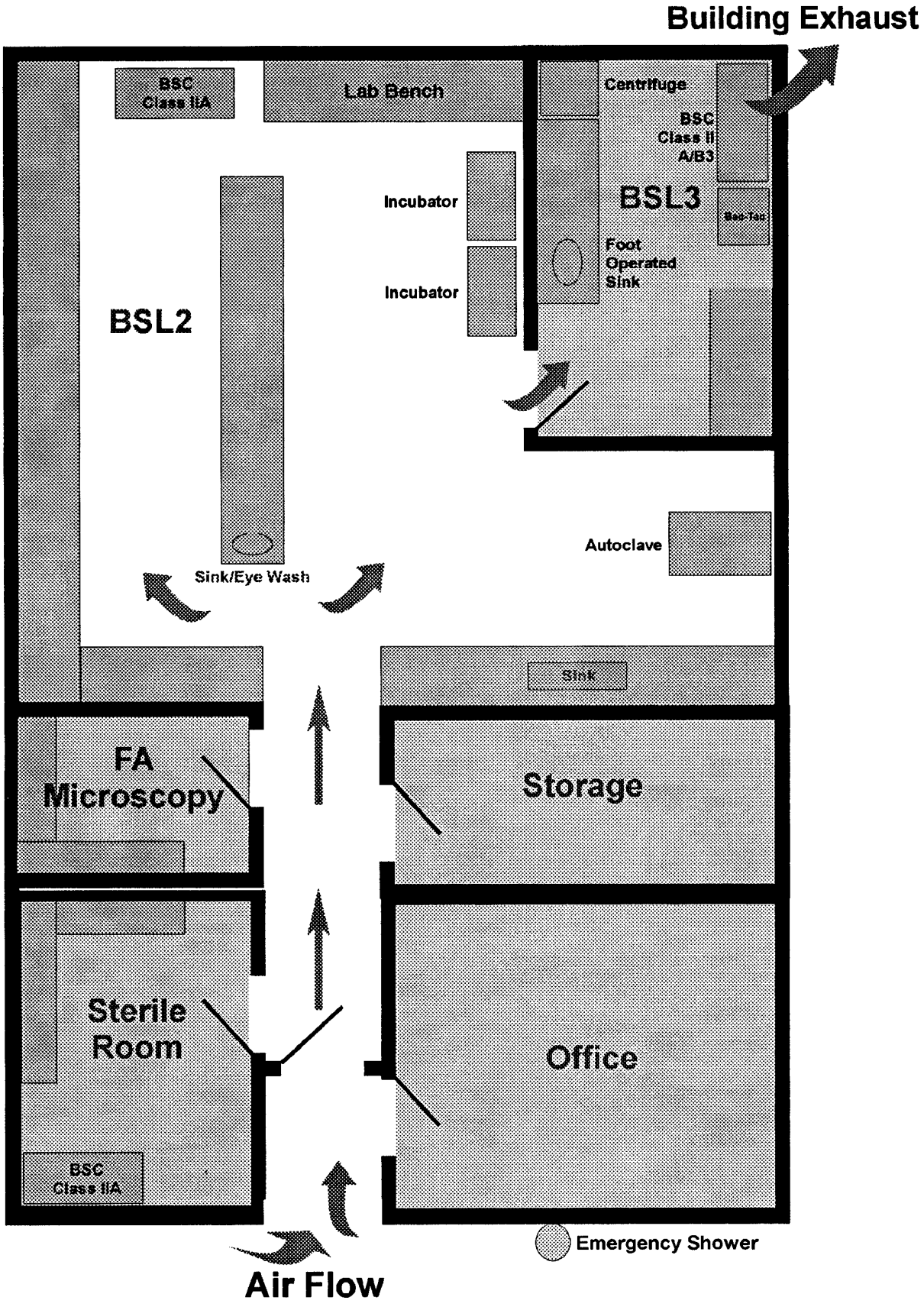
TABLE 2. Measures for controlling the risk for laboratory acquired tuberculosis

Activity	Risk factors	Administrative controls	Practices and procedures	BSL
Staining specimen spears for AFB without culture	Centrifugation and manipulation of specimen may produce infectious aerosols.	Kill tubercle bacilli.	Treat specimen with equal volume of 5% hypochlorite solution; process in BSC; use aerosol-containing safety cups for centrifugation.	2
Preparing specimens for centrifugation and AFB culture	Suspect specimens contain limited numbers of AFB and many are negative; set-up procedures involve potential for aerosolization.	Train personnel in applicable safety procedures.	Conduct all work in the BSC on a towel moistened with a tuberculocidal agent; use aerosol-containing safety cups for centrifugation.	2
Centrifugation of specimens suspected of containing live tubercle bacilli	Centrifugation and manipulation of specimen may produce aerosols.	Use biocontainment devices.	Use aerosol-containing safety cups for centrifugation; open in BSC.	3
Inoculating cultures from specimens	Production of aerosol during inoculation procedures.	Use BSC and rigorously follow BL-3 practices and procedures.	Follow aseptic techniques; autoclave all wastes from the BSC	2
Handling unopened primary-isolation plates or tubes	Tubercle bacilli multiply with a generation time of 18-24 hours.	Treat all cultures as potentially infectious.	Seal plates in gas-permeable bags. or with gas-permeable tape. Avoid aerosolization of inoculated liquid medium even if growth is not evident.	2
Staining smear of material from culture	Many organisms; possible survival on slide, but low probability for aerosolization.	Prepare slides in a BSC.	Before removal from BSC, heat-fix (149-167 F [65 C-75 C] for 2 hrs.) to kill tubercle bacilli.	3
Manipulating grown cultures of *M. tuberculosis* complex species on solid medium	Colonies on solid medium contain greater numbers of bacilli than are present in sputum specimens, but aerosol potential is low.	Vessels identified as containing *M. tuberculosis* complex; plates bagged or taped and screw-caps tightened.	Use carts to safely transfer all cultures; open inoculated plates and tubes only in BSC. Use disposable loops; if not available, clean loops and needles in sand alcohol, then flame.	3
Transferring large volumes of cultures or suspensions of bacilli	Substantial numbers of tubercle bacilli; high potential for aerosol generation when suspended in fluids, especially if clumps of bacilli are well dispersed; vortexing, sonicating, or vigorous mixing with a dispersant such as Tween 80 lead to aerosol production.	Ensure BSC is certified annually using calibrated instruments by person certified by National Sanitation Foundation; maintain directional air flow and room air changes; develop spill protocol for management of accidents.	Vortex and sonicate suspensions in BSC in closed tubes that are opened only in BSC. Use aerosol-containing centrifuge cups and open only in BSC. Manage waste safely.	3

TABLE 2. Measures for controlling the risk for laboratory acquired tuberculosis - Continued

Activity	Risk factors	Administrative controls	Practices and procedures	BSL
Disposing of cultures of *M. tuberculosis* complex	Handing material contaminated with tubercle bacilli outside BSC by untrained persons.	Identify material with proper disposal labels and autoclave prior to disposal.	Discard liquid waste into a tuberculocidal disinfectant solution; noncompressible discard containers used in BSC should contain 2-3 cm of tuberculocidal disinfectant inside a plastic liner which is covered before transfer to autoclave.	3
Conducting research on *M. tuberculosis* complex species	May employ large volumes of fluids containing high concentration of bacilli and high-risk aerosolizing procedures.	Ensure compliance with all biosafety recommendations	Maintain all elements of BSL-3	3
Shipping cultures or specimens of *M. tuberculosis* complex	Potential exposure if package leaks or breaks.	Provide shipping containers approved by Department of Transportation	Ship in triple - packaged container. Follow PHS regulations for transport of diagnostic specimens and infectious substances.	
Studying animals infected with *M. tuberculosis* complex species	Aerosols may be created during inoculation; bedding may contain viable bacilli in dried urine and feces; generation of droplet nuclei by coughing of nonhuman primates.	Provide containment cages; use proper facilities (see text).	Use bonnet-top rodent cages at ABSL-2; change cages in BSC. Houses nonhuman primates at ABSL-3 and wear respirators when in room.	2 and/or 3

Note: BSL=Biosafety Level; AFB=Acid-fast bacilli; BSC=Biological Safety Cabinet; NA=Not Applicable; ABSL=Animal Biosafety Level.



[FR Doc. 97–10879 Filed 4–25–97; 8:45 am]

BILLING CODE 4163–18–C

federal register

Monday
April 28, 1997

Part VI

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51857; FRL–5585–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from November 1, 1996 to November 30, 1996.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51857]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

The official record for this notice, as well as the public version, has been established for this notice under document control number ''[OPPTS–51857]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the document control number [OPPTS–51857]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 53 Premanufacture Notices Received From: 11/01/96 to 11/31/96

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0098	11/04/96	02/02/97	Dupont Specialty Chemicals	(G) Topical finish for textiles	(G) Alkali salt of copolymer of an alpha-olefin with an unsaturated dicarboxylic acid
P–97–0099	11/04/96	02/02/97	DIC Trading (USA) Inc	(G)Open, non-dispersive (UV curable coatings)	(G)Aromatic urethane acrylate
P–97–0100	11/04/96	02/02/97	Ciba-Geigy Corporation, Textile Products Division	(S) Reactive dye for wool	(G) Benzenesulfonic acid, substituted with [[1-ethyl-1,6-dihyro-2-hydroxy-4-methyl]oxo]-[(4-amino-6-chloro-1,3,5-triazin-2-yl)amino]-[[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-, sodium salt
P–97–0101	11/05/96	02/03/97	CBI	(G) Open, non-dispersive use	(G) Polyester resin
P–97–0102	11/05/96	02/03/97	CBI	(G) Processing aid	(G) Salt of mixed alkyl phosphate
P–97–0103	11/07/96	02/05/97	CBI	(S) Industrial coating	(G) Polyester IPDI based polyurethane prepolymer
P–97–0104	11/06/96	02/04/97	CBI	(G) Crosslinking agent of binder for magnetic recording tape	(G) Polyisocyante adduct based on toluene diisocyanate
P–97–0105	11/12/96	02/10/97	CBI	(S) Production intermediate	(G) Ketone
P–97–0106	11/12/96	02/10/97	Witco Chemical Corporation	(S) Amine hardener for epoxy resins	(S) Poly[oxy(methyl-1,2-ethanediyl)],-alpha-[2-hydroxy-3-[[2-(1-piperazinyl)ethyl]amino]propyl]-omega-[2-hydroxy-3-[[2-(1-pi perazinyl)ethyl]amino]propoxy]
P–97–0107	11/12/96	02/10/97	Witco Chemical Corporation	(S) PVC adhesion promoter	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethanamine and glycidyl tolyl ether, graft
P–97–0108	11/12/96	02/10/97	Witco Chemical Corporation	(S) Epoxy curing agent	(S) 2,4,6-Tris (dimethylaminopropyl aminomethyl)phenol
P–97–0109	11/13/96	02/11/97	CBI	(G) Component in UV cure release coating (for adhesive tape backing)	(G) Epoxy functional silicone fluid
P–97–0110	11/13/96	02/11/97	CBI	(G) Wetting agent	(G) Acetate capped alkoxylated silicone copolymer
P–97–0111	11/13/96	02/11/97	The Dow Chemical Company	(S) Heat transfer fluid	(S) Napthalene, 1,2,3,4-tetrahydro-6-(1-phenylethyl)-
P–97–0112	11/13/96	02/11/97	The Dow Chemical Company	(S) Heat transfer fluid	(S) Napthalene, 1,2,3,4-tetrahydro-5-(1-phenylethyl)-
P–97–0113	11/13/96	02/11/97	CBI	(G) Polymer additive for imaging product	(G) Terpolymer latex of butyl methacrylate, butyl acrylate and substituted styrene
P–97–0114	11/13/96	02/11/97	Chemdal Corporation	(S) Filtration of water; emulsion stabilizer for cosmetics; thickening agent for cosmetics; dispersion aid for liquid slurries; adsorbent for skin oil in facial creme	(S) Polymer of: allyl methacrylate; ethylene glycol dimethacrylate; 2,2 azobis (2,4 dimethyl valeronitrile)
P–97–0115	11/13/96	02/11/97	CBI	(S) Coupling agent in alkaline cleaners	(G) B-alanine, *N*-(2-carboxyethyl)-*N*-[3-(alkyloxy)propyl]; monosodium salt
P–97–0116	11/12/96	02/10/97	CBI	(S) Binder for baking enamel	(G) Phthalate-containing polyester polymer
P–97–0117	11/12/96	02/10/97	Ciba-Geigy Corporation, Textile Products Division	(S) Reactive dye for wool	(G) Naphthalene sulfonic acid, substituted with [[5-[(4-amino-6-chloro-1,3,5-triazin-2-yl)] amino-sulfo-[[4-[[2-(sulfooxy) ethyl]sulfonyl]phenyl] azo]phenyl]azo]-4-hydroxy-, sodium salt
P–97–0118	11/13/96	02/11/97	Pilot	(S) Surfactant for cosmetics and toiletries; surfactant for liquid detergents; general anionic surfactant applications	(S) D-glucopyranose, oligomeric, 6-(hydrogen sulfobutanedioate), -(coco alkyl)ethers, sodium salts ¶
P–97–0119	11/13/96	02/11/97	Pilot	(S) Surfactant for cosmetics and toiletries; surfactant for liquid detergents; general anionic surfactant applications	(S) D-glucopyranose, oligomeric, 6-(dihydroxy hydrogen 2,3-dihydroxy butanedioate),[r-(r,r)]-, 1-(coco alkyl)ethers, sodium salts
P–97–0120	11/07/96	02/11/97	Pilot	(S) Surfactant for cosmetics and toiletries; surfactant for liquid detergents; general anionic surfactant applications	(S) D-glucopyranose, oligomeric, 6-(dihydrogen 24-hydroxy-1,2,3-propanetri carboxylate), 1-(coco alkyl) ethers, sodium salts
P–97–0121	11/12/96	02/10/97	CBI	(G) Paint	(G) Acrylated alkyd resin
P–97–0122	11/15/96	02/13/97	CBI	(G) Isolated chemical intermediate	(G) Adipamide

I. 53 Premanufacture Notices Received From: 11/01/96 to 11/31/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0123	11/15/96	02/13/97	CBI	(S) Reactive dyestuff for the coloration of textiles	(G) Mono azo sulfonated naphthalene substituted tiazine/vinyl sulfone dyestuff
P–97–0124	11/15/96	02/13/97	CBI	(G) Industrial solvent	(G) Ether-ester solvent
P–97–0125	11/19/96	02/17/97	3M Company	(G) Coating additive	(G) Phenolic polymer
P–97–0126	11/18/96	02/16/97	CBI	(G) Flame retardant	(G) Aromatic tetraphenyl phosphate ester
P–97–0127	11/19/96	02/17/97	Asashi Chemical Industry America, Inc.	(S) Electro-parts connector; miscellaneous goods	(S) Polymer of: 1,4-benzene dicarboxylic acid; hexanedioic acid; 1,6-hexanediamine
P–97–0128	11/19/96	02/17/97	Asashi Chemical Industry America, Inc	(S) Wire-harness connector; miscellaneous goods	(S) Polymer of: 1,4-benzene dicarboxylic acid; hexanedioic acid; 1,6-hexanediamine; dodecanedioic acid
P–97–0129	11/13/96	02/17/97	Asashi Chemical Industry America, Inc	(S) Office parts, furniture, car parts	(S) Polymer of:1,6-hexanediamine; 1,3-benzene dicarboxylic acid hexanedioic acid
P–97–0130	11/18/96	02/16/97	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P–97–0131	11/15/96	02/13/97	Orient Chemical Corporation	(S) Ink for a ball point pen	(S) 2,7-Naphthalene disulfonic acid, 4-amino-3-[[4 ′-[[2-amino-4-[(3-butoxy-2-hydroxy propyl) amino] phenyl] azo]-3, ′-dimethyl [1,1 ′-biphenyl]-4-y]azo]- 5-hydroxy-6-(phenylazo)-, disodium salt
P–97–0132	11/19/96	02/17/97	CBI	(S) Reactive dyestuff for the coloration of textiles	(G) Mono azo triazine/vinyl sulfone dyestuff
P–97–0133	11/20/96	02/18/97	Rose Color, Inc	(S) Colorant for petroleum products	(S) 1,3-benzenediol coupled with diazotized dimethylbenzeneamine and diazotized 4-dodecyl benzeneamine
P–97–0134	11/21/96	02/19/97	Unichema North America	(S) Reactive raw material for production of polyurethanes	(G) Polyester diol
P–97–0135	11/21/96	02/19/97	Unichema North America	(S) Reactive raw material for production of polyurethanes	(G) Polyester diol
P–97–0136	11/21/96	02/19/97	CBI	(G) Softening of cellulose	(G) Alkoxylated fatty acid amide, alkylsulfate salt
P–97–0137	11/19/96	02/17/97	Gem Urethane Corporation	(S) Finishing of leather textile treatments	(G) Aqueous polyurethane dispersion
P–97–0138	11/22/96	02/20/97	3M Company	(G) Coating	(G) Acrylate copolymer
P–97–0139	11/22/96	02/20/97	PCR Incorporated, Inc	(S) Treatment for various inorganic fillers and as additives for use in thermoplastics, sealants, rubber and glass fiber applications	(G) Epoxy-alkoxysilane
P–97–0140	11/26/96	02/24/97	CBI	(S) Binder	(G) Polyester acrylate
P–97–0141	11/26/96	02/24/97	3M Company	(S) Tape adhesive	(G) Acrylate polymer
P–97–0142	11/25/96	02/23/97	Wheelabrator Clean Air Systems, Inc	(S) Catalyst for oxidation of hydrogen sulfide to sulfur by air	(S) Ferrate (3-), aqua [T3N,N-bis(carboxy methyl)glycinato (3-)-*N,O*][*N,N*-bis (carboxymethyl)glycinato (3-)-*N,O,O′*]-trisodium
P–97–0143	11/29/96	02/27/97	CBI	(G) Rosin for coatings	(G) Modified acrylic resin
P–97–0144	11/29/96	02/27/97	CBI	(G) Resin for coatings	(G) Modified acrylic resin
P–97–0145	11/29/96	02/27/97	CBI	(G) Resin for coatings	(G) Siloxane derivative
P–97–0146	11/27/96	02/25/97	CBI	(G) Plasticizer	(G) Dibasic acid/glycol polyester, alcohol capped
P–97–0147	11/26/96	02/24/97	H.B. Fuller Company	(S) Part A of a two part epoxy adhesive used for metal to metal adhesion	(G) Epoxide-terminated amino aromatic polyether
P–97–0148	11/21/96	02/19/97	Dupont Chambers Works - E.I. du Pont de Nemours	(G) Fabric finish - open, non-dispersive use	(G) Polysubstituted methacrylic copolymer latex
P–97–0149	11/29/96	02/27/97	CBI	(G) Dispersant	(G) Polyalkenyl amido succinate
P–97–0151	11/29/96	02/27/97	Owens Corning Science & Technology Center	(S) Molding resin	(S) 1,3-isobenzofurandione, polymer with 2,5-furandione, 2-methyl-1,3-propanediol and 1,2-propanediol

