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Wednesday
March 4, 1998

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 900, 929, 982, and 989

[Docket No. FV97–900–1 FR]

General Regulations; Revision or Removal of Selected Sections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises or removes various sections and parts from the Code of Federal Regulations (CFR). This rule revises the general regulations for Federal marketing orders and agreements covering fruits, vegetables, and nuts by updating the subpart regarding information collection. This rule removes sections titled ''Reserved'' from three marketing orders covering cranberries, Oregon-Washington hazelnuts, and California raisins, respectively. This rule also removes two parts from the CFR titled ''Reserved'' that used to specify marketing orders covering Florida grapefruit. The Florida grapefruit orders were terminated in 1987. These changes will provide more accurate information in the CFR and will eliminate unnecessary CFR printing costs.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone (941) 299–4770, Fax: (941) 299–5169; or Anne Dec, Marketing Order Administration Branch, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

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

The Agency has determined that this action is only administrative in nature because it involves updating the subpart regarding information collection to reflect the display of current Office of Management and Budget (OMB) control numbers and removing references to sections or parts that are titled ''Reserved.'' This action is not subject to the requirements of Executive Orders 12866 and 12988 or to the provisions of the Regulatory Flexibility Act.

This rule revises or removes various sections and parts from the CFR concerning Federal marketing orders and agreements for fruits, vegetables, and nuts. This rule revises the general regulations for such orders by updating the subpart regarding information collection. This rule removes sections titled ''Reserved'' from the cranberry, hazelnut, and raisin marketing orders. This rule also removes two parts from the CFR that used to specify marketing orders covering Florida grapefruit.

The Agricultural Marketing Agreement Act of 1937 (Act) provides authority for Federal marketing orders for various fruits, vegetables, and nuts. The programs are initiated by interested industries and voted on by those in the industries. Marketing orders are administered locally by industry committees with oversight by the Secretary of Agriculture (Secretary). A marketing order allows an industry to solve marketing problems by establishing grade, size, quality, maturity, quantity and container regulations that apply to all handlers in the industry. Such marketing orders and their accompanying regulations are codified in the CFR.

The Secretary was directed by the President, as part of a regulatory reinvention initiative, to review all existing regulations concerning Federal marketing orders and other programs in an effort to reduce regulations that may be burdensome on industries. To meet this initiative, regulations which need revision or are obsolete are being revised or removed.

Accordingly, this rule revises part 900 of the CFR which specifies general regulations that apply to all such marketing orders. For example, part 900 specifies procedures for promulgating new marketing orders, petitions to modify existing orders, and procedures for the conduct of grower referenda for marketing orders. Part 900 also contains a subpart pertaining to the collection of information under marketing orders. Specifically, § 900.601 specifies a list of control numbers assigned to the information collection requirements by the Office of Management and Budget (OMB) contained in 7 CFR parts 905 through 998 under the Paperwork Reduction Act (PRA) of 1995. This rule revises this section to reflect the promulgation and termination of marketing orders and agreements since 1987. This section is also revised to reflect that the information collection under 16 marketing orders has been consolidated under the OMB control number 0581–0178. This rule also changes the reference to the PRA in §§ 900.600 and 900.601 to reflect that the PRA of 1980 was amended in 1995.

This rule also removes five sections titled ''Reserved'' from the cranberry, hazelnut, and raisin marketing orders which are codified in parts 929, 982, and 989, respectively. These sections, 929.16 of the cranberry order, 982.432 and 982.457 of the hazelnut order, and 989.6 and 989.211 of the raisin order, contain no regulatory text, only the designation ''Reserved.'' These sections were previously terminated in accordance with the Act. It is not necessary for these sections to appear in their respective marketing orders. Similarly, this rule removes two parts from 7 CFR which are also titled ''Reserved.'' Parts 912 and 913 of 7 CFR used to specify two separate marketing orders for Florida grapefruit. These two orders were terminated in 1987 in accordance with the Act and it is unnecessary to designate these parts as ''Reserved.'' Having these five sections and two parts appear in each publication of the CFR is an extraneous use of space and removing them reduces unwarranted printing costs.

The changes made by this rule are purely administrative. This rule revises a list of marketing orders to reflect additions and terminations since the section was last amended. This rule makes no changes to any established regulation. This rule also eliminates five sections and two parts in the CFR that contain only the word ''Reserved.'' There is no need for these sections or parts to be reserved, so they are being removed. These changes will update the CFR to provide current information and

delete various sections and parts that will result in reduced CFR printing costs.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is unnecessary and contrary to the public interest to give preliminary notice or to engage in further public rulemaking procedures prior to putting this rule into effect and that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register** because: (1) The changes are purely administrative in nature and impose no regulation or additional burden on any entity; (2) the changes will not alter any aspect of an existing program; and (3) no useful purpose would be served by delaying the effective date of this action.

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7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 900, 912, 913, 929, 982, and 989 are amended as follows:

PART 900—GENERAL REGULATIONS

1. The authority citation for 7 CFR part 900, Subpart—Information Collection continues to read as follows:

Authority: 44 U.S.C. Ch. 35.

2. In part 900, §§ 900.600 and 900.601 are revised to read as follows:

§ 900.600 General.

This subpart shall contain such requirements as pertain to the information collection provisions under the Paperwork Reduction Act of 1995.

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR parts 905 through 998 under the Paperwork Reduction Act of 1995.