II. 54 Notices of Commencement Received From: 11/01/96 to 11/30/96

Case No.	Received Date	Commencement/Import Date	Chemical
P–84–0720	02/16/84	11/13/96	(S)Fatty acids tall oil hydrogenated esters with 2-butyl-1-octenal
P–92–0466	01/29/92	11/28/96	(G)Polyacrylate
P–92–1453	11/21/96	11/08/96	(G) Alkaryl substituted benzofuranone
P–93–1179	11/29/96	07/29/96	(S) Imino-1,4 butanediylimino (1,6-dioxo-1,.6-hexanediyl)-1 imino-6 oxo hexanediyl-copolymer
P–94–1754	11/04/96	07/31/96	(G) Chemically modified alpha cyclodextrin
P–94–1935	11/13/96	10/10/96	(G) Organo silane ester
P–95–0112	11/26/96	10/16/96	(G) Substituted pyrimidine
P–95–0113	11/26/96	10/20/96	(G) Substituted triazolopyrimidine
P–95–0681	11/19/96	11/06/96	(G) Oxirane, polymer with hydroxy functional cyclic ether
P–95–1117	11/12/96	10/23/96	(G) Alkyletherhydroxy-propylamine
P–95–1119	11/12/96	10/23/96	(G) Alkyl ether hydroxy-propylamine
P–95–1863	11/07/96	10/02/96	(G) Gas generant
P–95–2084	11/06/96	10/23/96	(G) Acrylate copolymer
P–95–2112	11/05/96	10/24/96	(G) Modified phenolic resin in aqueous solution
P–96–0039	11/18/96	06/19/96	(G) Substituted amino phenoxy alkanoic acid derivative
P–96–0124	11/21/96	11/01/96	(G) Plasticized urea-formaldehyde resin
P–96–0291	11/15/96	11/01/96	(S) Fatty acids, coco, 2-ethylhexyl esters
P–96–0346	11/05/96	10/07/96	(G) Amino functional alkoxy alkyl siloxane
P–96–0715	11/19/96	11/11/96	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1 ′-methylenebis[4-isocyanatocyclohexane], 2-oxepanone and 2,2′-oxybis[ethanol], compound with *N,N,N*-diethylethan amine
P–96–0817	11/27/96	11/06/96	(G) 2-substituted phenol-4-(2-aminoethyl) sulfonamide, hydrochloride
P–96–0825	11/14/96	11/02/96	(S) Methanone, [4,6-dihydroxy-5-[3-(trirthoxysily)propyl]-1-3-phenylene]bis[phenyl
P–96–0827	11/04/96	10/16/96	(S) Methanone, [4,6-dihydroxy-5-(2-propenyl)-1-3-phenylene] bis [phenyl
P–96–0917	11/05/96	10/16/96	(G) Isocyanate terminated dicarboxylic acid based urethane oligomer
P–96–0960	11/25/96	11/12/96	(G) Substituted castor oil, polymer with ethylene oxide
P–96–0963	11/05/96	10/16/96	(G) Isocyanate function polypropylene and polyethylene catalyst
P–96–0977	11/14/96	10/28/96	(G) Substituted triazinyl naphthalene sulfonic acid derivative
P–96–1010	11/20/96	10/21/96	(G) Substituted indophenol
P–96–1011	11/20/96	10/21/96	(G) Substituted indophenol
P–96–1013	11/20/96	10/24/96	(G) Amino-substituted-carbopolycycle, reaction product with sodium polysulfide
P–96–1043	11/22/96	11/06/96	(G) 2-propenoic acid, 2-methyl, oxiranylmethyl, polymer with ethenylbenzene, alkyl methacrylates, 2,2 ′-thiobis [ethanol]-quatermized, lactate (salt)
P–96–1089	11/25/96	11/15/96	(G) Silane-terminated polyester polymer
P–96–1122	11/26/96	11/08/96	(G) Polyurethane acrylate
P–96–1123	11/26/96	11/08/96	(G) Polyurethane acrylate
P–96–1150	11/19/96	11/02/96	(G) Reaction product of a silsesquioxane-silicic acid resin with a silylated aromatic compound
P–96–1203	11/25/96	11/13/96	(S) 1,4-cyclohexanedicarboxylic acid, 2,5-dioxo-dimethyl ester, ion(2-), disodium (9ci)
P–96–1223	11/13/96	10/31/96	(G) Reaction product of linear phospho nitrilic chloride with siloxane oil
P–96–1224	11/04/96	10/31/96	(G) Linear phosphonitrillic chloride
P–96–1229	11/13/96	10/21/96	(G) Polyurethane
P–96–1246	11/05/96	10/08/96	(G) Aspartic ester
P–96–1248	11/19/96	11/11/96	(G) Silazane polymer
P–96–1264	11/15/96	11/06/96	(G) Aliphatic ester
P–96–1313	11/05/96	10/22/96	(G) Modified isocyanate prepolymer
P–96–1318	11/26/96	10/30/96	(G) Copolymer of tetra fluoroethylene and perfluoro alkoxy ethylene
P–96–1337	11/25/96	11/15/96	(G) Amine substituted metal salt
P–96–1338	11/25/96	11/15/96	(G) Amine substituted metal salt
P–96–1339	11/25/96	11/15/96	(G) Amine substituted metal salt
P–96–1341	11/26/96	11/12/96	(G) Unsaturated polyester
P–96–1342	11/15/96	10/14/96	(G) Reduced maltose
P–96–1443	11/25/96	10/30/96	(G) Reaction products of polyalkylene oxides, diisocyanato alkylbenzene and alkyl alcohol
P–96–1446	11/29/96	10/26/96	(G) Amino modified silicone-polyether copolymer
P–96–1463	11/25/96	11/15/96	(G) Silane urea adduct
P–96–1465	11/13/96	10/29/96	(S) Siloxanes and silicones, $C_{24–54}$ branched and linear alkyl me, di me
P–96–1473	11/26/96	11/20/96	(G) Polyester urethane block copolymer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 11, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–10896 Filed 4–25–97; 8:45 am]

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federal register

Monday
April 28, 1997

Part VII

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51858; FRL–5588–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from December 1, 1996 to December 31, 1996.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51858]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51858]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of Notices of Commencement.

A record has been established for this notice under docket number ''[OPPTS–51858]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

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

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

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 115 Premanufacture Notices Received From: 12/01/96 to 12/31/96

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0150	12/02/96	03/02/97	CBI	(G) Deck chute conditioner	(G) Moisture cure urethane
P–97–0152	12/03/96	03/03/97	CBI	(S) Oil and water proofing agent	(G) Fluorinated acrylic copolymer
P–97–0153	12/04/96	03/04/97	3M Company	(G) Coating	(G) Polyether polyurethane
P–97–0154	12/03/96	03/03/97	CBI	(G) Pigment removal	(G) Quaternary cationic polyelectrolyte
P–97–0155	12/04/96	03/04/97	Henkel corporation	(S) Hot melt adhesive	(S) Polymer of: dimer fatty acid; sebacic acid; ethylenediamine; piperazine; 1,3, di-(4-piperidyl) propane
P–97–0156	12/04/96	03/04/97	CBI	(S) Coating fluid ingredient for printing plates	(G) Benzoyl methoxyheter opolycycle
P–97–0157	12/04/96	03/04/97	CBI	(S) Component of positive acting photoresist for circuit board coating	(S) Benzene, 2,5-bis[[4-(1,1-dimethylethyl)phenoxy]methyl-]-1,3-dinitro-
P–97–0158	12/04/96	03/04/97	CBI	(S) Coating fluid ingredient for printing plates	(G) The reaction products of 4-hydroxybutylacrylate with the copolymer of the butyl ester of 2-methyl-2-propenoic acid with 2,5-furandione, 1-(1-substituted-1-methylethyl)-3-(1-methylethenyl)benzene, and methyl 2-methyl-2-propenoate
P–97–0159	12/04/96	03/04/97	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–97–0160	12/04/96	03/04/97	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–97–0161	12/04/96	03/04/97	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–97–0162	12/04/96	03/04/97	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–97–0163	12/04/96	03/04/97	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–97–0164	12/04/96	03/04/97	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–97–0165	12/04/96	03/04/97	CBI	(G) Colorant	(G) Polyoxyalkylene, alkylene succinate polyester
P–97–0166	12/05/96	03/05/97	CBI	(G) Epoxy resin for coating metal surfaces in a contained use	(G) Amine modified epoxy resin
P–97–0167	12/05/96	03/05/97	CBI	(G) Additive for coating metal surfaces in a contained use	(G) Additive
P–97–0168	12/05/96	03/05/97	CBI	(G) Crosslinking agent for coating metal surfaces in contained use	(G) Urethane resin
P–97–0169	12/05/96	03/05/97	CBI	(G) Additive for coating metal surfaces in contained use	(G) Polyurethane
P–97–0170	12/05/96	03/05/97	Huls America Inc	(S) Surface modifier for industrial minerals	(G) Vinyl alkylalkoxy siloxane
P–97–0171	12/05/96	03/05/97	Rose Color, Inc	(S) A colorant for marking petroleum products e.g. fuel oil.	(S) 9,10-anthracenedione, 1,4-diamino-*N,N′*-mixed 2 ethylhexyl, iso-pn, me and pentyl derivs
P–97–0172	12/05/96	03/05/97	CBI	(G) Open, non dispersive use	(G) Polyester polymer
P–97–0173	12/06/96	03/06/97	Chemrex Inc.	(G) Open, non-dispersive additive for water-based adhesives and sealants	(G) Anionic aliphatic polyurethane dispersion
P–97–0174	12/09/96	03/09/97	3M Company	(S) Pressure sensitive adhesive	(G) Acrylate polymer
P–97–0175	12/05/96	03/05/97	CBI	(G) Organic solvent for pigment grinding resin in contained use	(S) 1-(2-hydroxythio)propane-2-ol
P–97–0176	12/10/96	03/10/97	Boulder Scientific Company	(S) Chemical intermediate	(G) Cyclo pentadiene derivative, sodium salt
P–97–0177	12/10/96	03/10/97	Boulder Scientific Company	(S) Chemical intermediate	(G) Cyclo pentadiene derivative
P–97–0178	12/10/96	03/10/97	Boulder Scientific Company	(S) Chemical intermediate	(G) Unsaturated hydrocarbon, cylopentadiene derivative
P–97–0179	12/09/96	03/10/97	Boulder Scientific Company	(S) Polymerization catalyst	(G) Substituted bis(cyclopentadienyl)zirconium dichloride
P–97–0180	12/10/96	03/10/97	Boulder Scientific Company	(S) Chemical intermediate	(G) Cyclopentadiene derivative
P–97–0181	12/10/96	03/10/97	Boulder Scientific Company	(S) Polymerization catalyst	(G) Substituted bis(cyclopentadienyl) zirconium dichloride
P–97–0182	12/10/96	03/10/97	Boulder Scientific Company	(S) Chemical intermediate	(G) Cyclopentadiene derivative, lithium salt

I. 115 Premanufacture Notices Received From: 12/01/96 to 12/31/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0183	12/10/96	03/10/97	Boulder Scientific Company	(S) Chemical intermediate	(G) Cyclopentadiene derivative, lithium salt
P–97–0184	12/09/96	03/09/97	CBI	(G) Resin for electrode position coating for coating metal surfaces in contained use	(G) Epoxy resin
P–97–0185	12/09/96	03/09/97	CBI	(G) Open, non-dispersive intermediate	(G) Fluoro phenyl acetamide
P–97–0186	12/08/96	03/08/97	Percy International Ltd	(S) Modifying resin used in the manufacture of leather/fabric; coating, printing inks and plastic coating	(S) Polymer of: diol specified on attachment 5: 1,1-methylenebis[4-isocycanato cyclohexane]; dimethylol proprionic acid; hydrazine; adipic acid, dihydrazide; dimethylamino methyl propanol
P–97–0187	12/09/96	03/09/97	CBI	(G) Component of coating with open use	(G) 2,6-dinitro-1,4-benzenedimethanol, polymer with aliphatic diisocyanate and 1,6 hexanediol, bisphenol a ethoxylate and acid functional diol
P–97–0188	12/09/96	03/09/97	MacDermid, Inc	(G) Photocure polymer, open non-dispersive use	(G) Methacrylate adducted polyurethane
P–97–0189	12/11/96	03/11/97	Boulder Scientific Company	(S) Polymerization catalyst	(G) Substituted bis(cyclopentadienyl)zirconium dichloride
P–97–0190	12/10/96	03/10/97	Teknor Apex Company	(S) Plasticizer for flexible PVC	(S) Polymer of: adipic acid; 2-methyl-1, 3-propanediol; 1,6 hexanediol; alcohols, C_{9-11}-iso, C_{-10} rich
P–97–0191	12/10/96	03/10/97	CBI	(G) Crosslinker for resin binder	(G) Urea derivative
P–97–0192	12/10/96	03/10/97	CBI	(G) Crosslinking agent	(G) Silicic acid, alkyl ester
P–97–0193	12/10/96	03/10/97	Orient Chemical Corporation	(S) Manufacture of ink	(S) 2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-, couples with diazotized, 4-butylbenzenamine, diazotized, 4,4′-cyclohexylidenebis [benzenamine] and m-phenylenediamine, sodium salt
P–97–0194	12/10/96	03/10/97	Hitac Adhesives and Coatings, Inc	(G) Adhesive tape component - as release coat	(G) Water soluble silicone modified poly (urethane-urea)
P–97–0195	12/10/96	03/10/97	Hitac Adhesives and Coatings, Inc	(G) Adhesive tape component - as release coat	(G) Water soluble silicone modified poly (urethane-urea)
P–97–0196	12/10/96	03/10/97	Hitac Adhesives and Coatings, Inc	(G) Adhesive tape component - as release coat	(G) Water soluble silicone modified poly (urethane-urea)
P–97–0197	12/10/96	03/10/97	Hitac Adhesives and Ccatings, Inc	(G) Adhesive tape component - as release coat	(G) Water soluble silicone modified poly (urethane-urea)
P–97–0198	12/13/96	03/13/97	Bomar Specialties Company	(S) Pipe sealant at approx. 20% use level; ultraviolet curable coating modifier at <30% use level; adhesive formulation component	(S) 2-propenoic acid, 2-hydroxyethyl ester, polymer with *N,N,N′*,N′,N′′,N′- hexakis-(methoxymethyl)-1,3,5-triazine-2,4,6-triamine and 2-oxapanone
P–97–0199	12/12/96	03/12/97	3M Company	(S) Low adhesion backsize	(G) Acrylate polmer
P–97–0200	12/12/96	03/12/97	3M Company	(S) Tape adhesive	(G) Acrylate copolymer
P–97–0201	12/13/96	03/13/97	Witco Chemical Corporation	(S) Printing inks	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, 2-ethylhexanoic acid, hexamethylenediamine and propionic acid
P–97–0202	12/10/96	03/10/97	CBI	(G) Paint	(G) Acrylated polyester resin
P–97–0203	12/12/96	03/12/97	MTC America, Inc	(G) Brake linings	(G) Acrylate copolymer
P–97–0204	12/13/96	03/13/97	Witco Chemical Corporation	(S) Hot melts	(S) Decanedioic acid, polymer with 1,4-butanediol
P–97–0205	12/17/96	03/17/97	Shell Chemical Company	(S) Acid is intermediate for manufacture of NA salts for use as anionic surfactants	(S) Polymer of: C_{9-11} alcohol ethoxylate; oxygen
P–97–0206	12/17/96	03/17/97	Shell Chemical Company	(S) Acid is intermediate for manufacture of NA salts for use as anionic surfactants	(S) Polymer of:poly(oxy-1,2-ethanediyl), alpha-(carboxymethyl)-omega-hydroxy-, C_{9-11}-alkyl ethers; *NAOH*
P–97–0207	12/17/96	03/17/97	Shell Chemical Company	(S) Acid is intermediate for manufacture of NA salts for use as anionic surfactants	(S) Polymer of: C_{9-11} alcohol ethoxylate; oxygen

I. 115 Premanufacture Notices Received From: 12/01/96 to 12/31/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0208	12/17/96	03/17/97	Shell Chemical Company	(S) Acid is intermediate for manufacture of NA salts for use as anionic surfactants	(S) Polymer of: poly(oxy-1,2-ethanediyl), alpha-(carboxymetyl)-omega-(undecycloxy)-*NAOH*
P–97–0209	12/13/96	03/13/97	CBI	(G) Ingredient for use in consumer products; highly dispersive use.	(G) Furan aldehyde
P–97–0210	12/13/96	03/13/97	H.B. Fuller Company	(S) Coating for fiberglass sizing operations	(G) Carboxylic acid and ester functionalized polymer
P–97–0211	12/13/96	03/13/97	H.B. Fuller Company	(S) Coating for fiberglass sizing operations	(G) Ester-functionalized polymer
P–97–0212	12/16/96	03/16/97	CBI	(S) Crosslinker for powder coating	(G) Modified polycarboxylic acid
P–97–0213	12/17/96	03/17/97	CBI	(S) Thickener, primarily for the cosmetics and detergents industries	(G) Sodium salt of acrylic acid/vinyl ester copolymer
P–97–0214	12/17/96	03/17/97	CBI	(S) Additive flame retardant for polymers	(G) Polymeric aryl phosphate
P–97–0215	12/12/96	03/12/97	Orient Chemical Corporation	(S) Manufacture of ink	(S) Benzene methanaminium, -butyl-*N*-[4-[[4-[butyl[(3-sulfophenyl)methyl]amino]-2-methylphenyl][4-[(4-ethoxyphenyl)-amino]phenyl]methylene]-3-methyl-2,5-cyclohexadien-1-ylidene]-3-sulfo-,inner salt, monosodium salt
P–97–0216	12/18/96	03/18/97	CBI	(G) Dehydration agent	(G) Propoxylated, ethoxylated amine
P–97–0217	12/18/96	03/18/97	BASF Corporation	(G) Epoxy catalyst	(S) 1*H*-imidazole, 2-ethyl-4,5-dihydro-4-methyl-
P–97–0218	12/19/96	03/19/97	Lobeco Products, Inc	(G) Raw material for production of certain crop protection products	(S) Benzoic acid, 3-hydroxy-, dipotassium salt
P–97–0219	12/19/96	03/19/97	CBI	(G) Destructive use	(G) Polyester resin
P–97–0220	12/19/96	03/19/97	CBI	(G) Open, non-dispersive use	(G) Polyester resin
P–97–0221	12/19/96	03/19/97	CBI	(G) Open, non-dispersive use	(G) Polyester resin
P–97–0222	12/20/96	03/20/97	CBI	(G) Processing aid in paper making and textile treatment processes	(S) Formamide, *N*-ethenyl-,polymer, with etheramine, hydrochloride
P–97–0223	12/20/96	03/20/97	CBI	(S) Industrial products; wheels, rollers, belts, machine pts.	(G) Ppdi polyester prepolymer
P–97–0224	12/26/96	03/26/97	CBI	(G) Petroleum additive	(G) Reaction product of alkylthioalcohol and substituted phosphorous compound
P–97–0225	12/26/96	03/26/97	Cerdec Corporation; Drakenfeld Products	(G) Precious metal coating ingredients	(G) Precious metal [(alkoxyalkylalkoxy)alkyl-2-mercapto propanoato]-
P–97–0226	12/26/96	03/26/97	CBI	(G) Open, non-dispersive use	(G) Acrylic latex
P–97–0227	12/23/96	03/23/97	3M Company	(G) Polymer additive	(G) Fluorochemical polymer
P–97–0228	12/23/96	03/23/97	3M Company	(G) Polymer additive	(G) Fluorochemical polymer
P–97–0229	12/24/96	03/24/97	Courtaulds Coatings Inc	(S) Curing agent for 2-part epoxy coating system	(G) Aromatic diamine aliphatic epoxy adduct
P–97–0230	12/23/96	03/23/97	NA Industries, Inc	(G) Lubricant and additives for ink, paint, and coatings	(G) Polyimine
P–97–0231	12/23/96	03/23/97	3M Company	(S) Intermediate	(G) Alkylethoxylate derivative
P–97–0232	12/23/96	03/23/97	AKZO Nobel Rresins	(S)Resin used to manufacture industrial coatings	(S) Polymer of: styrene; methacrylic acid; laurylmethacrylate; *E*-caprolactone; 2-hydroxethyl acrylate; tert. butylperoxy 3,5,5-trimethyl hexanoate
P–97–0233	12/23/96	03/23/97	3M Company	(S) Intermediate	(G) Alkylethoxylate derivative
P–97–0234	12/24/96	03/24/97	CBI	(G) Additive for lubricant	(G) Zinc dialkyl dithiophosphate
P–97–0235	12/23/96	03/23/97	CBI	(S) Processing aid for thermoplastic resins	(G)Rosin odified hydrocarbon resin
P–97–0236	12/23/96	03/23/97	CBI	(S) Processing aid for thermoplastic resins	(G) Modified hydrocarbon resin
P–97–0237	12/23/96	03/23/97	CBI	(S) Processing aid for thermoplastic resins	(G) Modified hydrocarbon resin
P–97–0238	12/23/96	03/23/97	CBI	(S) Processing aid for thermoplastic resins	(G) Modified hydrocarbon resin
P–97–0239	12/23/96	03/23/97	CBI	(S) Processing aid for thermoplastic resins	(G) Modified hydrocarbon resin
P–97–0240	12/23/96	03/23/97	CBI	(S) Processing aid for thermoplastic resins	(G) Modified hydrocarbon resin
P–97–0241	12/26/96	03/26/97	Unichema North America	(S) Reactive raw material for production of polyurethanes	(G) Polyester diol
P–97–0242	12/26/96	03/26/97	CBI	(G) Open, non-dispersive use.	(G) Polyurethane dispersion

I. 115 Premanufacture Notices Received From: 12/01/96 to 12/31/96—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0243	12/26/96	03/26/97	CBI	(G) Monomer for high performance polymers	(G) Aliphatic diol
P–97–0244	12/26/96	03/26/97	Cerdec Corporation; Drakenfeld Products	(G) Precious metal coating ingredient	(G) Polysulfide,poly[[polyhdro-alkano-cyclicpolyalkyl]oxy]-
P–97–0245	12/26/96	03/26/97	Unichema North America	(S) Reactive raw material for production of polyurethanes	(G) Polyester diol
P–97–0246	12/26/96	03/26/97	Unichema North America	(S) Reactive raw material for production of polyurethanes	(G) Polyester diol
P–97–0247	12/26/96	03/26/97	Cerdec Corporation; Drakenfeld Products	(G) Precious metal preparation ingredient	(G) Precious metal, [(polyhydro-alkyl-cyclic polyalkyl) alkyl mercaptoacetato-]
P–97–0248	12/26/96	03/26/97	Cerdec Corporation; Drakenfeld Products	(G) Precious metal preparation ingredient	(G) Precious metal, [(polyhydro-alkyl-cyclic polyalkyl) alkyl mercaptoacetato-]
P–97–0249	12/26/96	03/26/97	CBI	(G) Colorant	(G) Xanthene dye
P–97–0250	12/26/96	03/26/97	Unichema North America	(S) Reactive raw material for production of polyurethanes	(G) Polyester diol
P–97–0251	12/24/96	03/24/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic grafted copolymer
P–97–0252	12/24/96	03/24/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic grafted copolymer
P–97–0253	12/24/96	03/24/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic grafted copolymer
P–97–0254	12/24/96	03/24/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic grafted copolymer
P–97–0255	12/24/96	03/24/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic grafted copolymer
P–97–0256	12/24/96	03/24/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic grafted copolymer
P–97–0257	12/24/96	03/24/97	CBI	(S) Intermediate for substances	(G) Polyurethane resin
P–97–0258	12/24/96	03/24/97	CBI	(S) Intermediate for substances	(G) Polyurethane resin
P–97–0259	12/24/96	03/24/97	CBI	(S) Intermediate for substances	(G) Polyurethane resin
P–97–0260	12/24/96	03/24/97	CBI	(S) Intermediate for substances	(G) Polyurethane resin
P–97–0261	12/26/96	03/26/97	CBI	(G) Open, non-dispesive	(G) Polyester resin
P–97–0262	12/26/96	03/26/97	Witco Chemical Corporation	(S) PVC adhesion promoter	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethanamine and glycidyl tolyl ether, graft
P–97–0263	12/30/96	03/30/97	Chemrex Inc	(G) Open, non-dispersive additive for water-based adhesives and sealants	(G) Anionic aliphatic polyurethane dispersion
P–97–0264	12/30/96	03/30/97	Shin-Etsu Silicones of America, Inc	(S) Coating on glass and plastic articles for water-and/or oil repellency; filler-treatment for reinforced fluorinated plastics; addition into plastics, greases	(S) Silane, (3,3,4, 4,5,5,6, 6,7,7, 8,8,9,9, 10,10,10-hepta decafluoro decyl)trimethoxy-
P–97–0265	12/31/96	03/31/97	CBI	(G) Molding compound	(G) Poly(ester-ether)

II. 58 Notices of Commencement Received From: 12/01/96 to 12/31/96

Case No.	Received Date	Commencement/Import Date	Chemical
P–92–0849	12/24/96	11/27/96	(G) *N,N'*-phenylene bis(oxo-(alkyl benzothiazole-2-yl)phenylazo)alkyl amide
P–93–0201	12/18/96	11/22/96	(S) Magnesium aluminum zinc hydroxy carbonate (hydrotalcite-like compound)
P–94–0326	12/30/96	12/02/96	(G) Alkoxylated, di-alkyl-diethylenetriamine, alkylsulfate salt
P–94–0591	12/03/96	11/21/96	(G) Benzene alkanal, 4-alkyl-alpha, alpha-dialkyl, oxrime
P–94–1566	12/03/96	11/04/96	(S) Tetrakis (diethylamido) titanium
P–94–1697	12/24/96	12/11/96	(G) Water reducible polyester resin
P–94–1890	12/10/96	12/03/96	(G) Modified polymeric diphenyl methane diisocyanate prepolymer
P–94–1916	12/10/96	11/22/96	(G) Hydroalkyl functional poly dimethylsiloxane
P–95–0082	12/03/96	11/20/96	(G) 3-Cycloalkene-1-methanol, alkyl-1-(trialkyl-3-cycloalkene)
P–95–0939	12/17/96	11/19/96	(G) Organophosphate
P–95–1033	12/18/96	12/09/96	(G) Organo functional silica
P–95–1105	12/04/96	11/15/96	(G) Mixed carboxylic acids, branched
P–95–1560	12/12/96	11/21/96	(G) Water-borne polyurethane dispersion
P–95–1806	12/30/96	12/12/96	(G) Quaternary ammonium hydroxide
P–95–2064	12/30/96	12/04/96	(G) Organosilane ester
P–96–0132	12/09/96	06/15/96	(G) Alkenyl nitrile

II. 58 Notices of Commencement Received From: 12/01/96 to 12/31/96—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0162	12/18/96	11/26/96	(G) Polyamino acid salt
P–96–0269	12/12/96	12/03/96	(G) Acryl modified polysiloxane
P–96–0270	12/12/96	12/03/96	(G) Acryl modified polysiloxane
P–96–0293	12/30/96	12/13/96	(G) Substituted aminium carboxylic acid salt
P–96–0366	12/02/96	08/11/96	(S) Ethanedione, bis(4-fluorophenyl)-
P–96–0568	12/10/96	11/06/96	(G) Polyester containing neopentyl glycol
P–96–0601	12/31/96	12/25/96	(S) 8-Azabicyclo[3,2,1]octan-3-one, 8-methyl
P–96–0714	12/12/96	11/11/96	(G) Polyurethane
P–96–0761	12/18/96	12/10/96	(G) Acrylate functionalized polyester
P–96–0783	12/04/96	11/04/96	(G) Sulfonated aromatic acid with diamine
P–96–0831	12/26/96	12/10/96	(G) Polyurethane dispersion
P–96–0837	12/05/96	11/20/96	(S) Hydroxy terminated 1,3-butadiene homopolymer; dimethyl meta-isopropenyl benzyl isocyanate; dibutyltin dilaurate
P–96–0862	12/26/96	12/10/96	(G) Polyurethane dispersion
P–96–1021	12/03/96	11/13/96	(G) Amine terminated polyamide oligomer
P–96–1022	12/03/96	11/15/96	(G) Amine terminated polyamide oligomer
P–96–1085	12/04/96	11/07/96	(G) Sulfonated nylon copolymer
P–96–1148	12/19/96	12/04/96	(S) Lubrication oil (petroleum), hydrocracked nonarom. solvent-deparaffined
P–96–1175	12/05/96	11/16/96	(G) Polyamide
P–96–1189	12/10/96	11/26/96	(G) Tetra substituted benzene sulfonic acid
P–96–1192	12/18/96	11/14/96	(G) Alkyl alcohol terminated polyurethane from 1,3-bis(1-isocyanato-1-methylethyl)benzene, 1,6-hexanediol, polyether polyois and substituted aromatic diols
P–96–1193	12/18/96	11/14/96	(G) Neutralized alkyl alcohol terminated, amine functional polyurethane derived from 5-isocyanato-1-(isocyanato methyl)-1,3,3 trimethyl cylohexane, polyether polyols and alkyl diols
P–96–1240	12/10/96	11/06/96	(G) Substituted alkylphenyloxy polyoxyethylene sulfonic salt
P–96–1335	12/19/96	11/18/96	(G) Chromate (4-), substituted phenylazo-substituted maphthalene sulfonato- substituted sulfophenylazo- substituted naphthslene sulfonate, sodium salt
P–96–1407	12/20/96	12/01/96	(G) Metal complexed reaction product of diazotized substituted ureido benzene sulfonic acid and substituted benzaldehyde, sodium salt
P–96–1409	12/10/96	11/23/96	(G) Modified polyurethane
P–96–1411	12/10/96	11/23/96	(G) Modified polyacrylate polymer, solvent free
P–96–1440	12/12/96	12/04/96	(G) Polyester, polyurethane polymer
P–96–1456	12/24/96	12/09/96	(G) Polybutadiene modified polyester urethane
P–96–1461	12/12/96	12/12/96	(S) Mixed cresyl 1-butyl titanium (4+) salt, homopolymer
P–96–1484	12/26/96	11/25/96	(G) Alkali salt of linear alcohol
P–96–1485	12/17/96	12/13/96	(G) Aromatic amide
P–96–1486	12/03/96	11/13/96	(S) Benzene, ethenyl-, polymer with 1-methyl-4-(1-methylethenyl) cyclohexene, hydrogenated
P–96–1493	12/06/96	11/10/96	(G) Alkyl ester
P–96–1501	12/04/96	11/07/96	(G) Borate complex
P–96–1515	12/16/96	12/12/96	(G) Polyoxyalkylene polyester urethane block copolymer
P–96–1537	12/04/96	11/13/96	(G) Quatenary amino cyclic urea amino epoxy adduct
P–96–1538	12/12/96	11/14/96	(G) Hydrophobically modified polyethylene glycol-glycoluril copolymer
P–96–1539	12/12/96	12/11/96	(G) Hydrophobically modified polyethylene glycol-glycoluril copolymer
P–96–1544	12/02/96	11/18/96	(G) Reaction product of phosphonitrilic chloride with siloxane oil
P–96–1579	12/17/96	12/02/96	(G) Poly substituted acrylic copolymer
P–96–1606	12/19/96	12/10/96	(G) Modified acrylic polymer
Y–94–0136	12/03/96	11/11/96	(G) Alkyd polyester resin

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 11, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–10898 Filed 4–25–97; 8:45 am]

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federal register

Monday
April 28, 1997

Part VIII

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51859; FRL–5588–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from January 1, 1997 to January 31, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51859]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51859]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

The official record for this notice, as well as the public version, has been established for this notice under document control number ''[OPPTS–5189]'' (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified buy the document control number [OPPTS–T1859]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 87 Premanufacture Notices Received From: 01/01/97 to 01/31/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0266	01/03/97	04/03/97	Ciba-Geigy Corporation	(S) Light stabilizer for coatings	(G) Substituted triazine
P–97–0267	01/02/97	04/02/97	CBI	(G) Open non-dispersive (intermediate)	(G) Substitituted carbazate
P–97–0268	01/02/97	04/02/97	CBI	(S) Binder for formulating industrial paints for coating wood or plastic	(G) Acrylate/acrylonitrile copolymer
P–97–0269	01/07/97	04/07/97	Bedoukian Research, Inc.	(G) Chemical intermediate	(G) Monohalo substituted alkyne
P–97–0270	01/09/97	04/09/97	CBI	(G) Base resin of paint, an open non-dispersive use	(G) Modified polyester resin
P–97–0271	01/09/97	04/09/97	CBI	(G) Bowling lane coating	(G) Moisture cure urethane
P–97–0272	01/10/97	04/10/97	CBI	(S) Stabilizer for plastics	(G) Salt of fatty acid
P–97–0273	01/10/97	04/10/97	CBI	(S) Clarifying agents for plastics articles	(G) 1*H*-dibenzo[d,g][1,3,2]dioxaphosphocin, aluminum deriv.
P–97–0274	01/10/97	04/10/97	CBI	(S) Aroma chemical for use in fragrance mixtures	(G) C_{24} ester
P–97–0275	01/13/97	04/13/97	CBI	(G) Polymer additives and coating	(G) Aliphatic polyurethane acrylic oligomer
P–97–0276	01/10/97	04/10/97	Teknor Apex Company	(S) Plasticizer for flexible PVC	(G) Phthalic acid dialkyl ester
P–97–0277	01/10/97	04/10/97	Teknor apex company	(S) Plasticizer for flexible pvc	(G) Phthalic acid dialkyl ester
P–97–0278	01/13/97	04/13/97	AKZO Nobel Resins	(S) Resin used to manufacture industrial coatings	(S) Polymer of: butyl acrylate; butyl methacrylate; methacrylic acid; 2-hydroxyethylmethacrylate; styrene; tert. butylperoxy 3,5,5-trimethylhexanoate; cumenehydroxide; di-tert. butylperoxide
P–97–0279	01/13/97	04/13/97	CBI	(G) Component of coating with open use	(G) Hydroxy functional aliphatic phenol
P–97–0280	01/13/97	04/13/97	CBI	(G) Base resin of paint, an open non-dispersive use	(G) Modified alkyd resin
P–97–0281	01/13/97	04/13/97	CBI	(G) Base resin of paint, an open non-dispersive use	(G) Modified alkyd resin
P–97–0282	01/14/97	04/14/97	Dow Corning	(S) Surface modification treatment agent	(G) Silicone glycol
P–97–0283	01/14/97	04/14/97	Wapotec International Inc.	(S) Precursor of pesticides; oxidizer in presence of C_{12}; oxidizer in cosmetics; oxidizer in sanitizers; oxidizer in swimming pools	(S) Tetra chlorodecaoxide (9ci)
P–97–0284	01/15/97	04/15/97	CBI	(G) Ingredients for use in consumer products; highly dispersive use	(G) Wild pepper
P–97–0285	01/14/97	04/14/97	Reichhold Chemicals Inc	(G) Purge materials for hot melt polyurethane reactive adhesives	(G) Purge for hot melt polyurethane adhesives
P–97–0286	01/14/97	04/14/97	Henkel Corporation	(G) Eneergy curable	(G) Acrylated polyester
P–97–0287	01/17/97	04/17/97	CBI	(G) Plasticizer	(G) Ethoxylated aromatic compound
P–97–0288	01/21/97	04/21/97	Ciba-geigy corporation	(S) Light stabilizer for agricultural films or molded polyolefin articles.	(G) Substituted triazine
P–97–0289	01/21/97	04/21/97	CBI	(G) Polyimide precursor	(G) Diester diacid of aromatid dianhydride
P–97–0290	01/21/97	04/21/97	CBI	(G) Petroleum additive	(G) Alkenyl succinimide
P–97–0291	01/16/97	04/16/97	CBI	(G) Dyestuff intermediate	(S) [1,2,4]triazolo[1,5-a]pyridine-6-carbonitrile, 2-(1-ethylpentyl)-5,8-dihydro-7-methyl-5-oxo-
P–97–0292	01/21/97	04/21/97	Arco Chemical Company	(S) Mining flocculant solvent in brake fluids	(S) Poly[oxy(methyl-1,2-ethandiyl)], .alpha-propyl-.omega.-hydroxy-; general industry name = polypropylene glycol monopropyl ether
P–97–0293	01/22/97	04/22/97	Ciba-Geigy Corporation, Textile Products Division	(G) Textile dye	(S) Benzenesulfonic acid, 4-[[4-[[2-(acetylamino)-4-[(methoxycarbonyl)amino]phenyl]azo]phenyl]azo]-, sodium salt (9ci)
P–97–0294	01/17/97	04/17/97	Purac America, Inc	(G) Catalyst, metal plating and coating additive	(S) Propanoic acid, 2-hydroxy-iron(2+) salt (2:1)
P–97–0295	01/17/97	04/17/97	Purac America, Inc	(G) Catalyst, metal plating and coating additive	(S) Zinc, bis (2-hydroxy propanoato-01,02)-(t-4)
P–97–0296	01/22/97	04/22/97	CBI	(G) Additives for emulsion polymers	(G) Alkyl benzene sulfonic acids, amine salts