(b) *Display.*

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985, Spearmint Oil	0581–0065
987, California Dates	0581–0178
989, California Raisins	0581–0178
993, California Dried Prunes	0581–0178
997, Domestic Peanuts Not Covered Under the Peanut Marketing Agreement	0581–0163
998, Domestic Peanuts Covered Under the Peanut Marketing Agreement	0581–0067

PARTS 912–913—[REMOVED]

3. Under the authority of 7 U.S.C. 1621–1627, parts 912 and 913 are removed.

PART 929—[AMENDED]

4. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 929.16 [Removed]

5. In part 929, § 929.16 is removed.

PART 982—[AMENDED]

6. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 982.432 and 982.457 [Removed]

7. In part 982, §§ 982.432 and 982.457 are removed.

PART 989—[AMENDED]

8. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 989.6 and 989.211 [Removed]

9. In part 989, §§ 989.6 and 989.211 are removed.

Dated: February 20, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–5545 Filed 3–3–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 2 and 3

[Docket No. 95–078–3]

RIN 0579–AA74

Humane Treatment of Dogs and Cats; Temperature Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for the humane treatment of animals under the Animal Welfare Act by revising certain requirements pertaining to climatic conditions. We are clarifying the current temperature requirements for dogs and cats in indoor, sheltered, and mobile and traveling housing facilities, in primary conveyances used for transportation, and in the animal holding areas of terminal facilities. We are also requiring that any animal covered by the Animal Welfare Act shall never be exposed to combinations of temperature, humidity, and time that would adversely affect the animal's health and well-being, taking into consideration the animal's health status, age, breed, or any other pertinent factor. When climatic conditions present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. This action will help ensure that animals protected by the Animal Welfare Act are maintained in climatic conditions conducive to the animals' health and well-being.

EFFECTIVE DATE: April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, REAC, APHIS, suite 6D02, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972, or e-mail: snsmith@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA)(7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated the responsibility for enforcing the AWA to the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Parts 1 and 2 contain definitions and general requirements, and part 3 contains specific standards for the care of animals. Subpart A of 9 CFR part 3 contains requirements specifically pertaining to dogs and cats.

On July 2, 1996, we published in the **Federal Register** (61 FR 34386–34389, Docket No. 95–078–1) a proposal to amend the regulations in subpart A of 9 CFR part 3 by removing the option for facilities to use tethering as a means of primary enclosure for dogs and revising the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, for primary conveyances used in transportation, and for the animal holding areas of terminal facilities to require that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. This proposal was based, in part, on the recommendations and opinions expressed at three public meetings our agency hosted in 1996 to gather information on the regulations that apply to the care of dogs and cats in the commercial pet trade. In addition, our experience in AWA enforcement led us to conclude that continuous confinement of dogs by tethers is inhumane and that a maximum temperature restriction was needed for the care of dogs and cats in certain circumstances because there have been incidents in which dogs or cats exposed to extremely high temperatures during air travel died or were seriously harmed.

We solicited comments concerning our proposal for 60 days ending September 3, 1996. We received 54 comments by that date. After reviewing the comments, we decided to publish a final rule regarding tethering and reconsider the temperature requirements. The final rule regarding tethering (62 FR 43272–43275, Docket No. 95–078–2) was published August 13, 1997. Therefore, this document concerns only the part of the proposal concerning temperature requirements for dogs and cats.

Forty-two of the 54 comments received on the proposed rule addressed the proposed temperature requirements for dogs and cats. These comments were from dog dealers; associations representing the pets, transportation, animal feed, and biomedical research industries; pharmaceutical companies; humane organizations; a Federal government agency; a veterinarian; and other interested individuals. A few of the comments generally supported the proposal; the majority generally opposed it. Comments on the proposed rule itself are discussed below; comments on the potential economic effects of the proposed rule and on the Initial Regulatory Flexibility Analysis that was included in the proposed rule are discussed in the section of this document that pertains to Executive Order 12866 and the Regulatory Flexibility Act.

The issue raised by the most number of commenters was that the proposal appeared to be unfounded and that any proposed change to the AWA temperature requirements should be based on hard data supporting the need for the proposed change. This concern was expressed both by commenters who were opposed and commenters who were unopposed to the proposed rule. Several commenters mentioned the need for APHIS to consider two sources of relevant information: the recommendations regarding temperature requirements made at the three public meetings hosted by our agency in 1996 and from a study commissioned by our agency and the Federal Aviation Administration (FAA) regarding the

climatic conditions in cargo holds of various aircraft commonly used to transport animals.

One commenter disagreed with the suggestion that we had insufficient data upon which to base the proposed rule. The commenter stated that Congress has been concerned about the safety of animals being transported by the airlines since 1976 and that, at one of the APHIS public meetings, several humane organizations reported receiving frequent complaints from the public regarding animal deaths during air transit. Conversely, another commenter stated that, while a few participants at the public meetings suggested that there have been numerous such incidents of animal deaths, no evidence was produced, and many participants did not agree with these assertions. One commenter requested documented evidence of such incidents, and we have provided information directly to the commenter regarding the cases APHIS has had against the major airlines in recent years.

We are not aware of any scientific research that has been done that shows that the health and well-being of dogs and cats is seriously compromised at temperatures exceeding 90 °F. In fact, we believe that such a finding is unlikely because of the varying tolerances dogs and cats have to temperature extremes at different ages, the wide variety of dog breeds that have been developed over centuries for different purposes, including acclimation to different climates, and a host of other variables. As stated in the proposed rule, our belief that temperatures exceeding 90 °F can be harmful to dogs and cats was based on our experience in AWA enforcement and on the information gathered from the three public meetings. (We have not received the final report of the study on cargo holds commissioned by our agency and the FAA.) Despite a lack of hard data regarding a specific safe maximum temperature, our experience in regulating the care of dogs and cats and available information led us to believe that the current AWA temperature requirements were not adequate to ensure the well-being of dogs and cats in the commercial pet trade and that a maximum temperature limit was needed.

The majority of the commenters were opposed to the establishment of a 90-°F limit for the care of dogs and cats in indoor and sheltered housing facilities and in primary conveyances used for transportation. Their numerous reasons included the following: That the proposed 90-°F limit would be unnecessarily restrictive because animals can adjust to temperature changes; that there is a lack of evidence that exposure of healthy adult dogs to temperatures in excess of 90 °F for limited periods of time is inhumane if the dogs are provided adequate ventilation and are shielded from the sun; and that the 90-°F limit was too high in that it would be insufficient for safeguarding the health and lives of dogs and cats in the circumstances covered in the proposal. Two commenters stated that the limit should be 85 °F, and one commenter thought the limit should be 80 °F. Several commenters stated that, by itself, temperature is a poor indicator of comfort or stress and that other factors, such as humidity, airflow, length of exposure, and breed, hair coat, age, weight, health status, and acclimation of the animal, need to be considered in evaluating whether an animal is being exposed to significantly stressful conditions.

A couple of commenters stated that care and treatment issues such as appropriate temperature levels cannot be effectively regulated by a single standard and should be left up to responsible veterinary evaluation and discretion. A few dealers stated that the proposed rule was unnecessary because people in the pet profession know how to care for animals and have a financial stake in ensuring their well-being. Several commenters stated that the current regulations pertaining to temperature requirements are sufficient for ensuring the health and well-being of dogs and cats, if the regulations are properly enforced. One commenter indicated that APHIS should not change the regulations pertaining to dog and cat dealers and instead should concentrate on enforcing temperature requirements for dogs and cats in transit by airlines.

Several commenters took issue with the lack of flexibility in the proposed rule in that, as written, temperatures must ''never'' rise above 90 °F when dogs or cats are present. The commenters stated that a power failure occurring on a hot day could cause the temperature to rise above that level even in facilities with air conditioning, and then those facilities would be out of compliance with the proposed requirement. In addition, several commenters stated that this lack of flexibility would make it practically impossible at certain times of the year in most U.S. airport cities for pets to be shipped on aircraft because it is not feasible to assume that animals in air transit would ''never'' be exposed to temperatures exceeding 90 °F. Many commenters expressed concern that the lack of flexibility in the proposed rule could cause the airlines to establish an embargo on shipping animals. One commenter suggested that, if an upper temperature limit is to be established, it would be better to give a time limit for the animals to be exposed to that temperature rather than mandate that the temperature shall ''never'' exceed that level when dogs or cats are present.

We have carefully considered all of these comments and have decided that many of the concerns expressed have merit. We agree with the commenters that factors such as humidity and length of exposure, and age, breed, health status, and acclimation of the animal must all be considered in establishing a safe temperature range for a particular animal. Moreover, we agree that a prohibition on allowing dogs and cats in the circumstances covered by the proposal to be exposed to temperatures exceeding 90 °F for even a minimal amount of time under extenuating circumstances is neither feasible nor necessary; while many dogs or cats in the circumstances covered by the proposal might suffer at temperatures exceeding 90 °F for an extended period of time, few dogs or cats would not be able to withstand such temperatures for a limited period.

We have decided that setting a maximum temperature limit—whether it be 90 °F or any other temperature—for the care of dogs and cats in the circumstances described in the proposed rule would not achieve our goals for establishing a sound temperature policy for these animals and would place an unnecessary burden on the regulated industry. Moreover, establishing a single maximum temperature that could be used to ensure the health and well-being of all dogs and cats covered by the AWA in indoor, sheltered, and mobile or traveling housing facilities, in primary conveyances used for transportation, and in the animal holding areas of terminal facilities, and still be realistic for the industry to achieve, would be very difficult because too many variables are involved.

Instead, after carefully reviewing the comments received and further analyzing the current temperature requirements for dogs and cats in 9 CFR parts 2 and 3, we have decided that we basically agree with the commenters who stated that the current regulations are sufficient to protect the health and well-being of dogs and cats in the commercial pet trade. The incidents mentioned in the proposed rule in which animals died or were seriously harmed after having been exposed to extremely high temperatures during air

travel were the result of human error—not a lack of adequate governing regulations. All such cases of animal neglect have been successfully prosecuted based on the current regulations. However, we agree with opinions expressed at the public meetings on the care of dogs and cats in the commercial pet trade that the regulations pertaining to temperature requirements could and should be clarified and improved.

The current regulations for the care of dogs and cats in indoor, sheltered, and mobile or traveling housing facilities, in primary conveyances used for transportation, and in the animal holding areas of terminal facilities state that, among other things, the ambient temperature must not fall below 45 °F or rise above 85 °F for more than 4 consecutive hours when dogs or cats are present (9 CFR 3.2(a), 3.3(a), 3.5(a), and 3.15(e)). (For primary conveyances used for transportation, this requirement applies only during surface transportation.) The current regulations regarding the handling of dogs or cats to or from a primary conveyance or a terminal facility state that, among other things, the dogs or cats must not be exposed to an ambient temperature above 85 °F (29.5 °C) for a period of more than 45 minutes. We are concerned that some regulated parties have assumed that compliance with these temperature requirements is all that is required to ensure compliance with the AWA temperature requirements for dogs and cats in the circumstances just described. However, 9 CFR parts 2 and 3 include several other temperature and handling requirements that are also applicable to these animals.