I. 87 Premanufacture Notices Received From: 01/01/97 to 01/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0297	01/22/97	04/22/97	CBI	(G) Additives for emulsion polymers	(G) Alkyl benzene sulfonic acids, amine salts
P–97–0298	01/22/97	04/22/97	CBI	(G) Additives for emulsion polymers	(G) Alkyl sulfates, amine salts
P–97–0299	01/22/97	04/22/97	CBI	(G) Additives for emulsion polymers	(G) Alkyl ether sulfates, amine salts
P–97–0300	01/22/97	04/22/97	CBI	(G) Destructive use	(G) Fatty acid-maleic anhydride adduct
P–97–0301	01/22/97	04/22/97	The Dow Chemical Company	(G) Rheology modification	(S) Polymer of: ethylene; styrene; hydrogen
P–97–0302	01/22/97	04/22/97	Loctite Corporation	(S) Component in adhesive formulations	(S) Hexadecanoic acid, ethenyl ester
P–97–0303	01/15/97	04/21/97	Henkel Corporation	(S) Latex polymerization	(G) Secondary fatty alcohols, ethoxylated
P–97–0304	01/21/97	04/21/97	CBI	(G) Open, non-dispersive (intermediate)	(G) Thiadiazole sulfone
P–97–0305	01/21/97	04/21/97	CBI	(G) Component of coating with open use	(G) Carbarnate functional polyester
P–97–0306	01/21/97	04/21/97	CBI	(G) Component of coating with open use	(G) Carbarnate functional polyester
P–97–0307	01/21/97	04/21/97	CBI	(G) Component of coating with open use	(G) Carbarnate functional polyester
P–97–0308	01/21/97	04/21/97	CBI	(G) Component of coating with open use	(G) Carbarnate functional polyester
P–97–0309	01/21/97	04/21/97	CBI	(G) Component of coating with open use	(G) Carbarnate functional polyester
P–97–0310	01/21/97	04/21/97	CBI	(G) Component of coating with open use	(G) Carbarnate functional polyester
P–97–0311	01/21/97	04/21/97	CBI	(G) Component of coating with open use	(G) Carbarnate functional polyether
P–97–0312	01/21/97	04/21/97	Ciba-Geigy Corporation, Textile Products Division	(G) Fiber reactive dye	(G) 1,5-naphthalenedisulfonic acid, 2-[(amino-hydroxy-sulfo-naphthalenyl)azo]-, reaction products with 2-[(-amino-hydroxy-sulfo-naphthalenyl)azo]-1,4-benzenedisulfonic acid, 1,2-propanediamine and 2,4,6-triazine, sodium salts
P–97–0313	01/23/97	04/23/97	CBI	(G) Consumer binder	(G) Vegetable oil fatty acid modified styrene acrylic polymer
P–97–0314	01/22/97	04/22/97	CBI	(G) Open, non-dispersive (intermediate)	(G) Thiadiazole
P–97–0315	01/24/97	04/24/97	CBI	(S) Use as a tackifier in a road-marking thermo-paint application	(G) Maleic modified glycerol mono-alcohol ester of rosin
P–97–0316	01/28/97	04/28/97	Huls America Inc	(G) Plastics additive	(S) Silane, hexadecyl trimethoxy
P–97–0317	01/24/97	04/24/97	CBI	(S) Raw material used in the manufacture of photoresists	(G) Aromatic iodine salt
P–97–0318	01/22/97	04/22/97	Reichhold Chemicals Inc	(S) Resin for industrial paint	(G) Alkyd resin
P–97–0319	01/24/97	04/24/97	CBI	(S) Intermediate used in the manufacture of photoacid generators	(G) Fluorinated aromatic sulfonic acid
P–97–0320	01/24/97	04/24/97	CBI	(S) Intermediate used in the manufacture of photoacid generators	(G) Fluorinated aromatic compound
P–97–0321	01/29/97	04/29/97	CBI	(S) Peroxide cure accelerator for polymer systems	(S) 2-[methyl(4-methylphenyl)amino]ethanol
P–97–0322	01/28/97	04/28/97	CBI	(G) Flow improver	(G) Alkyl fumarate/vinyl acetate polymer
P–97–0323	01/28/97	04/28/97	CBI	(G) Lubricant additives	(G) Alkylated arylamines
P–97–0324	01/29/97	04/29/97	Unichema north america	(S) Lubricant base fluid	(S) 1,2,3-propanetriol, homopolymer, isooctadecanoate
P–97–0325	01/28/97	04/28/97	Eastman kodak Company	(G) Chemical intermediated, destructive use	(G) Polyalkylated nitrigenheterocyclic acid
P–97–0326	01/28/97	04/28/97	CBI	(G) Destructive use	(G) Alkyl fumarate
P–97–0327	01/10/97	04/10/97	Hercules Incorporated	(G) Papermaking adhesive	(G) Silylated polyamidoamine
P–97–0328	01/30/97	04/30/97	CBI	(G) Intermediate in chemical production	(G) Ethylenediamine, substituted, sodium salt
P–97–0329	01/30/97	04/30/97	Mona Industries, Inc	(G) Intermediate in multiplr step synthesis	(S) Silixanes and silicones, 3-(4-carboxy-2-oxo-1-pyrrolidinyl)propyl me, di-me
P–97–0330	01/30/97	04/30/97	CBI	(S) Isolated intermediate to dimethyldinitrobutane*	(G) Chlorinated nitroalkane

I. 87 Premanufacture Notices Received From: 01/01/97 to 01/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0331	01/30/97	04/30/97	CBI	(S) First intermediate in the production of *N*-auroylethelenedi aminetriacetic acid and its salts	(G) Ethylene diamine, substituted, sodium salt
P–97–0332	01/30/97	04/30/97	Mona Industries, Inc	(G) Intermediate in multiple step synthesis	(S) Siloxanes and silicones, di-me, 3-[4-[[[-3(dimethylamino)propyl]amino] carbonyl]-2-oxo-1-pyrrolidinyl] propyl me
P–97–0333	01/30/97	04/30/97	Mona Industries, Inc	(G) Both described uses would be dispersive	(S) Siloxanes and silicones, 3-[4-[[[3-[(2,3-dihydroxypropyl)dimethylammonio] propyl]amino]carbonyl]-2-oxo-1-pyrrolidinyl] propyl me, di-me, 3-[3-[[3-(c8-22 acylamino)propyl] dimethylammonio]-2-hydroxypropyl phosphates], chlorides, sodium salts
P–97–0334	01/31/97	05/01/97	I C & S Distributing Company	(S) An ingredient of wood coating	(S) Polymer of: ethanol, 2,2′-oxybis; 1,2-propanediol; 2-butenedioic acid; 1,3-isobenzofurandione, 3a,4,7,7a-tetrahydro-; 1-butanol,2,2-bis[(2-propenyoloxy)methyl]-
P–97–0335	01/31/97	05/01/97	Dyneon	(G) Elastomer additive	(G) Aromatic fluoroalkyl mixture complex
P–97–0338	01/27/97	04/27/97	Reichhold Chemicals, Inc	(S) Corrosion resistant pipe and duct manufacture; laminated panels (transportation); chemical, process equipment (tanks, stacks, etc.,); boat manufacture (marine) general laminating	(G) Polycarbodiimide
P–97–0339	01/27/97	04/27/97	Reichhold Chemicals, Inc	(S) Corrosion resistant pipe and duct manufacture; laminated panels (transportation); chemical, process equipment (tanks, stacks, etc.,); boat manufacture (marine) general laminating	(G) Polycarbodiimide
P–97–0340	01/31/97	05/01/97	Henkel Corporation	(G) Defoamer	(G) Silica filled polydimethylsiloxane
P–97–0341	01/31/97	05/01/97	Henkel Corporation	(G) Defoamer	(G) Silica filled polydimethylsiloxane
P–97–0342	01/31/97	05/01/97	Gateway Additive Company	(S) Metalworking fluid additives	(G) Alkenyl succinate
P–97–0343	01/31/97	05/01/97	Gateway Additive Company	(S) Metalworking fluid additives	(G) Amine salt of an alkenyl succinate
P–97–0344	01/31/97	05/01/97	Gateway Additive Company	(S) Metalworking fluid additives	(G) Amine salt of an alkenyl succinate
P–97–0345	01/31/97	05/01/97	CBI	(G) Structural material	(G) Modified polyacrylate
P–97–0346	01/31/97	05/01/97	CBI	(G) Structural material	(G) Modified polyacrylate
P–97–0347	01/31/97	05/01/97	CBI	(G) Structural material	(G) Modified polyacrylate
P–97–0348	01/31/97	05/01/97	CBI	(G) Structural material	(G) Modified polyacrylate
P–97–0349	01/31/97	05/01/97	CBI	(G) Structural material	(G) Modified polyacrylate
P–97–0350	01/31/97	05/01/97	CBI	(G) Structural material	(G) Organic silicon polymer
P–97–0351	01/31/97	05/01/97	CBI	(G) Structural material	(G) Organic silicon polymer
P–97–0352	01/31/97	05/01/97	CBI	(G) Structural material	(G) Organic silicon polymer
P–97–0353	01/31/97	05/01/97	CBI	(G) Structural material	(G) Organic silicon polymer
P–97–0354	01/31/97	05/01/97	CBI	(G) Structural material	(G) Organic silicon polymer

II. 35 Notices of Commencement Received From: 01/01/97 to 01/31/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–92–0011	01/13/97	12/24/96	(G) Alkylsilicon copolymerized aliphatic polyurethane
P–93–0366	01/28/97	01/14/97	(S) Polymer of: propene; 1-hexene; 2,5-furandione; tic14; MGC12; a1(c2h5)3; (t-c4h9)202
P–94–1066	01/21/97	12/20/96	(G) Pentaerythritol tetraesters of mixed fatty acids
P–94–1068	01/30/97	01/13/97	(G) Mixed fatty acid esters of mono-and dipentaery thritol
P–94–1817	01/14/97	04/10/96	(G) Toughening resin
P–94–1818	01/16/97	04/15/96	(G) Toughened epoxy resin
P–95–0239	01/10/97	10/23/95	(S) Bismuth naphthenate
P–95–1356	01/07/97	12/20/96	(G) Siylated polyurethane (spu)
P–96–0033	01/07/97	12/26/96	(S) Cyclopropanecarboxaldehyde

II. 35 Notices of Commencement Received From: 01/01/97 to 01/31/97—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0229	01/08/97	12/10/96	(G) *N*-(3-phenylpropyl) alkyl pyridinium bromide
P–96–0574	01/21/97	12/25/96	(S) Benzaldehyde,2,3,5 trichloro
P–96–0683	01/16/97	01/08/97	(G) Bis phenyl substituted urea
P–96–0921	01/22/97	12/31/96	(G) Substituted thiazole
P–96–0923	01/22/97	01/08/97	(G) Substituted thiazole
P–96–0976	01/17/97	01/09/97	(G) Isocyanate terminated dicarboxylic acid based urethane oligomer
P–96–0982	01/13/97	12/12/96	(G) Blocked aromatic iscocyanate
P–96–1234	01/31/97	01/02/97	(G) Polyester polyurethane
P–96–1385	01/29/97	01/16/97	(S) Polymer of: poly(oxy(methyl-1,2-ethanediyl)], alpha, alpha′-[(1-methyl-ethylidene)di-4, 1-phenylene] bis[omega-hydroxy-;isophthalic acid; adipic acid; stannous (ii) chloride
P–96–1444	01/22/97	01/13/97	(S) 2*H*-azepin-2-one, hexahydro-, homopolymer, mononon amide, distn. residues
P–96–1480	01/22/97	01/16/97	(G) Benzotriazole derivative
P–96–1530	01/21/97	12/19/96	(G) Vegetable oil polymer with aromatic dicarboxylic acid, vegetable oil fatty acids, aliphatic alpha olefin and olefin distillate streams
P–96–1541	01/21/97	01/07/97	(G) 1,2-Propanediol polymer (*N*-1-3), polymer with 2-alkyl-2(hydroxymethyl)-1,3-propanediol, 1,1′ -alkylenebis[4-isocyanato benzene]and 2,2′-(methylimino)bis[ethanol], 2-butanone oxrime-blocked
P–96–1577	01/16/97	12/20/96	(G) Polyester acrylate
P–96–1581	01/28/97	01/16/97	(G) Halo substituted alkene
P–96–1625	01/22/97	01/15/97	(G) Aromatic glyceride derivative
P–96–1639	01/02/97	12/09/96	(G) Polyhydroxyrene
P–96–1643	01/28/97	01/21/97	(G) Amine-functioinalized polyether polyester polyurethane polymer
P–96–1645	01/17/97	12/13/96	(G) Fluorochemical esters
P–96–1650	01/21/97	01/14/97	(G) Water soluble nylon
P–96–1660	01/31/97	01/16/97	(G) Silicone acrylate polymer
P–96–1696	01/31/97	01/27/97	(G) Substituted phenyl amino trizinyl substituted phenyl azsubstituted pyrdine compound
P–96–1715	01/28/97	01/08/97	(G) Glycolysis product of polyurethane foam
P–97–0003	01/14/97	01/07/97	(G) Propolymer component
P–97–0012	01/28/97	01/20/97	(G) Hydroxy functional acrylic polymer
P–97–0047	01/28/97	01/20/97	(G) Alcohol alkoxylate

List of Subjects

Environmental protection, Premanufacture notices.

Dated:_____

_____

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–10895 Filed 4–25–97; 8:45 am]

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Monday
April 28, 1997

Part IX

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers; Final Rule

Energy Conservation Program for Consumer Products; Finding of No Significant Impact; Notice

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–801]

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or Department) today promulgates revised energy conservation standards for refrigerators, refrigerator-freezers, and freezers. This action is expected to result in substantial energy savings, with consequent benefits to consumers and reductions in emissions of air pollutants.

EFFECTIVE DATE: The effective date of the revised standards is July 1, 2001.

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I. Introduction

A. General

This final rule concludes a regulatory action, mandated by Part B of Title III of the Energy Policy and Conservation Act, as amended (the Act or EPCA), 42 U.S.C. § 6291–6309, to review and revise the Department's energy conservation standards applicable to refrigerators, refrigerator-freezers, and freezers (refrigerator products). The revised standards will result in reduced energy consumption, reduced consumer costs, and reduced emissions of air pollutants associated with electricity production. The Department estimates that over 30 years the revised standards will save approximately 6.67 quads (7.03 exajoules (EJ)) of primary energy and result in a 465 million metric ton (Mt) (513 million short tons) reduction in emissions of CO_2 and a 1,362 thousand metric ton (kt) (1,501,000 short tons) reduction in emissions of NO_X.

The regulations published today amend existing standards that were promulgated on November 17, 1989 (hereinafter referred to as the 1989 Final Rule). 54 FR 47916. The Act directs the Department to review the 1989 Final Rule for possible amendment and to issue a final rule based on that review within five years. EPCA, § 325(b)(3)(B), 42 U.S.C. § 6295(b)(3)(B).

In developing today's final regulations, the Department has relied substantially on a joint recommendation negotiated by refrigerator manufacturers and their trade association, energy efficiency advocates, electric utilities, and state energy offices, which was submitted to the Department on November 15, 1994. The Department appreciates their efforts to work out differences and, to the maximum extent practicable, intends to support and encourage similar efforts with respect to energy conservation standards for other appliances.

B. Background

DOE published an Advance Notice of Proposed Rulemaking (hereinafter referred to as the 1993 Advance Notice) on standards for refrigerator products as well as other products on September 8, 1993. 58 FR 47326. The 1993 Advance Notice presented the product classes that DOE planned to analyze and provided a detailed discussion of the analytical methodology and models that the Department expected to use in doing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to the approach taken by DOE.

On November 15, 1994, the Department received joint comments from the Association of Home Appliance Manufacturers (AHAM), the Natural Resources Defense Council (NRDC), the American Council for an Energy Efficient Economy (ACEEE), the New York State Energy Office, the California Energy Commission (CEC), Pacific Gas and Electric (PG&E) and Southern California Edison (SCE) (hereinafter referred to as the ''Joint Comments''). The AHAM member companies that were active in the negotiations and that supported the agreement were: Amana Refrigeration, Inc. (Amana), Frigidaire Company (Frigidaire), General Electric Appliances (GEA), Marvel Industries (Marvel), Maytag Company (Maytag), Sanyo Company (Sanyo), Sub-Zero Corporation (Sub-Zero), U-Line Corporation (U-Line), W.C. Wood Company and Whirlpool Corporation (Whirlpool).

This group of refrigerator manufacturers, energy efficiency advocates, electric utilities, and state energy offices worked intensively for approximately two and one-half years to develop a common recommendation for revised energy conservation standards for refrigerator products that met the statutory requirements. Although DOE neither organized nor was a member of the group, DOE responded to the group's request to send DOE staff observers to meetings and to make contractors available to provide analytical support. The Department viewed the group effort to reach agreement among representatives of industry, energy efficiency advocates and others as a very constructive development, and the thoughtful Joint

Comments were of great value to the Department in crafting its proposal.

On July 20, 1995, DOE published a Notice of Proposed Rulemaking in which the Department proposed amended energy conservation standards for the refrigerator products (hereinafter referred to as the 1995 Proposed Rule). 60 FR 37388. The standard levels proposed in the 1995 Proposed Rule corresponded closely to the standard levels recommended in the Joint Comments on the 1993 Advance Notice. Standards proposed in the 1995 Proposed Rule are shown in Table 1–1 and Table 1–2.

TABLE 1–1.—PROPOSED ENERGY STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS WHICH CONTAIN HCFCS

Product class	Energy standards equations (kWh/yr)	
	Effective January 1, 1993	Effective 3 years after publication of final rule
1. Refrigerators and Refrigerator-freezers with manual defrost	13.5AV+299 0.48av+299	8.82AV+248.4 0.31av+248.4
2. Refrigerator-Freezers—partial automatic defrost	10.4AV+398 0.37av+398	8.82AV+248.4 0.31av+248.4
3. Refrigerator-Freezers—automatic defrost with top-mounted freezer without through-the-door ice service and all-refrigerators—automatic defrost	16.0AV+355 0.57av+355	9.80AV+276.0 0.35av+276.0
4. Refrigerator-Freezers—automatic defrost with side-mounted freezer without through-the-door ice service	11.8AV+501 0.42av+501	4.91AV+507.5 0.17av+507.5
5. Refrigerator-Freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service	16.5AV+367 0.58av+367	4.60AV+459.0 0.16av+459.0
6. Refrigerator-Freezers—automatic defrost with top-mounted freezer with through-the-door ice service	17.6AV+391 0.62av+391	10.20AV+356.0 0.36av+356.0
7. Refrigerator-Freezers—automatic defrost with side-mounted freezer with through-the-door ice service	16.3AV+527 0.58av+527	10.10AV+406.0 0.36av+406.0
8. Upright Freezers with Manual Defrost	10.3AV+264 0.36av+264	7.55AV+258.3 0.27av+258.3
9. Upright Freezers with Automatic Defrost	14.9AV+391 0.53av+391	12.43AV+326.1 0.44av+326.1
10. Chest Freezers and all other Freezers except Compact Freezers	11.0AV+160 0.39av+160	9.88AV+143.7 0.35av+143.7
11. Compact Refrigerators and Refrigerator-Freezers with Manual Defrost	13.5AV+299 0.48av+299	10.70AV+299.0 0.38av+299.0
12. Compact Refrigerator-Freezers—partial automatic defrost	10.4AV+398 0.37av+398	7.00AV+398.0 0.25av+398.0
13. Compact Refrigerator-Freezers—automatic defrost with top-mounted freezer and compact all-refrigerators—automatic defrost	16.0AV+355 0.57av+355	12.70AV+355.0 0.45av+355.0
14. Compact Refrigerator-Freezers—automatic defrost with side-mounted freezer	11.8AV+501 0.42av+501	7.60AV+501.0 0.27av+501.0
15. Compact Refrigerator-Freezers—automatic defrost with bottom-mounted freezer	16.5AV+367 0.58av+367	13.10AV+367.0 0.46av+367.0
16. Compact Upright Freezers with Manual Defrost	10.3AV+264 0.36av+264	9.78AV+250.8 0.35av+250.8
17. Compact Upright Freezers with Automatic Defrost	14.9AV+391 0.53av+391	11.40AV+391.0 0.40av+391.0
18. Compact Chest Freezers	11.0AV+160 0.39av+160	10.45AV+152.0 0.37av+152.0

AV=Total adjusted volume, expressed in $ft.^3$, as determined in Appendices A1 and B1 of Subpart B of this Part.
av=Total adjusted volume, expressed in Liters.

TABLE 1–2.—PROPOSED ENERGY STANDARDS FOR HCFC-FREE REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Product class	Energy standards equations (kWh/yr) effective dates		
	Effective January 1, 1993	3 years after publication of final rule	9 years after publication of final rule
19. HCFC-Free Refrigerators and Refrigerator-Freezers with Manual Defrost	13.5AV+299 0.48av+299	9.70AV+273.2 0.34av+273.2	8.82AV+248.4 0.31av+248.4
20. HCFC-Free Refrigerator-Freezer—partial automatic defrost	10.4AV+398 0.37av+398	9.70AV+273.2 0.34av+273.2	8.82AV+248.4 0.31av+248.4

TABLE 1–2.—PROPOSED ENERGY STANDARDS FOR HCFC-FREE REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS—Continued

Product class	Energy standards equations (kWh/yr) effective dates		
	Effective January 1, 1993	3 years after publication of final rule	9 years after publication of final rule
21. HCFC-Free Refrigerator-Freezers—automatic defrost with top-mounted freezer without through-the-door ice service and HCFC-Free all-refrigerators—automatic defrost	16.0AV+355 0.57av+355	10.78AV+303.6 0.38av+303.6	9.80AV+276.0 0.35av+276.0
22. HCFC-Free Refrigerator-Freezers—automatic defrost with side-mounted freezer without through-the-door ice service	11.8AV+501 0.42av+501	5.40AV+558.3 0.19av+558.3	4.91AV+507.5 0.17av+507.5
23. HCFC-Free Refrigerator-Freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service	16.5AV+367 0.58av+367	5.06AV+504.9 0.18av+504.9	4.60AV+459.0 0.16av+459.0
24. HCFC-Free Refrigerator-Freezers—automatic defrost with top-mounted freezer with through-the-door ice service	17.6AV+391 0.62av+391	11.22AV+391.6 0.40av+391.6	10.20AV+356.0 0.36av+356.0
25. HCFC-Free Refrigerator-Freezers—automatic defrost with side-mounted freezer with through-the-door ice service	16.3AV+527 0.58av+527	11.11AV+446.6 0.39av+446.6	10.10AV+406.0 0.36av+406.0
26. HCFC-Free Upright Freezers with Manual Defrost	10.3AV+264 0.36av+264	8.31AV+284.1 0.29av+284.1	7.55AV+258.3 0.27av+258.3
27. HCFC-Free Upright Freezers with Automatic Defrost	14.9AV+391 0.53av+391	13.67AV+358.7 0.48av+358.7	12.43AV+326.1 0.44av+326.1
28. HCFC-Free Chest Freezers and All Other Freezers Except Compact Freezers	11.0AV+160 0.39av+160	10.87AV+158.1 0.38av+158.1	9.88AV+143.7 0.35av+143.7
29. HCFC-Free Compact Refrigerators and Refrigerator-Freezers with Manual Defrost	13.5AV+299 0.48av+299	13.5AV+299.0 0.48av+299	10.70AV+299.0 0.38av+299.0
30. HCFC-Free Compact Refrigerator-Freezer—partial automatic defrost	10.4AV+398 0.37av+398	10.4AV+398.0 0.37av+398.0	7.00AV+398.0 0.25av+398.0
31. HCFC-Free Compact Refrigerator-Freezers—automatic defrost with top-mounted freezer and HCFC-free compact all-refrigerators—automatic defrost	16.0AV+355 0.57av+355	16.0AV+355.0 0.57av+355.0	12.70AV+355.0 0.45av+355.0
32. HCFC-Free Compact Refrigerator-Freezers—automatic defrost with side-mounted freezer	11.8AV+501 0.42av+501	11.8AV+501.0 0.42av+501.0	7.60AV+501.0 0.27av+501.0
33. HCFC-Free Compact Refrigerator-Freezers—automatic defrost with bottom-mounted freezer	16.5AV+367 0.58av+367	16.5AV+367.0 0.58av+367.0	13.10AV+367.0 0.46av+367.0
34. HCFC-Free Compact Upright Freezers with Manual defrost	10.3AV+264 0.36av+264	10.3AV+264.0 0.36av+264	9.78AV+250.8 0.35av+250.8
35. HCFC-Free Compact Upright Freezers with Automatic defrost	14.9AV+391 0.53av+391	14.9AV+391.0 0.53av+391.0	11.40AV+391.0 0.40av+391.0
36. HCFC-Free Compact Chest Freezers	11.0AV+160 0.39av+160	11.0AV+160.0 0.39av+160.0	10.45AV+152.0 0.37av+152.0

AV = Total adjusted volume, expressed in ft.^{3}, as determined in Appendices A1 and B1 of Subpart B of this Part.
av = Total adjusted volume, expressed in Liters.

The proposed standards were designed to reduce product energy use by up to 30 percent relative to current standards (Tier 1).[1] For products manufactured without HCFC blowing agents, there was a second-tier standard applicable for six years designed to reduce energy use by up to 23 percent (Tier 2). The percentage reduction in energy use varied from class to class. The proposed standards would take effect three years from the date of publication of the final rule. The second tier transition standard for HCFC-free products was designed to address concerns about uncertainty relating to the energy penalty associated with substitutes for HCFC–141b, the blowing agent used for refrigerator insulation. The manufacture and import of HCFC–141b, a stratospheric ozone-depleting chemical, will be banned effective January 1, 2003, pursuant to regulations of the Environmental Protection Agency (EPA). 40 CFR 82.4 (l), (m).

The 1989 Final Rule divided refrigerator products into 10 classes based on various product characteristics (e.g., freezer location). As was proposed in the 1995 Proposed Rule, today's rule establishes new classes for eight different compact refrigerator configurations.

The comment period on the 1995 Proposed Rule, extended by 30 days from its original date, ended on November 2, 1995. 60 FR 47497 (September 13, 1995). A public hearing was held in Washington, D.C. on October 26, 1995. In September and October of 1995, some manufacturers indicated that they no longer supported the imposition of updated standards prior to 2003 because of uncertainty surrounding the thermal efficiency characteristics and cost of insulation

[1] The largest two classes, top mount auto defrost refrigerator-freezer without through-the-door features and side-by-side refrigerator freezers with through-the-door features, have efficiency improvements of 29.6 and 29.3 percent, respectively. These two classes account for 78 percent of the energy used by refrigerators and refrigerator/freezers and 57 percent of all refrigerator products including freezers.

using a blowing agent other than HCFC–141b and safety concerns relating to use of hydrocarbon blowing agents.

In September 1995, the Department announced a formal effort to improve the process it uses to develop appliance efficiency standards. Energy efficiency advocates, product manufacturers, trade associations, state agencies, utilities and other interested parties were asked to provide substantial input into the Department's work, which resulted in the publication of a rule institutionalizing procedural enhancements. 61 FR 36973 (July 15, 1996) (hereinafter referred to as the Process Rule). The enhanced process for considering new or revised appliance efficiency standards includes earlier input from stakeholders, increased predictability of the rulemaking timetable, an improved analysis of impacts, and the encouragement of consensus agreements when possible. For further details, see the Process Rule. 61 FR 36973 (July 15, 1996).

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996 included a moratorium on proposing or issuing new or amended appliance energy conservation standards during Fiscal Year 1996. Pub. L. 104–134.

In keeping with elements of the Process Rule and to inform the development of a final rule on revised refrigerator standards, DOE reopened the comment period on the Proposal Rule until September 11, 1996 (hereinafter referred to as the 1996 Reopening Notice). 61 FR 41748 (August 12, 1996). DOE sought further comment on issues relating to the relationship between revised DOE efficiency standards and the EPA regulation of HCFC–141b. In the 1996 Reopening Notice, DOE described a number of options under consideration, including the approach in the Proposed Rule, and requested comment and supporting data. In the Reopening Notice, the Department identified a ''preferred option,'' which would have established that standard levels would be set in the range bounded by the proposed Tier 1 and Tier 2 standard levels effective January 1, 2003, with the final standard level to be set in 1999, based on a narrow determination of the energy penalty of the substitute blowing agent. The options identified for comment focused on standard levels in the range bounded by the proposed Tier 1 and Tier 2 standard levels, and on effective dates from 2000 through 2003.

II. Discussion of Criteria and Comments

The Act requires that any new or amended conservation standard prescribed by the Secretary shall achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. EPCA § 325(o)(2)(A), 42 U.S.C. § 6295(o)(2)(A).

The Department conducted engineering and economic analyses of those classes of refrigerator products for which performance and cost data could be obtained. The classes analyzed were: top-mounted refrigerator-freezer with auto defrost; top-mounted refrigerator-freezer with auto defrost and through-the-door features; side-by-side refrigerator-freezer with auto defrost; side-by-side refrigerator-freezer with auto defrost and through-the-door features; bottom-mounted refrigerator-freezer with auto defrost; upright freezer with auto defrost; upright freezer with manual defrost; chest freezer with manual defrost; and compact refrigerator-freezer with manual defrost. Data was collected by surveys of the industry, extensive literature review and discussions with experts. This information was used as the basis for determining the improvement in performance and the manufacturer cost for each design option added to the baseline unit. The engineering analysis determined the annual energy use, life cycle costs, and pay back periods for each combination of design options. Proposed standards for classes which could not be analyzed due to the lack of data have been based on the percentage performance improvement over current standards determined for a similar class that was analyzed. No new data on engineering or economic analysis was provided in the comments to the 1995 Proposed Rule.

Revised national impact analyses were performed for today's final rule using the 1997 *Annual Energy Outlook* (AEO) energy price forecast. These results are presented in the updated Chapter 5, ''National Energy and Economic Impacts'' of the Technical Support Document (TSD), DOE/EE–0064. Chapter 4, ''Life-Cycle Costs and Payback Period,'' was also revised using the 1997 AEO energy price forecast. The TSD is the same as the one that accompanied the 1995 Proposed Rule for these products, with the exception of Chapter 4, Chapter 5 and Table R.5, ''Expected Impacts of Program Alternatives,'' which have been updated. Copies of the TSD and the updated chapters and table are available at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

The Department has received over 200 comments from Members of Congress, manufacturers, states, environmental and energy efficiency organizations, trade associations, utilities and the public over the course of nearly two years beginning with the publication of the 1995 Proposed Rule. The significant issues raised by the public comments are addressed below. The Department has recently received comments from a diverse group of stakeholders indicating support for the approach taken in this final rule. (Frigidaire, No. 316; GEA, No. 317; Maytag, No. 318; Whirlpool, No. 319; Amana, No. 320; NRDC, Alliance to Save Energy (ASE), ACEEE, CEC, Florida Energy Office, SCE, and Oregon Office of Energy, PG&E, No. 321).

A. Technological Feasibility

1. General

For those products and classes of products discussed in today's final rule, DOE believes that all of the efficiency levels analyzed in the 1995 Proposed Rule, while not necessarily realized in current production, are technologically feasible. The technological feasibility of the design options is addressed in Chapter 3 of the TSD. The Department considers a design option technologically feasible if that design option is incorporated in commercial products or in working prototypes.

The Department received no public comments regarding the efficiency levels achievable by the design options presented in the 1995 Proposed Rule and accompanying TSD.

2. Maximum Technologically Feasible Levels

To meet the requirement set forth in the Act that any new or amended standard be technologically feasible, the Department conducted engineering analyses of those classes of refrigerator products for which performance and cost data could be obtained. Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible design option (max tech) was identified. The max tech levels were derived by adding energy-conserving engineering design options to the baseline units for each of the respective classes in order of increasing consumer payback periods. A brief discussion of the max tech level for each class analyzed is found in the ''Analysis'' section of the 1995 Proposed Rule. 60 FR at 37407–8 (July 20, 1995). A complete discussion of each max tech level and the design options included in

each is found in the Engineering Analysis in Chapter 3 of the TSD.

B. Economic Justification

Section 325 of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified: economic impact on manufacturers and consumers, net consumer savings, energy savings, impacts on product utility, impact on competition, need for energy conservation, and other relevant factors. EPCA § 325(o)(2)(B)(i), 42 U.S.C. § 6295(o)(2)(B)(i). Each of these is discussed below.

1. Economic Impact on Manufacturers

a. Approach to Modeling. The Engineering Analysis identified design options for improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per-unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

In the analysis which supported the 1995 Proposed Rule, the Department used a computer model that simulated a hypothetical company to assess the likely impacts of standards on manufacturers and to determine the effects of standards on the industry at large. This model, the Manufacturer Analysis Model (MAM), is described in the TSD. (See TSD, Appendix C.) It provides a broad array of outputs, including shipments, price, revenue, net income and short- and long-run returns on equity. An ''Output Table'' lists values for all these outputs for the base case and for each of the standards cases under consideration. (See Tables 6–4 through 6–7 of Chapter 6 in the TSD.) The base case represents the forecasts of outputs with the range of energy efficiencies expected if there are no new or amended standards. A ''Sensitivity Chart'' shows how returns on equity would be affected by a change in any one of the nine control variables of the model. (TSD, Appendix C). The Manufacturer Analysis Model consists of 13 modules. The module which estimates the impact of standards on total industry net present value is version 1.2 of the Government Regulatory Impact Model (GRIM), dated March 1, 1993, which was developed by the Arthur D. Little Consulting Company (ADL) under contract to AHAM, the Gas Appliance Manufacturers Association (GAMA), and the Air-Conditioning and Refrigeration Institute (ARI). (See TSD, Appendix C for more details.)

Commenting on the 1995 Proposed Rule, AHAM, Sub-Zero and GEA criticized the methodology and analytical models used to assess standards. These comments raised concerns about the determination of the impact of standards on manufacturers, particularly the way the Department used the GRIM developed by industry, and the failure to consider the impact of multiple DOE and other agency regulations. Sub-Zero requested that DOE reassess the method used to determine the burdens that future standards will place on small companies. (AHAM, No. 207 at 2–4; Sub-Zero, No. 209 at 3, 4; and GEA, No. 212 at 1, 2).

In implementing the Process Rule, the Department is now undertaking a review of the manufacturing impact analysis model and methodologies. In developing its new methodology, the Department will take into account the comments received concerning its methodology. However, while DOE is committed to improving these analytical tools, DOE believes the results of the Department's manufacturer impact analysis on the 1995 Proposed Rule reasonably reflect the likely impact of new refrigerator standards. The analysis shows, for example, significant drops in short-run return on equity for the higher standard levels, which is consistent with manufacturers' claims. Moreover, notwithstanding their comments concerning the manufacturer impact analytical method, manufacturers, in the Joint Comments, concluded that the proposed standard levels were economically justified and, in more recent comments, expressed support for the approach taken in this final rule. (Joint Comments, No. 49 at 22; Frigidaire, No. 316; GEA, No. 317; Maytag, No. 318; Whirlpool, No. 319; Amana, No. 320).

Other than on issues relating to the status of alternative blowing agents, there have been neither significant technological changes nor significant changes in the market since the Joint Comments were received and the 1995 Proposed Rule was published. Therefore, the Department believes the analysis found in the 1995 Proposed Rule, the TSD for the Proposed Rule (with updated chapters) and the Joint Comments are a sound basis for promulgating this final rule. Developments relating to substitute blowing agents, and the impact of these developments on manufacturer costs are discussed below.

b. Phaseout of HCFC–141b. Many of the manufacturers' written or oral comments on the 1995 Proposed Rule asked that the Department take into account the cumulative burden of DOE's new energy efficiency standards and EPA's regulations banning, as of January 1, 2003, the manufacture and import of HCFC–141b, the blowing agent currently used in the production of the insulation in refrigerators. In the preamble to the Process Rule, with respect to refrigerators, DOE stated that it ''expects to consult further with interested parties to determine whether it is appropriate to make alterations to the proposed standards to take into account the interaction between the revised efficiency standards and Clean Air Act and Montreal Protocol on Substances that Deplete the Ozone Layer regulations relating to the manufacture of HCFCs.'' 61 FR at 36980. The 1996 Reopening Notice expressly sought comment on the interrelationship between these two regulatory actions, the resulting impact on manufacturers, and the possible means for mitigating any adverse impacts. There are three major areas of concern regarding the phaseout of HCFC–141b: the thermal performance of the replacements; the date by which sufficient quantities of the replacement would be available; and the impact of both regulations on the development and manufacture of new refrigerators.

i. Thermal Performance of HCFC–141b Replacements. Based on a recommendation in the Joint Comments, the Department's 1995 Proposed Rule proposed new product classes for refrigerator products made without HCFCs. To allow for the presumed energy penalty of replacements for HCFC–141b, DOE proposed a 10 percent relaxation of the otherwise applicable standards for HCFC-free products for a period of six years after the effective date of the new standards. The Joint Comments, which were developed in 1994 and reflect information on blowing agents available at the time, stated that: ''all non-chlorinated substitutes available to replace HCFC–141b are expected to be a minimum 10% less energy efficient.'' (Joint Comments, No. 49 at 12).

In the 1996 Reopening Notice, the Department sought additional information on replacement blowing agents because of the relevance of such information to the rulemaking effective date and standard levels. AHAM submitted a report summarizing the research of the Appliance Research Consortium (ARC) on foam blowing agents which indicates that a foam blowing agent, hydrofluorocarbon (HFC)–245fa (1,1,1,3,3-pentafluoropropane), is able to produce

insulating foams with a thermal efficiency comparable to HCFC–141b. The ARC report included the results of refrigerator cabinet tests which found that units using HFC–245fa insulation averaged only 0.9 percent more energy usage than comparable units using HCFC–141b. (AHAM, No. 237, Attachment 3).

ii. HFC–245fa Availability. HFC–245fa cannot be used in refrigerators until the blowing agent is added to EPA's Significant New Alternatives Policy (SNAP) list. This inclusion is dependent on the results of several toxicity tests and could occur during 1997. A 90-day toxicity test ended in August 1996 and the results raised no significant concerns. Based on these results and results of other tests, the likely producer of the chemical, AlliedSignal, will decide whether to petition EPA to have HFC–245fa added to the SNAP list. EPA has indicated that it is prepared to initiate the necessary regulatory process to determine whether to allow commercialization of HFC–245fa as soon as a manufacturer petitions the Agency. Based on early information about the physical and toxicological performance of HFC–245fa, EPA believes regulatory approval will be granted. (EPA, No. 301 at 1, 2).

In addition to the toxicity tests, AlliedSignal also has performed a gas migration test using foam board insulation made with HFC–245fa. Comparatively little migration has occurred (less than the migration of HCFC–141b under similar conditions). An AHAM-sponsored food transfer test performed by an independent laboratory (Hazelton) should begin in the summer of 1997, with refrigerator results available in the fall of 1997, and freezer results due toward the end of 1997.

Although the chemical will not require Food and Drug Administration (FDA) approval, these studies are likely to be reviewed by an independent panel of experts to decide whether the chemical would likely meet the FDA's Generally Regarded As Safe (GRAS) requirements. This process should be completed by the end of 1997. (AlliedSignal, No. 266 at 1).

While there are still some uncertainties associated with HFC–245fa, AlliedSignal has indicated, based on favorable test results, that it expects to begin commercial production of HFC–245fa in 1999 and to expand its availability in early 2000 by starting production at a new facility. As of February 1997, AlliedSignal expected appliance manufacturers to begin converting to HFC–245fa as early as 1999 and to complete their conversion before the end of 2000. (AlliedSignal, No. 314, at 4).

iii. Cumulative Burden from Multiple Government Regulations. During 1995 and 1996, prior to the availability of the positive test results on HFC–245fa, many manufacturers expressed concern about the cumulative regulatory burden of revised efficiency regulations and EPA's ban on the production of HCFC–141b as of 2003. They argued that imposing new efficiency standards in 2000 would force manufacturers to redesign their products and processes twice, once in 1999, in order to meet the new efficiency standard, and a second time in 2002, to accommodate a new insulation blowing agent. Manufacturers believed then that the replacement for HCFC–141b was likely to have significant impacts on thermal efficiency and product design, and could also involve significant manufacturing process changes.

Maytag, GEA and Frigidaire expressed concerns about the availability of HCFC-free foams. GEA stated that it appeared unlikely that HFC–245fa would be proven safe and made available in sufficient quantities before 2002. (GEA, No. 212 at 2). AHAM stated that even if the commercial sale of HFC–245fa began in 1999 or 2000, there might not be sufficient production for the entire refrigerator (and building insulation) industry. (AHAM, No. 268 at 3).