Additional temperature requirements in 9 CFR parts 2 and 3 pertaining to dogs and cats in the circumstances covered by the proposed rule state that ''dogs and cats must be sufficiently heated and cooled when necessary to protect [them] from temperature extremes and to provide for their health and well-being'' (§§ 3.2(a), 3.3(a), and 3.5(a)), ''[d]uring air transportation, dogs and cats must be held in cargo areas that are heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs and cats'' (§ 3.15(d)), ''[d]uring surface transportation, auxiliary ventilation, such as fans, blowers or air conditioning, must be used in any animal cargo space containing live dogs or cats when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C)'' (§ 3.15(e)), and ''handling of all animals shall be done . . . in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort'' (§§ 2.38(f)(1) and 2.131(a)(1)).

The regulations that state that the ambient temperature must never rise above 85 °F for more than 4 consecutive hours (commonly referred to as the ''4-hour rule''), or more than 45 minutes in the case of dogs or cats being transported to or from a primary conveyance or terminal facility, do not override these additional temperature requirements. Consequently, a person responsible for the care of an animal that died from exposure to high temperatures might have been in compliance with the ''4-hour rule'' but would have been in violation of the other temperature and handling requirements in 9 CFR parts 2 and 3 by not ensuring that the animals were cooled as necessary to provide for their well-being. In other words, the AWA regulations require that an individual responsible for a dog or cat's care must take measures to ensure the animal's well-being regardless of whether the temperature is 85 °F or some temperature in excess of 85 °F. While some dogs and cats can easily withstand temperatures exceeding 85 °F for relatively long periods of time, other dogs and cats could be in danger at such temperatures for a relatively short period, especially with high humidity levels. Therefore, in this final rule, we are clarifying that the ''4-hour rule'' does not preclude the need to comply with the other temperature and handling requirements in 9 CFR parts 2 and 3. We are adding to §§ 3.2(a), 3.3(a), 3.5(a), 3.15(e), 3.18(d), and 3.19(a)(1) and (3) the following sentence: ''The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.''

In addition, because we agree with the many commenters who stated that humidity is an important factor in determining an animal's ability to withstand heat, we are also adding a new regulation regarding humidity levels that will apply to all animals covered by the AWA and making some minor changes to part 3 regarding humidity as it affects dogs and cats in the commercial pet trade. It is generally recognized that high temperatures with low humidity are less dangerous and more comfortable for humans and animals than high temperatures and high humidity. As stated above, individual animals can withstand high temperatures or high temperatures combined with high humidity for different lengths of time. Therefore, we are adding to the handling regulations in § 2.131 new requirements that pertain to climatic conditions. The new regulations specify that, when climatic conditions, such as extreme temperatures and humidity levels, present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. Moreover, at no time may an animal be exposed to a combination of temperature, humidity, and time that would present a threat to the animal's health and well-being, taking into consideration such factors as the animal's health status, age, breed, and temperature acclimation.

We believe these changes to the regulations are more realistic for the commercial pet and transportation industries to achieve than the proposed 90-°F limit and actually better convey our goals for a sound temperature policy for dogs, cats, and other animals covered by the AWA.

Other Comments on the Proposed Rule

Several commenters stated that applying the proposed requirement to indoor and sheltered primary enclosures but not to outdoor primary enclosures is contradictory and discriminatory. One commenter agreed that the proposed temperature requirement should not apply to outdoor facilities but stated that the proposed rule should also not apply to animals in sheltered facilities with unobstructed access to an outdoor run. A couple of commenters expressed concern that the proposal implied that the USDA endorses outdoor facilities for dogs and cats over indoor facilities because one of the alternatives listed in the proposal for dog and cat dealers to gain compliance with the proposed requirement was for them to establish outdoor shelters.

We did not mean to imply that we believe outdoor primary facilities for dogs and cats are preferable to indoor facilities. In regard to preventing stress from high temperatures, we continue to believe that outdoor shelters and runs provide dogs and cats with access to fresh air, air movement (breezes and winds), shade (required by the regulations), and other climatic and environmental factors that help to alleviate stress from high temperatures. Therefore, we believe that temperatures in excess of 85 °F are more comfortable outdoors than indoors, if auxiliary ventilation is not provided indoors. We do not recommend the use of outdoor facilities over indoor facilities for dogs and cats.

Two commenters said that USDA should expand the proposed rule to deal with minimum temperatures as well as

maximum temperatures and should disallow animals in the circumstances covered by the proposed rule to ever be exposed to temperatures below 50 °F. One commenter further stated that infant animals in the circumstances covered by the proposed rule should never be subjected to temperatures less than 65 °F.

The current temperature requirements that apply to indoor housing facilities state, among other things, that ''[w]hen dogs or cats are present, the ambient temperature in the facility must not fall below 50 °F (10 °C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50 °F (10 °C). The ambient temperature must not fall below 45 °F (7.2 °C) for more than 4 consecutive hours when dogs or cats are present * * *.'' (§ 3.2(a)). These temperature requirements are the same as those for sheltered and mobile or traveling housing facilities. The temperature requirements for primary conveyances and terminal facilities state, among other things, that the ambient temperature may not fall below 45 °F (7.2 °C) for a period of more than 4 hours when dogs or cats are present. The temperature requirements regarding transporting dogs or cats to or from terminal facilities and primary conveyances state, among other things, that the ambient temperature must not fall below 45 °F (7.2 °C) for a period of more than 45 minutes, unless the animal is accompanied by a certificate of acclimation to lower temperatures as provided in § 3.13(e).