As a result of these concerns, the Department carefully considered the interrelationship between these two regulatory actions. To try to mitigate the effects of new energy efficiency standards for refrigerator products and the phaseout of HCFC–141b, the Department evaluated a number of different combinations of effective dates and standard levels for HCFC–141b products and for HCFC-free products. In the 1995 Proposed Rule, the Department proposed separate classes for HCFC and HCFC-free products with 10 percent less stringent standards for the HCFC-free products. In the 1996 Reopening Notice, the Department presented for comment seven possible adjustments to the standards levels and effective date, including the two-tier option proposed in the 1995 Proposed Rule. In the Reopening Notice, the Department specifically requested input on the question of whether significant cost savings would result from having standards take effect at the same time as the EPA ban on the manufacture of HCFC–141b. The Department also requested more information on the candidate substitutes for HCFC–141b.

Public comment on these various proposals was split, with Whirlpool, Marvel Industries, the Northwest Power Planning Council (NPPC), U-Line, CEC, NASEO, ACEEE, NRDC and other commenters expressing continued strong support for the standards as proposed in the 1995 Proposed Rule. (Whirlpool, No. 208 at 3; Marvel Industries, No. 261 at 1; NPPC, No. 210 at 1; U-Line, No. 211 at 2; ACEEE and NRDC, No. 214 at 2; CEC, No. 215 at 1; and NASEO, No. 216 at 1). Amana, Frigidaire, GEA and Maytag supported a new standard in 2003, in order to allow them to make the product and process changes necessary for meeting a new standard simultaneously with introducing a substitute for HCFC–141b. (Amana, Frigidaire, GEA, and Maytag, No. 290, at 1).

In response to the 1996 Reopening Notice, manufacturers, energy efficiency advocates, the EPA and others provided additional information. The Department received comments which more specifically addressed the growing likelihood that HFC–245fa would be the chosen substitute for HCFC–141b. ACEEE and NRDC claimed that there was now evidence that by the 2003 phaseout date for the manufacture of HCFC–141b, alternative blowing agents would be available with no energy penalty. If the Department were significantly delayed in publishing a final rule, ACEEE and NRDC recommended reconsidering the issue of less stringent standards for HCFC-free products. (ACEEE and NRDC, No. 206 at 7–9). Several commenters stated that current information indicated that the next generation HFC's being tested will be viable alternatives with minimal impact on energy consumption and cost. (EPA, No. 250 at 4; GEA, No. 317; Whirlpool, No. 319).

Amana, Frigidaire, Maytag and GEA stated that switching to HCFC substitutes as early as 2000 was not technically feasible, given what is known about the time line for testing and production of HFC–245fa. They asserted that toxicity testing might not be completed until 2001, that the transition of manufacturing facilities to produce the substitute would take additional time, and that chemical manufacturers might not be able to provide adequate supplies of the substitute product to all appliance companies on a timely basis. (Amana, Frigidaire, Maytag and GEA, No. 265 at 1).

These manufacturers commented that the HCFC substitute could affect the fundamental design and manufacture of refrigerators. In particular, if the substitute is not a ''drop-in,'' an additional redesign of refrigerator products may be required. They further commented that while the largest

manufacturers may be able to accommodate the investment in multiple redesigns, other manufacturers cannot afford the added costs associated with over-designing, under-designing or mis-designing for double digit efficiency improvements without first knowing what the HCFC replacement will be. (Amana, Frigidaire, Maytag and GEA, No. 265 at 1).

Information submitted by manufacturers reflected varying views on the likely incremental costs if products needed to be redesigned twice in a three year period (once in 2000 and again in 2003). Maytag stated that when the HCFC–141b ban and the imposition of new energy efficiency standards are separated in time, engineering changes will occur at each stage, requiring considerable resources each time, and the possibility of major capital investments. (Maytag, No. 233, at 2). Frigidaire stated that the incremental cost of two redesigns versus a single redesign between the present time and 2003 is substantial for smaller manufacturers. (Frigidaire, No. 232 at 5). Whirlpool stated that if HFC–245fa or a comparable blowing agent with no significant energy penalty is available, then the degree of redesign needed will be minimal. No product changes would be required, although some companies might choose to make minor design changes and/or change liner material to obtain competitive cost advantages. Whirlpool commented that the factory investments for conversion to HFC–245fa will be zero to a few hundred thousand dollars. (Whirlpool, No. 244, at 3).

Based on the positive results of recent toxicology tests, and the statements of Allied Signal, the EPA and others, DOE has concluded that it is likely that the chosen substitute for HCFC–141b will be HFC–245fa, or another blowing agent with comparable characteristics, and that such a substitute will be available for use in the manufacture of refrigerators prior to the 2003 phase out date for the production of HCFC–141b. (Allied Signal, No. 314; EPA, No. 250). Furthermore, the results of recent tests conducted by ARC show that there is likely to be little or no energy penalty associated with the use of HFC–245fa. (AHAM, No. 237, Attachment 3 at 9). Allied Signal reported that foams produced with HFC–245fa age at a slower rate than foams produced with HCFC–141b at all temperatures tested. Therefore, the thermal conductivity of HFC–245fa blown foams is superior to that of HCFC–141b foams after several weeks of aging. (Allied Signal, No. 267 at 8–9). As noted by Whirlpool, HFC–245fa is less corrosive than HCFC–141b which may result in some cost savings to the industry because manufacturers will not need to use an inner liner or may be able to use a lower cost liner material. (Whirlpool, No. 244 at 3). Because of the comparability of HFC–245fa to HCFC–141b, the Department believes that only minor changes in refrigerator design, not a complete redesign, will be required to convert to the new blowing agent.

DOE has carefully considered all comments on the impact of amended energy efficiency standard levels on manufacturers. Based on the information in the record about the characteristics of HFC–245fa and its likely schedule of availability, DOE believes it is no longer necessary to retain the second tier standard for HCFC-free product classes, as proposed in the 1995 Proposed Rule. Consequently, this rule establishes a single tier of efficiency standards at the levels corresponding to the Tier 1 standards in the 1995 Proposed Rule. This approach is supported by recent comments from Frigidaire, GEA, Maytag, Whirlpool, Amana, energy conservation advocates, states and utilities. (Frigidaire, No. 316; GEA, No. 317, Maytag, No. 318, Whirlpool, No. 319; Amana, No. 320; NRDC, ASE, ACEEE, CEC, Florida Energy Office, SCE, and Oregon Office of Energy, PG&E, No. 321).

The Department recognizes that there will be considerable costs associated with the product redesign necessary to meet the new efficiency standards, as well as some additional costs associated with the conversion to a new insulation blowing agent, even assuming that agent is HFC–245fa or another chemical with comparable characteristics. In addition, the redesign for meeting revised efficiency standards can be done with greater confidence if the substitute blowing agent is known at the time of the redesign. For these reasons, the Department has decided to give manufacturers 14 months more than the minimum of three years from the date of publication until the standard becomes effective. This will allow more time for the development of HCFC–141b substitutes, and for manufacturers to make design changes and obtain the capital necessary to complete the required changes. Furthermore, because of the comparability of HCFC–141b and HFC–245fa, DOE believes that manufacturers could choose to delay their conversion to HFC–245fa until sometime after July 1, 2001, without incurring substantial additional costs.

In April 1997, a number of parties filed comments with the Department supporting this approach of setting an effective date of July 1, 2001, and eliminating the second tier transition standard for HCFC-free products. (Frigidaire, No. 316; GEA, No. 317, Maytag, No. 318, Whirlpool, No. 319; Amana, No. 320; NRDC, ASE, ACEEE, CEC, Florida Energy Office, SCE, and Oregon Office of Energy, PG&E, No. 321). This approach is founded on the best current information about substitutes for HCFC–141b, i.e., that HFC–245fa will receive the necessary regulatory approvals, and that Allied Signal will make it available in sufficient quantities for all manufacturers to use prior to 2003. However, given that all testing on HFC–245fa has not been completed, some commenters urged the Department to provide for appropriate exception relief for manufacturers in the event that HFC–245fa or comparable products do not become available to all manufacturers on a timely basis.

DOE recognizes that some uncertainty still exists about the ultimate acceptability of HFC–245fa or other comparable blowing agents, as well as some uncertainty regarding the timing of commercial production of such a product. The results, to date, of HFC–245fa toxicology tests have generally been positive, but the testing process is not likely to be completed until late 1997. Consequently, it is still possible that subsequent tests will identify unacceptable risks associated with the use of this product or that its commercial availability will be delayed beyond 2003. Under such conditions, DOE may grant manufacturers exception relief. Section 504 of the Department of Energy Organization Act authorizes DOE to make adjustments of any rule or order issued under the Energy Policy and Conservation Act, consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194(a).

The process established by DOE for receiving and acting on applications for exception is set forth in 10 CFR part 1003, subpart B. Applicants for an exception are required to serve their application on persons who might be adversely affected by the granting of an exception, and DOE may require or provide additional notice of the application. 10 CFR 1003.23. The notices to potentially affected parties would include an invitation to submit comments regarding the application to DOE and any comments would be served on the other identified parties in the proceeding. The applicant would be provided an opportunity to respond to any submissions by third parties relevant to the application. 10 CFR

1003.25(a)(1). After considering the entire record, DOE would render a final decision and order. In exercising its authority under section 504, DOE may grant an exception from an efficiency standard for a limited time, and may place other conditions on the grant of an exception.

DOE will require any application for an exception to provide specific facts and information relevant to the claim that compliance would cause special hardship, inequity or the unfair distribution of burdens. Joint applications would be permitted. Compliance with the terms of this rule could constitute special hardship for the refrigerator manufacturing industry in the unexpected event that it was shown that HFC–245fa or a comparable product would not be available as a timely replacement for HCFC–141b and the unavailability of HFC–245fa or comparable products prior to the imposition of the ban on the further production of HCFC–141b would substantially increase the expected manufacturer costs associated with complying with this revised standard. In such circumstances, appropriate transition relief, as may be needed to address the special hardship, would be considered. Any relief would be crafted with due consideration for the effects of such relief on competition in the affected markets.

2. Economic Impact on Consumers Including Life-Cycle Costs and Payback Periods

In determining whether a standard is economically justified, EPCA directs the Secretary to consider the economic impact on consumers. In response to the 1996 Reopening Notice, over 100 consumers urged the adoption of the standards as proposed in the Proposed Rule. These comments supported the reduction in pollution which would result from the standards as well as the benefits to American households. (Public Comments, No. 305).

To evaluate the expected economic impact on consumers, the Department calculates the total life-cycle costs of alternate standard levels as well as the expected time required to pay back any increase in the product's initial costs. The expected payback period of a standard is calculated and often referenced because it is a commonly used measure and also is the basis for the rebuttable presumption created by section 325(o)(2)(B)(iii) of EPCA, 42 U.S.C. 6295(o)(2)(B)(iii).

The life-cycle cost to consumers is the sum of the purchase price and the operating expense discounted over the lifetime of the appliance. Installation and maintenance costs are elements of life-cycle cost but are not significant for refrigerator products. The change in life-cycle costs resulting from any new standards is considered by the Department to be the best measure of the effect of proposed standards on consumers. This is quantified by the difference in the life-cycle costs for the average consumer with and without revised standards for the analyzed refrigerator classes.

The life-cycle cost was calculated for each class for the range of efficiencies considered in the Engineering Analysis, using a real consumer discount rate of 6 percent. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus distributor and retailer markups. The Department believes that its analysis represents the worst case scenario for consumers in that it assumes an incremental increase in the purchase price based on the costs associated with improving efficiency. In the marketplace, manufacturers may offset some or all of this cost increase by, for example, making material substitutions or increasing productivity. (Whirlpool, No. 208 at 2,3). DOE does not attempt to predict the consumer benefits of such non-energy changes which are part of an on-going product improvement process.

Energy Market & Policy Analysis, Inc. (EM&PA) commented that the economic analysis issued by DOE in its TSD is based on outdated and invalid assumptions about potential energy costs. EM&PA commented that all calculations of life-cycle costs, payback periods, and consumer energy cost savings in the TSD are based on unrealistically high estimates of future energy (particularly electricity) prices. (EM&PA, No. 229 at 3).

The purchase price and operating energy expense of each standard level based on the 1994 AEO are presented in Chapter 4 (Consumer Impacts) of the original TSD. The Department is committed to using the most recent available AEO forecasts. The annual operating cost for standard level 1 has been updated based on the lower 1997 AEO energy prices.[2] (See updated Chapter 4 of the TSD.) The 1997 AEO forecast of electricity prices in 2000 is 12.7 percent lower than the 1994 forecast.

Moreover, DOE has analyzed life-cycle costs, payback periods, cost of conserved energy, energy savings, and other metrics using a range of energy prices. Life-cycle costs for the standard level of today's final rule were calculated for the following sensitivity cases: low state electricity prices, high state electricity prices, high equipment prices, low equipment prices, the combination of low state electricity prices and high equipment prices, and the combination of high state electricity prices and low equipment prices. Results are shown in updated TSD Chapter 4. The Department is committed to using such analyses in future rulemakings. (Section 11(e) of the Process Rule).

As a complement to energy price sensitivities, the Department calculates the cost of conserved energy (CCE) for standards under consideration. The CCE is the increase in purchase price amortized over the lifetime energy savings of the appliance. The advantage of the CCE approach is that it does not require assumptions about future energy prices because it uses only the purchase expense of the efficiency measure and the expected energy savings. The consumer will benefit whenever the cost of conserved energy is less than the energy price paid by the consumer for that end use. (TSD, Sec. 4.4, p. 4–23)

AHAM commented, ''The DOE/LBNL energy analysis indicates that standard levels approximating those proposed have paybacks in the 3–4 year category. In fact, analysis undertaken by AHAM, with the same data LBNL used, indicates that for the proposed standards levels the payback is in the 7–8 year period for refrigerator/freezers and 11–12 years for freezers.'' (AHAM, No. 207 at 2).

The payback period reported in the TSD, using 1997 AEO energy price forecasts, is 4.1 years for the top mount auto defrost refrigerator-freezer class without through-the-door features, the most popular class of refrigerators, and ranged from 0.6 to 11.9 years for other classes of refrigerator products. (See TSD, Chapter 4). AHAM provided no explanation for the discrepancy in payback forecasts, claimed no specific errors in the Department's analysis and provided insufficient data to enable the Department to determine why the payback periods do not agree. The Department calculated payback periods using both AEO 1994 and 1997 energy prices and both sets of payback periods are shorter than AHAM claims.

ACEEE and NRDC noted that the 1995 Proposed Rule rejected standard level 2 in part because the payback period at this level may be as long as 19 years, the expected life of the product. (ACEEE and NRDC, No. 206 at 6). Standard level 2 was not rejected solely on the basis of

[2] Annual energy cost is the product of annual energy use times $0.0858/kWh. This electricity price comes from the 1997 AEO price projection. (Sec. 5.1.4, ''Residential Energy Prices,'' of updated TSD Chapter 5).

the payback period. The Department also considered the adverse impact on manufacturers short-run return on equity.

3. Energy Savings

The Act requires DOE to consider the total projected energy savings that result from revised standards. The Department used the Lawrence Berkeley National Laboratory Residential Energy Model (LBNL–REM) results in its consideration of total projected savings.

a. Forecast of Savings. The Department forecasts energy consumption by using the LBNL–REM, which forecasts energy consumption over the period of the analysis for candidate standards and the base case. (See TSD, Appendix B for a detailed discussion of the LBNL–REM.). The LBNL–REM projections depend on estimated values, the most significant of which are the responsiveness of household appliance purchasers to changes in residential energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances.

The Department's estimate of the energy savings attributable to a standard is the difference between the projected energy consumption, assuming compliance with the candidate standard, and projected energy consumption under the base case. The calculation of the forecast energy savings for today's rule differs in two significant ways from the original TSD presentation which was the basis for the numbers in the 1995 Proposed Rule. First, the effective date of the standards has been changed from January 1, 1998, to July 1, 2001. Second, the Department is now using the AEO 1997 energy price forecasts instead of the AEO 1994 energy price forecasts which were used in the 1995 TSD. The cumulative energy savings of this final rule, as shown in updated chapter 5, is 6.67 quads over the period 2000 through 2030. The Department did not receive any comments on the calculation of energy savings.

b. Significance of Savings. Under section 325(o)(3)(B) of the Act, 42 U.S.C. § 6295(o)(3)(B), the Department is prohibited from adopting a standard for a product if that standard would not result in ''significant conservation of energy.'' While the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the D.C. Circuit concluded that Congress intended the word ''significant'' to mean ''non-trivial.'' *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985). DOE has determined that the energy savings from this final rule are significant.

4. Lessening of Utility or Performance of Products

In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the products under consideration in this rulemaking. That is, to the extent that comments or research showed that a product included a utility or performance-related feature that inherently lowers energy efficiency, a separate class with a different efficiency standard was created for that product. This is consistent with the Joint Comments which stated that ''these standards were chosen at a level that provides for no significant lessening of utility or performance.'' (Joint Comments, No. 49 at 23). No other comment was received on this subject.

5. Impact of Lessening of Competition

The Act directs the Department to consider the impact of any lessening of competition that is likely to result from the imposition of the standards. It further directs the Attorney General to make a determination of the impact, if any, of any lessening of competition and to provide that determination to DOE within 60 days of the publication of a proposed rule.

In its letter of April 19, 1996, the Department of Justice (DOJ) provided its analysis of the standards proposed in the 1995 Proposed Rule. (A copy of the letter containing the DOJ findings is published in its entirety in Section V.) DOJ stated, ''we cannot conclude that promulgation of the proposed rules is likely to have a substantial adverse effect on competition in the market for those products. While the rules may result in some changes in the product mix offered by some manufacturers, and may result in the discontinuation of certain models of each of the products, the available evidence does not demonstrate that competition in these markets likely would be substantially affected by the proposed rules.''

DOJ expressed some concern regarding the cumulative effect of the proposed energy conservation standards and EPA's ban on the manufacture and import of HCFC–141b. DOE reopened the comment period on August 12, 1996, in order to obtain additional information and views on these issues. As a result of the reopening, DOE obtained information about the availability of substitutes for HCFC blowing agents which shows there is likely to be less economic impact on manufacturers from the conversion to HCFC–141b substitutes than anticipated at the time of the DOJ analysis. As discussed in Section II.B.1.b. of this Supplementary Information section, research conducted by a consortium of refrigerator manufacturers shows that HFC–245fa (or a similar substance) is a likely substitute for HCFC–141b, and that use of HFC–245fa is not expected to require major product redesign. Moreover, the change in effective date further addresses the DOJ concerns about the proposed rule.

Representatives of several manufacturers argued that DOE is required to seek a new determination from DOJ of the impact on competition of options raised in the Reopening Notice before promulgating any final rule. The Assistant Attorney General's letter of April 19, 1996, fully satisfied DOJ's obligations under EPCA. The Act only requires the Attorney General to make a determination of the impact on competition of a proposed rule. 42 U.S.C. 6295(o)(2)(B)(ii). No provision of EPCA requires DOJ to convey its views on DOE notices of reopening of the comment period or on final rules, nor does EPCA require DOE to solicit views from DOJ on those actions. DOE acknowledges that there may be circumstances in which it would be advisable, as a matter of policy, for DOE to solicit supplemental views from DOJ, but DOE sees no need to do that in this proceeding. Moreover, DOJ was aware of the reopening of the comment period but submitted no additional views on the impact on competition of the various options presented for comment. The DOJ views in this proceeding are contained in its original April 19, 1996, analysis.