The sentence described previously that is being added through this final rule to several sections in 9 CFR part 3 to clarify that the ''4-hour rule'' does not preempt the other temperature and handling requirements also pertains to minimum temperatures. We believe that the current temperature requirements regarding specific minimum temperature levels, in conjunction with the current AWA regulations that pertain to temperature in general and the changes resulting from this final rule, are sufficient to protect dogs and cats in the circumstances covered by the proposal from adverse exposure to cold temperatures.

One commenter questioned whether there is evidence that airlines routinely have monitored or will monitor the temperatures in cargo holds and how APHIS would monitor the temperature of cargo holds during flight. Another commenter stated that airlines should be required to ascertain current temperatures at all transfer points and destinations for animals being transported and not permit shipment if the temperatures are outside the requirements.

For the airlines or any other regulated entity to ensure compliance with the AWA temperature requirements for dogs and cats, monitoring the animals they are transporting is more important than taking temperature readings. As such, the current requirements pertaining to air transportation of dogs and cats state, among other things, that ''[d]uring air transportation of dogs or cats, it is the responsibility of the carrier to observe the dogs or cats as frequently as circumstances allow, but not less than once every 4 hours if the animal cargo area is accessible during flight. If the animal cargo area is not accessible during flight, the carrier must observe the dogs or cats whenever they are loaded and unloaded and whenever the animal cargo space is otherwise accessible to make sure they have sufficient air for normal breathing, that the animal cargo area meets the heating and cooling requirements of § 3.15(d), and that all other applicable standards of this subpart are being complied with * * *.'' (9 CFR 3.17(b)).

We believe that these current requirements, in conjunction with the AWA regulations discussed previously that pertain to temperature in general, as well as the new requirement being added to 9 CFR part 2 through this final rule, are sufficient to ensure the health and well-being of animals during air transport. In regard to requiring the airlines to ascertain temperatures at transfer points and refusing to transport animals if the temperatures are outside the appropriate range, the airlines can and do refuse to ship animals if there is any question as to whether an individual animal could be transported safely. However, we do not agree that obtaining temperatures at transfer points prior to departure is necessary. The outside temperature at an airport is irrelevant if efforts are made to keep the animals sufficiently heated or cooled to ensure their well-being while in the cargo hold of the airplane on the tarmac and while the animals are being transported to or from the airplane or terminal facility.

One commenter stated in regard to § 3.15(d) that, ''if it is required that the passenger cabin of an airplane be pressurized at 8,000 feet and less, then the cargo hold in which animals are transported must also be pressurized.'' We have made no change in response to this comment because aircraft cargo holds that contain animals are pressurized the same as passenger cabins.

One commenter suggested that the proposed rule could benefit from a definition of the term ''terminal facilities'' in 9 CFR, part 1. We believe that this term is self-explanatory, and, consequently, have made no change to the regulations in response to this comment.

One commenter stated that USDA should mandate that airlines (1) advise passengers who have lost an animal on a flight that they should file a complaint with USDA, and (2) advise USDA themselves of such incidents. The commenter maintained that the data obtained from such reporting would better enable USDA to learn precisely which aircraft and which cargo holds present the greatest risks to animals. Another commenter further stated that carriers and intermediate handlers should be required to notify APHIS within 24 hours of the death of an animal being transported and should be required to maintain an annual report on the transportation of companion animals to include (1) the total number of animals shipped, and (2) the total number of injuries, fatalities, and losses. The commenter had additional recommendations regarding establishing requirements under the AWA intended to ensure the safety of animals in air transit.

We believe that the statistics the commenters recommended we obtain could be informative but question the true value of having such data. Specifically, we question whether having it would necessarily improve our enforcement of the AWA and whether any benefit gained from such data would be worth the paperwork burden that would be placed on the regulated industry and the information collection burden that would be placed upon our agency. However, we are considering these suggestions as well as the other recommendations made by the commenter pertaining to air transport of animals. In addition, we are engaged in a public information campaign regarding the APHIS Animal Care program, and one of the areas of emphasis is USDA's role in regulating the air transport of animals. We have developed a brochure, ''Traveling With Your Pet,'' that is being distributed to, among others, travel agencies, veterinarians, and any member of the public who requests it. Animal Care has also established a home page on the

World Wide Web that includes information on safe pet travel.

A few commenters indicated that we should extend the proposed regulation to cover dogs and cats housed by humane societies, pounds, and individual pet owners. While we agree that all dogs and cats should be treated in a humane manner, the AWA does not authorize us to promulgate standards for the care of animals by humane societies, pounds, or individual pet owners, unless they are acting as dealers or exhibitors.

Two commenters made comments and recommendations regarding AWA enforcement, the AWA regulations pertaining to veterinary care provided to regulated animals, and the breeding frequency for female animals in the commercial pet trade. Although these comments are outside the scope of the proposed regulation, we are taking them into consideration. If we decide to make any changes to the AWA regulations in response to these comments, we will publish a proposed rule in the **Federal Register**.

One commenter expressed concerns about the format of the three public meetings APHIS held in 1996 to gather information on the regulations pertaining to the care of dogs and cats in the commercial pet trade. Specifically, the commenter stated, ''If APHIS is going to use the workshop format to justify specific rulemaking, rather than merely as a mechanism for gather[ing] opinions, it must develop a mechanism to assure that reasonable standards of accountability are imposed on workshop participants, so that workshop input can be properly evaluated and not be overly influenced by aggressive and excessively vocal interest groups.'' The commenter was particularly concerned that participants who claimed there have been numerous incidents of injury and death of dogs and cats during air transport did not produce supporting evidence, ''and it was clear that the majority of participants in the air transport session did not concur with these allegations.''