6. Need of the Nation to Conserve Energy

Enhanced energy efficiency improves the Nation's energy security, strengthens the economy and reduces the environmental impacts of energy production. The Department estimates that over 30 years, the revised standards will save approximately 6.67 quads (7.03 exajoules (EJ)) of primary energy.

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems relevant. The estimated environmental benefits from today's final rule (based on the 1997 AEO fuel prices) are, over the period from 2000 to 2030, a reduction in emissions of NO_X by 1,362 thousand tons (1,501 thousand short tons), a reduction in emissions of CO_2 by 465 Mt (513 million short tons) and

a reduction in the cost of the emission controls roughly equivalent to the cost of reducing SO_2 emissions by 1,545 kt (1,703 thousand short tons). (TSD, updated Chapter 5).

C. Rebuttable Presumption of Economic Justification

Section 325(o)(2)(B)(iii) of EPCA, 42 U.S.C. § 6925 (o)(2)(B)(iii), states:

''If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year, there shall be a rebuttable presumption that such standard level is economically justified.''

If the increase in the initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than 3 years, then it is presumed that such standard is economically justified. This presumption of economic justification can be rebutted upon a proper showing.

The pay back period for today's final rule for manual defrost upright freezers is less than 3 years. The estimated pay back period for the top mounted automatic defrost refrigerator-freezer class, which accounts for more than 50 percent of the sales of all refrigerator-freezer products, is 4.1 years. The longest payback period for any of the product classes is 11.9 years (this is for refrigerators with a top-mount freezer and through-the-door features, the least popular of the full-size refrigerator classes), which is substantially shorter than the product life. (Updated TSD Chapter 4, Sec. 4.2.2).

III. Analysis

A. Product Classes

The Department is adding new product classes for compact refrigerators, refrigerator-freezers and freezers. Formerly, the Department made no class distinctions by size of refrigerator, so compact refrigerators were governed by the same standards (which include adjustments for volume) as full-size refrigerators. The Department is now adding new product classes for compact refrigerators, refrigerators-freezers and freezers, which includes products with a total volume of less than 7.75 cubic feet (Federal Trade Commission/AHAM rated volume) and 36 inches or less in height. The total energy consumption of all compact refrigerator products in the U.S. is about 2.5 percent of the total energy consumed by all refrigerator products. There are only three or four energy savings options expected to be available for these products by the year 2001. Because of small production volumes, the impact of new standards on these manufacturers is relatively severe. The Department calculates a 5-year payback period is required to recoup the consumer cost of improvements in efficiency at levels only 2 to 3 percent more stringent than the 1993 levels. Given that the compact products have a distinct utility (i.e., they serve a variety of applications not served by full sized units) and the limited efficiency improvement potential because of the limited number of design options available, the Department has concluded that compact refrigerator products should be treated differently from full sized models.

The proposal to create new product classes for HCFC-free products has been dropped, based on information about the likely availability of HFC–245fa as a substitute blowing agent.

B. Standard Levels

Section 325(o)(2)(A) of the Act specifies that any new or amended standard the Department prescribes must be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.''

The figures cited in this section are found in the TSD prepared for the 1995 Proposed Rule and the updated TSD chapters 4 and 5, which are supplements to the TSD. The updated TSD chapters reflect two major changes from the original TSD: effective date and updated electricity price forecasts. The original TSD was prepared using energy price forecasts from the 1994 AEO. The 1997 AEO, which forecasts lower energy prices, recently became available. The impact of lower energy prices is to reduce somewhat the economic benefits of standards, which is reflected in increased consumer payback periods and reduced life-cycle-cost savings and national benefits. Standard Levels 4, 3, and 2 were rejected in the 1995 Proposed Rule using the 1994 AEO price forecasts and the lower 1997 AEO price forecasts would show somewhat smaller energy cost savings for the rejected standard levels. The Department did not rerun the TSD analysis for the rejected standard levels based on the 1997 AEO energy price forecasts. The calculations for Standard Levels 4, 3, and 2 below are derived from the TSD, and reflect AEO 94 predictions and an effective date in 1998. For Standard Level 1, the Department did prepare revised TSD chapters using the 1997 AEO energy price forecasts and the July 1, 2001, effective date of the standards.[3]

1. Standard Level 4

The Department first considered the max tech level of efficiency. Standard Level 4, max tech, would save the most energy: 10.0 quads (10.55 EJ) for refrigerators (including refrigerator-freezers) and 2.0 quads (2.11 EJ) for freezers between 1998 and 2030. In order to meet this standard, the Department assumes that all refrigerator products would incorporate vacuum panel insulation. The use of vacuum panel insulation accounts for 30 percent of total energy savings, with increased wall thickness as the only alternative. Vacuum panel technology has progressed, but there remain concerns about manufacturability, availability, reliability, and performance. Vacuum panels are 6 to 10 times heavier than foam. The increase in door weight may cause the appliance to tip over when the door is opened. Also, current production capability for vacuum panels is far too small for the projected demand. A 1-inch increase in wall and door thickness (a 2-inch increase in the side-to-side dimension) is not a viable option. Some larger products already are constrained by the need to fit into existing spaces and through doors and passageways. Decreasing interior volume would sacrifice product utility. In addition, there are likely to be some groups of consumers who would experience net life-cycle cost increases compared to the units they would have otherwise purchased. Based upon a consideration of these factors, the Department therefore concludes that the burdens of Standard Level 4 for refrigerators, refrigerator-freezers and freezers outweigh the benefits, and rejects the standard level as not economically justified.

2. Standard Level 3

This standard level is projected to save 8.6 quads (9.1 EJ) of energy for refrigerators and refrigerator-freezers and 1.7 quads (1.8 EJ) for freezers. While this level does not use vacuum panels, about 40 percent of the energy savings for most of the classes is obtained by increasing the insulation values. There is general agreement that an increase in the wall thickness is not acceptable for many of the larger models in each class. This level has payback periods as high as 25.5 years (longer than the typical 19-year product life) and reduces estimated

[3] Note that the analysis of Standard Level 1 in the Proposed Rule assumed that all products met the proposed Tier 1 standards, thus no adjustment to reflect the elimination of the HCFC-free classes and their Tier 2 standards is needed.

refrigerator manufacturer short-run return on equity from 7.3 percent to 5.8 percent, a reduction of 20 percent. For freezer manufacturers, the estimated short-run return on equity (ROE) drops from 7.3 percent to 4.7 percent, a reduction of more than 35 percent. Based on these considerations, the Department concludes that the burdens of Standard Level 3 for refrigerators, refrigerator-freezers and freezers outweigh the benefits, and rejects the standard level as not economically justified.

3. Standard Level 2

This standard level is projected to save 7.8 quads (8.2 EJ) of energy for refrigerators and refrigerator-freezers, and 1.3 quads (1.4 EJ) for freezers. However, this level also requires an increase in insulation with a corresponding increase in the wall thickness. Furthermore, the payback period may be as long as 19.0 years, the expected life of these products. The initial burden on the manufacturers is also high: short-run return on equity for manufacturers of both refrigerators and freezers is estimated to decrease from 7.3 percent to 6.2 percent, a reduction of 16 percent. The Department concludes that the burdens of Standard Level 2 for refrigerators, refrigerator-freezers and freezers outweigh the benefits, and rejects the standard level as not economically justified.

4. Standard Level 1

The Department concludes that Standard Level 1 for refrigerator products, effective in July 2001, and without the special transition standards for HCFC-free products contained in the 1995 Proposed Rule, is technologically feasible and economically justified. Over the period from July 1, 2001–2030, Standard Level 1 is projected to save 6.18 quads (6.52 EJ) for refrigerators and refrigerator freezers and 0.49 quads (0.51EJ) for freezers. Technologies necessary to meet this standard level are presently available. The consumer payback of this standard level is 4.1 years for the largest-selling class (top mount auto-defrost refrigerator, without through-the-door features) and no more than 11.9 years for any class. The cost of conserved energy is 3.7 cent/kWh for the largest selling class, meaning that this standard level will benefit purchasers of this refrigerator class who pay more than 3.7 cent/kWh for electricity. Standard Level 1 is at or near the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $117 or 9.3 percent for the largest class. For the largest selling refrigerator class, if the lowest state energy price is analyzed, the minimum life-cycle cost point is still at Standard Level 1, and consumers would still benefit. Consumers who pay the high state electricity price would benefit from an even higher standard. (See updated TSD Chapter 4).

According to the TSD analysis, manufacturers' short-run return on equity is estimated to drop from 7.31 percent in the base case to 6.92 percent for Standard Level 1. The long-run ROE at Standard Level 1 is 7.36 percent, a slight improvement from the base ROE of 7.31 percent. In the Joint Comments, the manufacturers and others recommended this standard level to DOE. In the Joint Comments, the parties commented that the negotiation process allowed for a cumulative assessment of impact which, in turn, led to adjustments among various product standard levels in order to better balance the economic impact among manufacturers. (Joint Comments, No. 49 at 14). The major manufacturers have supported this standard level with a July 2001 effective date in their recent comments. (Frigidaire, No. 316; GEA, No. 317, Maytag, No. 318, Whirlpool, No. 319; Amana, No. 320).

This final rule will save approximately the same amount of energy as would promulgation of the rule proposed in the 1995 Proposed Rule. The energy savings lost by setting a July 1, 2001, effective date are offset by the elimination of the less stringent proposed standards for HCFC-free products. Energy savings from the 1995 Proposed Rule and this final rule are presented in Table 2. The proposed rule would have established a two-tiered standard effective three years from the date of publication (May 2000); the final rule is a single tier standard effective in July 2001. Two proposed rule scenarios are shown: the first scenario assumes there are no HCFC-free products until 2003; the second scenario assumes all products qualify for the Tier 2 HCFC-free standard level from 2000–2005.

TABLE 2.—CUMULATIVE ENERGY SAVINGS (QUADS)

Years	Two-tiered Proposed Rule (Tier 2 from 2003–2005)	Two-tiered Proposed Rule (Tier 2 from 2000–2005)	Single tier Final Rule (Effective July 1, 2001)
2000–2010	0.87	0.73	0.81
2000–2020	3.31	3.06	3.26
2000–2030	6.67	6.41	6.67

For all these reasons, DOE concludes that Standard Level 1 is economically justified. The public comments support this conclusion. Standard Level 1 corresponds to the efficiency levels in the Joint Comments submitted on the 1993 Advance Notice. Furthermore, it has been supported by a diverse group of parties in recent comments. (Frigidaire, No. 316; GEA, No. 317; Maytag, No. 318; Whirlpool, No. 319; Amana, No. 320; NRDC, ASE, ACEEE, CEC, Florida Energy Office, SCE, and Oregon Office of Energy, PG&E, No. 321).

C. Effective Date

As discussed above, the Department concludes that the rule based on Standard Level 1 should take effect for all classes of refrigerators on July 1, 2001. This date, combined with the elimination of the HCFC-free classes, mitigates concerns about adverse manufacturer impacts while preserving energy and consumer savings comparable to those of the 1995 Proposed Rule.

IV. Procedural Requirements

A. Environmental Review

A Draft Environmental Assessment for Proposed Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 et seq., the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, the Department's regulations for compliance with NEPA, 10 CFR part 1021, and the Secretarial Policy on the National Environmental

Policy Act (June 1994). Section V.B.2. of the Secretarial Policy encourages the Department to provide an opportunity for interested parties to review environmental assessments prior to the Department's formal approval of such assessments.

No comments were received on the Draft Environmental Assessment that was published within the TSD that accompanied the 1995 Proposed Rule. The Department finalized the Environmental Assessment in January, 1996. (DOE/EA–1138). The standards in today's final rule differ slightly from the Proposed Rule's Standard Level 1, resulting in slightly less energy savings in the early years of the standards. The AEO 1997 emission factors are different, and, therefore, emission reductions are correspondingly changed from the 1995 Proposed Rule. Updated tables of emission reductions were prepared for today's final rule and will be available in the Freedom of Information Reading Room. The environmental effects of this final rule were deemed to be not significant for NEPA purposes, so the Department today is issuing a Finding of No Significant Impact (FONSI), published elsewhere in this issue.

B. Regulatory Planning and Review

Today's regulatory action has been determined to be an ''economically significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.

Pursuant to E.O. 12866, DOE prepared a draft Regulatory Analysis. Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs and has been compared to the effectiveness of the rule. 60 FR 37388, 37411 (July 20, 1995). No new data has been received concerning this review. The draft Regulatory Analysis, which was published as a part of the TSD, is incorporated herein as final. Table R–5 ''Expected Impacts of Program Alternatives,'' was updated for this rule and included with the updated portions of the TSD.

AHAM stated that the Department needs to improve the evaluation of non-regulatory means of achieving energy savings. (AHAM, No. 207 at 7). Whirlpool commented that with the reduction in rebate programs, Whirlpool feels that there will be no improvement, and probably some backsliding in efficiency without mandatory standards improvement: ''Standards are a key driver for innovation for improved energy efficiency. Innovating for improved efficiency does require resources. However, as manufacturers develop and retool for energy-efficient products (especially 'clean sheet' designs) they will routinely include other benefits beyond energy efficiency (such as innovative features, cost reductions, and quality improvements) in order to maximize the return from their investment.'' (Whirlpool, No. 208 at 2, 3).

NPPC stated, ''The level of standards proposed meets the department's criteria for setting standards. In addition, we analyzed the level of proposed standards from the perspective of whether the energy savings represented a cost-effective resource for the Northwest region, instead of buying power from the electricity market or building a combustion turbine. We found that the resource represented by making these appliances more efficient was indeed cost-effective and represents over 100 average megawatts of electricity savings over the next 20 years. By far, the best way to secure these savings is to adopt Federal standards. Federal standards give a uniform signal to manufacturers across their entire national market, and eliminate administrative costs that would be incurred if utilities tried to secure the savings through local programs.'' (NPPC, No. 210 at 1).

ACEEE and NRDC provided data to support the position that for refrigerator products, ''alternative means such as labeling and rebate programs are a useful complement to standards, but are not a replacement for standards.'' One study found that refrigerator labeling produces an average of 1.5 percent savings in energy use. Similarly, utilities have found that rebate programs can influence only 40 to 60 percent of purchases. Market trends ''support the conclusion that standards will have a much greater impact on new product efficiency and energy savings than non-regulatory approaches.'' (ACEEE and NRDC, No. 214 at 10–11).

Under the Process Rule policies, the Department is committed to exploring non-regulatory alternatives to standards. A full discussion of the Department's consideration of non-regulatory alternatives is presented in the ''Regulatory Impact Analysis'' section of the TSD. The Department concluded that for this rulemaking, the energy savings from a regulatory approach greatly exceeded the savings from any non-regulatory alternative. (See updated Table R.5 ''Expected Impacts of Program Alternatives'' of the Regulatory Impact Analysis.) The updated analysis shows energy savings from voluntary efficiency targets (the most effective of the non-regulatory alternatives) to be 3.49 quads from 2000–2030, which is significantly less than the 6.67 quads of energy savings predicted for today's rule.

C. Unfunded Mandates Review

With respect to a proposed regulatory action that may result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation), section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532 (a), (b). Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c).

The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of the notice of proposed rulemaking and ''Regulatory Impact Analysis'' section of the TSD responded to those requirements.

DOE is obligated by section 205 of UMRA, 2 U.S.C. 1535, to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement is required under section 202. From those alternatives, DOE must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation of why a different alternative is selected. As required by section 325(o) of the Energy Policy and Conservation Act, this final rule establishes energy conservation standards for refrigerator products that are designed to achieve the maximum improvement in energy efficiency which DOE has determined to be technologically feasible and economically justified. 42 U.S.C. 6295(o). A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the final TSD and updated Table R.5 ''Expected Impacts of Program Alternatives.''

D. Regulatory Flexibility Act Review

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires that an agency prepare an initial regulatory flexibility analysis and publish the analysis (or a summary thereof) in the **Federal Register** when it publishes a general notice of proposed rulemaking required by law. 5 U.S.C. 603. The Act also requires an agency to prepare a final regulatory flexibility analysis and publish the analysis (or a summary thereof) in the **Federal Register** when it publishes a final rule. 5 U.S.C. 604. These requirements do not apply if the agency certifies, when it publishes a proposed or final rule, that the rule if promulgated would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). In the 1995 Proposed Rule, the Department certified that the proposed standard levels would not, if promulgated, have a significant economic impact on a substantial number of small entities. No written comments specifically addressed that certification.

Although DOE did not prepare an initial regulatory flexibility analysis, it considered the potential economic impact of the rule on small businesses and included provisions in the 1995 Proposed Rule and this final rule designed to minimize the burden on manufacturers of refrigerator products who are small businesses.

The Regulatory Flexibility Act defines ''small business'' by incorporating the definition of ''small business concern'' in the Small Business Act. 5 U.S.C. 601(3). The Department used the small business size standards published by the Small Business Administration to estimate the number of small businesses that would be required to comply with this rule. Small Business Administration, Final Rule on ''Small Business Size Standards,'' 61 FR 3280 (January 31, 1996). The size standards are listed by Standard Industrial Classification (SIC) code and industry description. To be considered a small business, a manufacturer of home refrigerators or freezers, together with its affiliates, may employ no more than 1,000 employees. SIC Category 3632 (61 FR at 3291).

DOE examined the structure of the industries that would be affected by this rulemaking to determine the likely impact of the rule on that structure. Both the home refrigerator and freezer industries are highly concentrated. Five firms, none of which is a small business, account for approximately 95 percent of all non-compact refrigerator sales in the U.S. Two firms account for at least 90 percent of freezer sales in the U.S., and neither firm is a small business. Three firms, none of which is a small business, account for approximately 84 percent of the sales of compact refrigerators.[4] U-Line and Marvel, which are small businesses, account for 6 percent and 3 percent, respectively, of compact refrigerator sales. Other small businesses, such as Sun Frost and Sub-Zero, produce refrigerators for niche markets.

In the July 1995 Proposed Rule, DOE proposed new classes of standards for compact refrigerators, refrigerator-freezers and freezers after considering the relatively small size of the compact refrigerator manufacturers and the technological limitations on improving the energy efficiency of compacts. As discussed in the 1995 Proposed Rule (60 FR at 37405–06), this approach was recommended by the Joint Comments based on several factors, including technological constraints and the limited research and development funding and capital resources available to small companies. The standards for compact refrigerator products proposed in the 1995 Proposed Rule would have required five percent less energy use than the 1993 standards. The compact refrigerator products standards in this final rule retain the 1995 Proposed Rule requirement for five percent less energy use.

DOE continues to believe that promulgation of this rule will not have a significant economic impact on a substantial number of small entities. However, if after the rule becomes effective DOE learns that such an impact would occur, the Department may exercise its authority under section 325(t) of EPCA, 42 U.S.C. 6295(t), or section 504(a) of the DOE Organization Act, 42 U.S.C. 7194(a), to grant appropriate relief to small manufacturers.

E. Federalism Review

Executive Order 12612 requires that regulations or rules be reviewed for any substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power among various levels of government. 52 FR 41685 (October 30, 1987). If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policy makers in promulgating or implementing the regulation.