Our agency held the three public meetings in 1996 to gather information from interested and affected parties. We believe the workshop format was useful for eliciting information. We have considered and continue to consider the wide range of opinions expressed at those meetings, and further rulemaking may result. We did not use the input obtained from the public meetings to ''justify'' our proposed rule; as stated previously, the proposed rule was based on information gathered at the meetings as well as on our own experience in AWA enforcement.

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

Executive Order 12866 and Regulatory Flexibility Act

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

This document makes final part of a proposed rule published in the **Federal Register** on July 2, 1996 (61 FR 34386–34389, Docket No. 95–078–1). The proposed rule would have amended the regulations under the Animal Welfare Act by removing the option for facilities to use tethering as a means of primary enclosure for dogs and revising the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, for primary conveyances used in transportation, and for the animal holding areas of terminal facilities to require that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. As part of the proposed rule document, we performed an Initial Regulatory Flexibility Analysis in which we invited comments concerning potential economic effects of the proposed rule.

This document pertains only to the part of the proposed rule concerning the temperature requirements. We received several comments from members of the potentially affected industries concerning the likely economic effects of the proposed temperature requirements and one comment from the U.S. Small Business Administration (SBA) that stated the Initial Regulatory Flexibility Analysis fell short of what is required by the Regulatory Flexibility Act. The SBA further stated that APHIS should better indicate the scope of the problem before issuing a final rule and consider other alternatives than just the rule as proposed or no change to the regulations.

In fiscal year 1995, 10,108 facilities were licensed or registered under the AWA. Of that number, 4,325 were licensed dealers, 2,304 were licensed exhibitors, and 3,479 were registrants. The dealers are subdivided into two classes. Class A dealers (3,056) breed animals, and Class B dealers (1,269) serve as animal brokers. The registrants comprise research facilities (2,688), carriers and intermediate handlers (756), and exhibitors (35).

It is not known how many of the licensees and registrants are considered small entities under SBA standards, since information as to their size (in terms of gross receipts or number of employees) is not available. However, it is reasonable to assume that most are small, based on composite data for providers of the same and similar services in the United States. In 1992, the per-firm average gross receipts for all 6,804 firms in SIC 0752 (which includes breeders) was $115,290, well below the SBA's small-entity threshold of $5.0 million. Similarly, the 1992 per-establishment average employment for all 3,826 U.S. establishments in SIC 8731 (which includes research facilities) was 29, well below the SBA's small-entity threshold of 500 employees.

Animal dealers commented on both the potential direct and indirect economic effects of the proposed rule on their businesses. Several commenters stated that the estimated cost of compliance in the Initial Regulatory Flexibility Analysis was too low and that implementing the proposal would be much more burdensome and costly than the analysis showed. Two research firms commented that, in most parts of the United States, air conditioning is the only means of ensuring that the temperature in an enclosed building never rises above 90 °F. One firm then estimated that installation of air conditioning at the firm's research facility would cost $350,000, additional annual utility costs would be $37,340, and an additional $400,000 would be required for a generator to prevent cessation of air conditioning during a power outage. The other research firm stated that the cost of installing and operating air conditioning ''would jeopardize our ability to operate profitably and may result in a substantial increase in cost to our pharmaceutical clients.'' One dealer indicated that the estimated cost for additional electricity needed for air conditioning was too low, and another dealer questioned whether the cost of a standby generating system is within an affordable price range for a small kennel.

Some animal dealers expressed concern that the airlines might stop transporting animals instead of trying to comply with additional USDA animal care and handling requirements. The commenters were especially concerned that many small dealers cannot afford the costs of transporting their animals by surface transportation. They further stated that, if the airlines end air transport of animals, then small dealers would be put out of business and the wholesale pet industry would either become obsolete or the domain of a few large dealers. One commenter stated

that small dealers provide diversity in the commercial pet business.

A commenter representing the airline industry expressed similar concerns. The commenter stated that, if the proposed rule was finalized, it would ''have a destructive and costly effect on individual pet owners, owners of assistance dogs, the pet trade, breeders of dogs and cats, and the dog and cat show competition industry'' because ''airlines simply will not be able to carry pet animals from a large number of airport cities for large portions of each year.''

We recognize and agree with many of the concerns just described. However, we believe that all of these concerns are relevant to the proposed rule only. The final rule should not cause economic hardship for the regulated industries because it serves to clarify the current regulations and adds no new requirements that would add a financial burden. The final rule clarifies that the standards in subpart A of 9 CFR part 3 that state that the ambient temperature must not fall below 45 °F or rise above 85 °F for more than 4 consecutive hours when dogs or cats are present do not override the other requirements pertaining to climatic conditions and handling in 9 CFR parts 2 and 3. In addition, the final rule adds a new requirement to 9 CFR part 2 that applies to climatic conditions for all animals covered by the AWA. Under the new rule, when climatic conditions, such as extreme temperatures and humidity levels, present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. Moreover, at no time may an animal be exposed to a combination of temperature, humidity, and time that would present a threat to the animal's health and well-being, taking into consideration such factors as the animal's health status, age, breed, and temperature acclimation. Because the AWA regulations have always required regulated parties to take appropriate measures to ensure the health and well-being of their animals, these requirements basically serve to clarify existing requirements.

In regard to the comment letter from the SBA, APHIS Animal Care officials agreed that more specific information was needed regarding the scope of the problem, so APHIS headquarters surveyed the Animal Care field staff on the issue of temperature requirements for dogs and cats. The respondents included 38 animal care inspectors and 1 supervisory animal care specialist. The survey responses indicate that, in the facilities inspected by the respondents in the past 5 years, 2,516 dogs and cats have been severely affected, and 108 dogs and cats have died, as the result of exposure to excessive temperatures. In regard to the SBA's comment that other viable alternatives than just the rule as proposed or no change to the regulations need to be considered, APHIS is taking an entirely different approach to the proposal in the final rule.

There are no reporting or recordkeeping requirements associated with this rule.

Executive Order 12372

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

Executive Order 12988

This final 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 Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR parts 2 and 3 are amended as follows:

PART 2—REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. In § 2.131, a new paragraph (d) is added to read as follows:

§ 2.131 Handling of animals.

* * * * *

(d) When climatic conditions present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. An animal may never be subjected to any combination of temperature, humidity, and time that is detrimental to the animal's health or well-being, taking into consideration such factors as the animal's age, species, breed, overall health status, and acclimation.

PART 3—STANDARDS

3. The authority citation for part 3 is revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(d).

4. In § 3.2, paragraph (a) is amended as follows:

a. In the first sentence, by adding the words ''or humidity'' after the word ''temperature''.

b. At the end of the paragraph, by adding a new sentence to read as set forth below.

§ 3.2 Indoor housing facilities.

(a) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

5. In § 3.3, paragraph (a) is amended as follows:

a. In the first sentence, by adding the words ''or humidity'' after the word ''temperature''.

b. At the end of the paragraph, by adding a new sentence to read as set forth below.

§ 3.3 Sheltered housing facilities.

(a) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

6. In § 3.5, paragraph (a) is amended as follows:

a. In the first sentence, by adding the words ''or humidity'' after the word ''temperature''.

b. At the end of the paragraph, by adding a new sentence to read as set forth below.

§ 3.5 Mobile or traveling housing facilities.

(a) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

7. Section 3.15 is amended as follows:

a. In paragraph (d), the first sentence, by adding the words ''and humidity'' after the word ''temperature''.

b. In paragraph (e), at the end of the paragraph by adding a new sentence to read as set forth below.

§ 3.15 Primary conveyances (motor vehicle, rail, air, and marine).

* * * * *

(e) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

6. In § 3.18, paragraph (d) is amended by adding at the end of the paragraph a new sentence to read as follows:

§ 3.18 Terminal facilities.

* * * * *

(d) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

7. In § 3.19, paragraphs (a)(1) and (3) are amended by adding at the end of both paragraphs a new sentence to read as follows:

§ 3.19 Handling.

(a) * * *

(1) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

(3) * * * The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions in parts 2 and 3 of this chapter.

* * * * *

Done in Washington, DC, this 26th day of February 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–5538 Filed 3–3–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 600

48 CFR Parts 915, 927, 952, and 970

RIN 1991–AB33

Assistance Regulations; Acquisition Regulations; Revisions to Rights in Data Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its Financial Assistance and Acquisition Regulations to effect changes to its rights in technical data regulations to reflect a greater reliance upon the rights in technical data coverage in the Federal Acquisition Regulation and to recognize the requirements relating to technology transfer activities at certain DOE laboratories.

EFFECTIVE DATE: This rule is effective April 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–8264.

Judson Hightower, U.S. Department of Energy, Office of Assistant General Counsel for Technology, Transfer and Intellectual Property, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–2813.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Comments.
III. Procedural Requirements.
A. Review Under Executive Order 12866.
B. Review Under Executive Order 12988.
C. Review Under the Regulatory Flexibility Act.
D. Review Under the Paperwork Reduction Act.
E. Review Under the National Environmental Policy Act.
F. Review Under Executive Order 12612.
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996.
H. Review Under the Unfunded Mandate Reform Act of 1995.

I. Background

This final rule promulgates regulations published for comment on March 31, 1997, at 62 FR 15138. These new regulations delete the coverage of rights in technical data, including regulations, solicitation provisions, and contract clauses currently in the Department of Energy Acquisition Regulation (DEAR). The new coverage relies substantially on the rights in technical data regulations, provisions, and clauses in the Federal Acquisition Regulation (FAR), except where other coverage is appropriate to fulfill DOE's statutory duties to disseminate data produced in its research, development and demonstration programs. Coverage in Subpart 970.27 of the DEAR has been written to reflect the considerations relating to and use of two alternate rights in technical data clauses in DOE's management and operating contracts. Finally, these regulations relocate material on the handling of proposal data by non-Federal evaluators and reflects the effect on their selection of section 6002 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

This final rule supersedes Acquisition Letters No. 87–5, 88–1, and 91–7.

II. Discussion of Comments

Eleven commenters responded to the proposed rule. Five of the commenters were DOE management and operating contractors; two others were universities; two were trade associations, and the remaining two were DOE employees. The comments have been considered and disposed of as described below.

Material from 10 CFR Part 600 has been added at the outset of the presentation of the regulatory changes of this final rule though those changes were not part of the proposed rule. DOE has a practice of inviting public comment on significant policies that are added to a final rule that were not within scope of the notice of proposed rulemaking. DOE has decided not to reopen the comment period in this case, because the changes to 10 CFR Part 600 are not significant. DOE's financial assistance policies on rights in technical data have always followed the policies applicable to procurement. There is no reason to think that the changes made by today's final rule should be altered for financial assistance. These changes to 10 CFR Part 600 merely correct references to the Rights in Data-General clause to conform to the Department of Energy Acquisition Regulation coverage of this final rule and call for the use of paragraph (d)(3) that appears in the DEAR in lieu of the one that has appeared at 600.27(b)(2)(i)(C).