The Act provides that Federal energy efficiency standards established by the Act or regulations promulgated pursuant to the Act preempt state standards for such products. 42 U.S.C. § 6297. This final rule does not expand the scope of preemption beyond that resulting from the existing regulations. Thus, DOE has concluded that there is no net effect sufficient to warrant preparation of a Federalism assessment. Moreover, if any such state regulations are adopted, the Act provides for subsequent state petitions for waiver of Federal preemption.

F. ''Takings'' Assessment Review

DOE has determined pursuant to Executive Order 12630, 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution.

G. Paperwork Reduction Act Review

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to

[4] Appliance Magazine, September 1996. 1995 sales figures.

determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

I. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

Consistent with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will identify the final rule as a ''major rule'' for purposes of Congressional review. The Department also will submit to the Comptroller General, and make available to each House of Congress, the TSD and other relevant information as required by 5 U.S.C. 801.

V. Department of Justice Views on Proposed Rule

Reproduced below is the letter provided by the Department of Justice to DOE pursuant to EPCA § 325 (o)(2)(B)(ii), 42 U.S.C. § 6295 (o)(2)(B)(ii):

April 19, 1996.

The Honorable Christine A. Ervin, Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585.

Dear Ms. Ervin:

The Department of Energy (''DOE'') has issued a Notice of Proposed Rulemaking amending the energy conservation standards for refrigerators, refrigerator-freezers and freezers (60 FR 37368 (the ''proposed rules''). Section 325 of the Energy Policy and Conservation Act, as amended in 1992 (42 U.S.C. 6295) (''the Act''), requires the Attorney General ''* * * to determine the impact, if any, of any lessening of competition likely to result from the proposed standards.'' This letter constitutes the competitive impact determination of the Department of Justice (the ''Department'').

The proposed rules would establish more stringent energy efficiency standards for three types of household appliances—refrigerator-freezers (''refrigerators''), compact refrigerators and household freezers. The proposed rules would require greater percentage increases in energy efficiency for refrigerators than for the other products. If promulgated, the new energy standards will take effect less than five years before regulations promulgated by the Environmental Protection Agency prohibiting the use of HCFCs take effect on January 1, 2003. Because it may be harder to meet the new energy efficiency standards without HCFCs, the rules contain a separate set of standards for non-HCFC products that would permit somewhat greater energy use.

In order to assess the likely impact of the proposed rules on competition in the sale of refrigerators, compact refrigerators, and freezers, the Department examined the structure of the affected industries and interviewed manufacturers and others to determine the likely impact of the rules on that structure. All three industries are highly concentrated. Only five firms account for 95 percent of all refrigerator sales in the U.S.; two firms account for at least 90 percent of freezer sales in the U.S.; and four firms account for most sales of compact refrigerators. With the possible exception of compact refrigerators, substantial new entry into these markets in the near future is unlikely.

In assessing the likely impact of the rules on competition the Department attempted to determine whether the rules would likely lead to an increase in concentration in any of the markets. They could do so in two ways: first, by raising the cost of appliances and reducing design and feature choices, standards may lower demand. Second, if standards impose costs on manufacturers that cannot be passed on to consumers, they can lower manufacturers' rates of return. Either or both of these effects could cause manufacturers to exit the market, or to stop making certain types of products, thereby lessening competition and raising prices.

The proposed rules are largely identical to the proposals (''the Joint Comments'') which were formally submitted to DOE on November 15, 1994. The Joint Comments were the product of two years of negotiations involving most of the major manufacturers of these appliances, the Association of Home Appliance Manufacturers and a group of public utilities and environmental organizations. The parties stated in the Joint Comments that it was their belief that the standards would not ''lead to a likelihood of reduced competition.''

Some manufacturers, however, now tell the Department their prior conclusion that the rules would not reduce competition was based on an assumption that the proposed standards would be enacted soon after the Joint Comments were submitted. They contend that the unanticipated delay has changed the way that the rules will affect them. Because the rules relating to products that utilize HCFCs will be relevant only until HCFCs are phased out in 2003, the costs of redesign and retooling needed to bring these products into compliance cannot be amortized over as long a product life as anticipated. Thus, some manufacturers have stated that compliance with the standard will add substantially to their costs and could lead one or more of them to consider discontinuing the manufacture of certain sizes or types of refrigerators.

Based upon information available to the Department in this proceeding, however, we cannot conclude that promulgation of the proposed rules is likely to have a substantial adverse effect on competition in the markets for these products. While the rules may result in some changes in the product mix offered by some manufacturers, and may result in the discontinuation of certain models of each of the products, the available evidence does not demonstrate that competition in these markets likely would be substantially affected by the proposed rules.

The Department notes, however, that it does have some concerns about the cumulative effects of these and other energy efficiency regulations on the markets for refrigerators and freezers. Manufacturers will be required to comply both with the proposed rules and the requirement for a phaseout of the use of HCFCs by January 1, 2003. There is some evidence suggesting the previous round of energy efficiency rules for freezers were a significant factor in the decisions of two firms to cease manufacture of those products, leaving an extremely concentrated market dominated by the two remaining firms. The cumulative effect of the costs of compliance with both DOE and EPA regulations, together with the diversion of corporate attention and resources from marketing efforts, could ultimately have an adverse impact on the ability of some firms to compete.

Sincerely,

Anne K. Bingaman,

Assistant Attorney General.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., on April 23, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of chapter II of title 10, Code of Federal Regulations, is amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 is amended by adding a definition for *compact refrigerator/refrigerator-freezer/freezer* to read as follows:

§ 430.2 Definitions.

* * * * *

Compact refrigerator/refrigerator-freezer/freezer means any refrigerator, refrigerator-freezer or freezer with total volume less than 7.75 cubic feet (220 liters)(rated volume as determined in Appendix A1 and B1 of subpart B of this part) and 36 inches (0.91 meters) or less in height.

* * * * *

3. Section 430.32 is amended by revising paragraph (a) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(a) *Refrigerators/refrigerator-freezers/freezers.* These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet (1104 liters) or freezers with total refrigerated volume exceeding 30 cubic feet (850 liters).

Product class	Energy standards equations for maximum energy use (kWh/yr)	
	Effective January 1, 1993	Effective July 1, 2001
1. Refrigerators and Refrigerator-freezers with manual defrost	13.5AV+299 0.48av+299	8.82AV+248.4 0.31av+248.4
2. Refrigerator-Freezer—partial automatic defrost	10.4AV+398 0.37av+398	8.82AV+248.4 0.31av+248.4
3. Refrigerator-Freezers—automatic defrost with top-mounted freezer without through-the-door ice service and all-refrigerators—automatic defrost	16.0AV+355 0.57av+355	9.80AV+276.0 0.35av+276.0
4. Refrigerator-Freezers—automatic defrost with side-mounted freezer without through-the-door ice service	11.8AV+501 0.42AV+501	4.91AV+507.5 0.17av+507.5
5. Refrigerator-Freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service	16.5AV+367 0.58av+367	4.60AV+459.0 0.16av+459.0
6. Refrigerator-Freezers—automatic defrost with top-mounted freezer with through-the-door ice service	17.6AV+391 0.62av+391	10.20AV+356.0 0.36av+356.0
7. Refrigerator-Freezers—automatic defrost with side-mounted freezer with through-the-door ice service	16.3AV+527 0.58av+527	10.10AV+406.0 0.36av+406.0
8. Upright Freezers with Manual Defrost	10.3AV+264 0.36av+264	7.55AV+258.3 0.27av+258.3
9. Upright Freezers with Automatic Defrost	14.9AV+391 0.53av+391	12.43AV+326.1 0.44av+326.1
10. Chest Freezers and all other Freezers except Compact Freezers	11.0AV+160 0.39av+160	9.88AV+143.7 0.35av+143.7
11. Compact Refrigerators and Refrigerator-Freezers with Manual Defrost	13.5AV+299[a] 0.48av+299[a]	10.70AV+299.0 0.38av+299.0
12. Compact Refrigerator-Freezer—partial automatic defrost	10.4AV+398[a] 0.37av+398[a]	7.00AV+398.0 0.25av+398.0
13. Compact Refrigerator-Freezers—automatic defrost with top-mounted freezer and compact all-refrigerators—automatic defrost	16.0AV+355[a] 0.57av+355[a]	12.70AV+355.0 0.45av+355.0
14. Compact Refrigerator-Freezers—automatic defrost with side-mounted freezer	11.8AV+501[a] 0.42[av]+501[a]	7.60AV+501.0 0.27av+501.0
15. Compact Refrigerator-Freezers—automatic defrost with bottom-mounted freezer	16.5AV+367[a] 0.58av+367[a]	13.10AV+367.0 0.46av+367.0
16. Compact Upright Freezers with Manual Defrost	10.3AV+264[a] 0.36av+264[a]	9.78AV+250.8 0.35av+250.8
17. Compact Upright Freezers with Automatic Defrost	14.9AV+391[a] 0.53av+391[a]	11.40AV+391.0 0.40av+391.0
18. Compact Chest Freezers	11.0AV+160[a] 0.39av+160[a]	10.45AV+152.0 0.37av+152.0

AV=Total adjusted volume, expressed in $ft.^3$, as determined in Appendices A1 and B1 of subpart B of this part.
av=Total adjusted volume, expressed in Liters.
[a] Applicable standards for compact refrigerator products manufactured before July 1, 2001. Compact refrigerator products are not separate product categories under the standards effective January 1, 1993.

* * * * *

[FR Doc. 97–10888 Filed 4–25–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Finding of No Significant Impact; Energy Conservation Program for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Finding of no significant impact (FONSI) for amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act and the National Appliance Energy Conservation Act, and the National Appliance Energy Conservation Amendments, prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Based on an Environmental Assessment (EA), DOE/EA–1138, DOE has determined that the adoption of the amended energy efficiency Standard Level 1 for refrigerators, refrigerator-freezers, and freezers, as modified for the Final Rule, would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Therefore, an environmental impact statement (EIS) is not required, and the Department is issuing this finding of no significant impact (FONSI).

ADDRESSES: Copies of the EA and modified emission reduction tables for the Final Rule are available from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

FOR FURTHER PROGRAM INFORMATION CONTACT: Dr. Barry P. Berlin, Office of Energy Efficiency and Renewable Energy (EE–43), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127.

FOR FURTHER INFORMATION REGARDING THE DOE NEPA PROCESS, CONTACT: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), 1000 Independence Avenue, SW., Washington, DC 20585–0119, (202) 586–4600.

DESCRIPTION OF THE PROPOSED ACTION: The action is the establishment of revised energy conservation standards for refrigerators, refrigerator-freezers, and freezers.

Environmental Impacts

The EA evaluates the environmental impacts of a range of new energy conservation standards for refrigerators, refrigerator-freezers, and freezers. The results are presented for each potential standard level. Each potential standard level is an alternative action, and the environmental impacts of each alternative are compared to what would be expected to happen if no new standard were adopted, i.e., the ''no action'' alternative. The amended standard being finalized today is a small modification of one of the standard levels that had been proposed.

The main environmental concern is emissions from fossil-fueled electricity generation. Most of the design options for this appliance product category would result in decreased electricity use and, therefore, a reduction in power plant emissions. The proposed efficiency standards would generally decrease air pollution by decreasing future energy demand. The greatest decreases in air pollution would be for sulfur oxides, listed in equivalent weight of sulfur dioxide, or SO_2. Reductions of nitrogen oxides and carbon dioxide would also occur, and are listed by weight of NO_X and CO_2, respectively.

Although the quantity of raw materials used per appliance would remain relatively constant, in most scenarios initial price increases from standards are expected to reduce slightly the number of appliances sold, which would result in small decreases in the total amount of raw materials used. The main effect of this decreased appliance production would be the SO_2 decreases from avoided fuel burning at power plants. The environmental contribution from reduced steel production is not included in the estimates for net SO_2 decreases resulting from design changes in these products.

Although the effects on particulate emissions related to the standard-induced decrease in electricity generation would be minor compared to effects on SO_2, NO_X, and CO_2, any reduction would possibly be beneficial to the quality of surface water. Since the total amount of particulate emitted would decrease, it is very likely that less particulate would reach surface water.

Reduction in particulate emissions accompanied by decreases in SO_2 and NO_X would have other beneficial effects on the environment. The resultant improvement in air quality and the decreased potential for acid rain formation could help improve the quality of wetlands and fish and wildlife as well as aid in the preservation of historical and archaeological sites.

Determination

Based upon the EA, DOE has determined that the adoption of the amended energy-efficiency standards for refrigerators, refrigerator-freezers, and freezers would not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an EIS is not required.

Issued in Washington, DC, on April 23, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–10889 Filed 4–25–97; 8:45 am]

BILLING CODE 6450–01–P

federal register

Monday
April 28, 1997

Part X

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Training and Qualification Requirements for Check Airmen and Flight Instructors: Correction and Editorial Changes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 28471; Amendment No. 121–264]

RIN 2120–AF08

Training and Qualification Requirements for Check Airmen and Flight Instructors: Correction and Editorial Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment makes corrections and minor editorial changes to regulations published on June 17, 1996 (61 FR 30734). This amendment will not impose any additional restrictions on persons affected by these regulations. The final rule published on June 17, 1996, established separate requirements for check airmen who check only in flight simulators and flight instructors who instruct only in flight simulators. In addition this rule allows check airmen and flight instructors to obtain all of their flight training in simulators, as opposed to the current scheme in which initial and transition flight training must include an in-flight element.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Tom Toula, Telephone (202) 267–3766.

SUPPLEMENTARY INFORMATION:

Background

On June 17, 1996, the FAA published a regulation that established separate requirements for check airmen who check only in flight simulators and flight instructors who instruct only in flight simulators. A reference to § 121.411 in current § 121.409(b)(4) is no longer appropriate. Flight instructor qualification requirements have been moved to new § 121.412. This correction will change the reference in § 121.409(b)(4) to § 121.412.

It was the intent of this rule to have the requirements of § 121.412(e) virtually identical to those in § 121.411(e). Upon further review there appears to be a difference between § 121.411(e) and § 121.412(e) in that § 121.412(e) prohibits a flight instructor who has reached his or her 60th birthday from serving as an instructor. By this correction, the requirements will be identical. Under § 121.413(d), the last word of the paragraph was rendered as ''transaction'' instead of ''transition'' as the FAA had specified.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Safety, Reporting and recordkeeping requirements, Transportation.

Accordingly, Title 14 of the Code of Federal Regulations (CFR) Part 121 is amended as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, and 44705, 44709–44711, 44713, 44716–44717 44722, 44901, 44901–44904, 44912, 46105.

2. Section 121.409 is amended by revising paragraph (b)(4) (the undesignated paragraph following paragraph (b)(4) remains unchanged) to read as follows:

§ 121.409 Training courses using airplane simulators and other training devices.

(b) * * *

(4) Is given by an instructor who meets the applicable requirements of § 121.412.

* * * * *

3. Section 121.412 is amended by revising paragraph (e) to read as follows:

§ 121.412 Qualifications: Flight instructors (airplane) and flight instructors (simulator).

* * * * *

(e) Flight instructors who have reached their 60th birthday, or who do not hold an appropriate medical certificate, may function as flight instructors, but may not serve as pilot flight crewmembers in operations under this part.

4. Section 121.413 is amended by revising paragraph (d) to read as follows:

§ 121.413 Initial and transition training and checking requirements: Check airmen (airplane), check airmen (simulator).

* * * * *

(d) The transition ground training for check airmen must include approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the airplane to which the check airman is in transition.

* * * * *

Issued in Washington, DC, on April 21, 1997.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 97–10632 Filed 4–25–97; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
April 28, 1997

Part XI

The President

Memorandum of April 14, 1997—Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978

Federal Register
Vol. 62, No. 81
Monday, April 28, 1997

Presidential Documents

Title 3—

The President

Memorandum of April 14, 1997

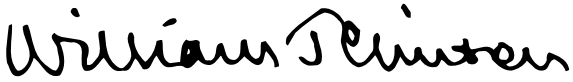
Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978

Memorandum for the Attorney General

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Attorney General the functions concerning employees of the Federal Bureau of Investigation vested in the President by section 101(a) of the Civil Service Reform Act of 1978 (Public Law 95–454), as amended by the Whistleblower Protection Act of 1989 (Public Law 101–12), and codified at section 2303(c) of title 5, United States Code, and direct the Attorney General to establish appropriate processes within the Department of Justice to carry out these functions. Not later than March 1 of each year, the Attorney General shall provide a report to the President stating the number of allegations of reprisal received during the preceding calendar year, the disposition of each allegation resolved during the preceding calendar year, and the number of unresolved allegations pending as of the end of the calendar year.

All of the functions vested in the President by section 2303(c) of title 5, United States Code, and delegated to the Attorney General, may be redelegated, as appropriate, provided that such functions may not be redelegated to the Federal Bureau of Investigation.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 14, 1997.

[FR Doc. 97–10984
Filed 4–25–97; 8:45 am]
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§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
1900–1910 (§§ 1900 to 1910.999)	(869–028–00112–2)	43.00	July 1, 1996
1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
30 Parts:			
1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–028–00120–3)	20.00	July 1, 1996
200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–028–00127–1)	28.00	July 1, 1996
33 Parts:			
1–124	(869–028–00128–9)	26.00	July 1, 1996
125–199	(869–028–00129–7)	35.00	July 1, 1996
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–028–00133–5)	46.00	July 1, 1996
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
1–199	(869–028–00135–1)	20.00	July 1, 1996
200–End	(869–028–00136–0)	48.00	July 1, 1996
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–028–00138–6)	34.00	July 1, 1996
18–End	(869–028–00139–4)	38.00	July 1, 1996
39	(869–028–00140–8)	23.00	July 1, 1996
40 Parts:			
●1–51	(869–028–00141–6)	50.00	July 1, 1996
●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869-028-00144-1)	47.00	July 1, 1996
●61–71	(869–028–00145–9)	47.00	July 1, 1996
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–028–00147–5)	31.00	July 1, 1996
86	(869–028–00148–3)	46.00	July 1, 1996
●87-135	(869–028–00149–1)	35.00	July 1, 1996
●136–149	(869–028–00150–5)	35.00	July 1, 1996
●150–189	(869–028–00151–3)	33.00	July 1, 1996
●190–259	(869–028–00152–1)	22.00	July 1, 1996
●260–299	(869–028–00153–0)	53.00	July 1, 1996
●300–399	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–028–00155–6)	33.00	July 1, 1996
●425–699	(869–028–00156–4)	38.00	July 1, 1996
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–028–00159–9)	12.00	July 1, 1996
101	(869–028–00160–2)	36.00	July 1, 1996
102–200	(869–028–00161–1)	17.00	July 1, 1996
201–End	(869–028–00162–9)	17.00	July 1, 1996
42 Parts:			
●1–399	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●44	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
●200–499	(869–028–00170–0)	14.00	[6] Oct. 1, 1995
●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
●1200–End	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
●1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–028–00181–5)	17.00	Oct. 1, 1996
47 Parts:			
●0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
●20–39	(869–028–00183–1)	26.00	Oct. 1, 1996
●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
●70–79	(869–028–00185–8)	33.00	Oct. 1, 1996
●80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1–51)	(869–028–00187–4)	45.00	Oct. 1, 1996
●1 (Parts 52–99)	(869–028–00188–2)	29.00	Oct. 1, 1996
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
●7–14	(869–028–00192–1)	29.00	Oct. 1, 1996
●15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
●1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
●100–185	(869–028–00196–3)	50.00	Oct. 1, 1996
●186–199	(869–028–00197–1)	14.00	Oct. 1, 1996
●200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
●400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.