In the time since the publication of the proposed rule, Part 15 of the Federal Acquisition Regulation has been rewritten and material that had been at 15.413–2 dealing with the handling of proposal data and the use of non-Federal evaluators was deleted. The proposed rule contained alterations, for DOE's purposes, to paragraphs (e) and (f) of the FAR coverage as it then existed. We believe that the FAR material that was deleted has value to DOE contracting officers, and, as a result, this final rule publishes the substance of the former FAR and proposed DEAR provisions dealing with the handling of proposal data and use of non-Federal evaluators in DOE procurements at subsection 915.207–70.

One commenter suggested that DOE should identify the employers of non-Federal evaluators. We did not make a change. The notice of use of non-Federal evaluators is sufficient to allow

potential proposers to assess any risks of compromising proprietary data.

Another commenter suggested several additions to the nondisclosure agreement at 915.413–2(f)(b). We did not make a change, believing the agreement as recited in the proposed rule to be sufficient to inform the non-Federal evaluator of his or her responsibilities to maintain the propriety of the material being evaluated.

We have included subsections 927.402–1(b) and 927.403, though they were not published in the proposed rule. We have made minor modifications to these two provisions to change references that result from the publication of this final rule, including substituting the terms ''limited rights data'' and ''restricted computer software'' for ''confidential data'' each time the latter term appeared. This substitution was also made throughout the remainder of the rule, including the clauses.

Several commenters questioned the use of the phrase ''to acquire permission [from DOE] to assert copyright in any technical data or computer software'' or variations as used throughout this final rule. The basis for these questions is the recognition that under current copyright law, the drafter of the document or creator of the software has an automatic copyright in the data. The use of this phrase recognizes that right but controls the copyright of data first produced in the performance of a DOE contract by requiring permission from DOE before the contractor can assert the copyright. This phrase and the process as used in these regulations conforms to the phrase and the process used throughout the data regulations and clauses of the Federal Acquisition Regulation. By oversight, this phrase was not used in the proposed rule in paragraph (d)(3) of 927.409(a). That provision has been altered to bring it into conformity with the remainder of the regulations and clauses.

A commenter requested a clarification of the prohibition against a Federal prime contractor's using economic leverage ''to inequitably acquire rights in a subcontractor's confidential data'' stated in the proposed rule at subsection 927.404(k)(2). We have made a change to prohibit the use of economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for the contractor's private use, and the contractor shall not acquire such rights in standard commercial items on behalf of the Government without the prior approval of DOE patent counsel. This same proscription has been stated at 970.406(c)(3) with regard to DOE management and operating contracts and has been discussed in the subcontracts paragraphs of the clauses at 970.5204–82 and 970.5204–83.

This same provision has been added to 970.2706(c) and has been reflected in the clauses at 970.5204–82 and 970.5204–83. In addition, in each of those instances, a provision has been added to require the prior approval of DOE Patent Counsel where a management and operating contract proposes to acquire limited rights data or restricted computer software from a subcontractor using other than Alternate II or Alternate III, respectively, to the Rights in Data—General clause at FAR 52.227–14 as amended in accordance with DEAR 927.409(a).

One commenter expressed concern over a possible interpretation of a requirement for contractor licensing as discussed at paragraph 927.404(l) and Alternate VI implying a license in patents. No such license is intended and, in fact, is expressly denied in paragraph (i) of the Rights in Data—General clause at FAR 52.227–14.

Paragraph (a) of 927.409 has been altered to allow contracting officers to use Alternate IV in contracts for basic and applied research with educational institutions where software is not a specified deliverable. Also, one commenter noticed that at 927.409(a) we failed to include a definition for ''form, fit, and function data.'' We have added the definition, using the FAR wording.

Another commenter questioned the changing of the FAR definitions of ''data'' and ''technical data,'' relocating the exception for contract administration data from ''data,'' as in the FAR, to ''technical data.'' We continue to believe our proposed definitions more accurately reflect the true meaning of the terms, but, upon study of the Rights in Data—General clause at FAR 52.227–14, have chosen to use the FAR definitions of these two terms both for contracts that are not management and operating contracts and for the clauses at 970.5204–82 and 970.5204–83 for management and operating contracts.

Other commenters questioned the simplifying of the definitions for ''limited rights data'' and ''restricted computer software.'' This simplification combines two definitions and avoids the FAR definition where ''limited rights'' are defined but do not recite *verbatim* the limited rights that appear in Alternate II or, in the case of ''restricted computer software,'' Alternate III. The revised definitions avoid any potential for ambiguity by referencing the applicable rights as they may appear in the clause.

A commenter noticed that the definitions recited at 927.409(a) already include Alternate I. Therefore, we have deleted the separate instruction to use Alternate I.

Another commenter suggested that we have altered the definition of unlimited rights that was provided in the FAR. That commenter says ''DOE has deleted the phrase 'by or on behalf of the Government.' '' The FAR definition includes no such phrase. This rule differs from the FAR in the definition of ''unlimited rights'' only by the addition of '', including by electronic means,'' in recognition of the increasing use of electronic means to disseminate data.

At subparagraph (a)(2)(vi) we have altered the instruction for use of the clause at 970.5204–82 to require its inclusion in contracts for the management or operation of a DOE facility or site in addition to DOE management and operation contracts. It is critical that DOE assure its ownership of data relating to management or operation of a facility or site in the same manner that has historically existed for the management and operating contracts. This same principle has been dealt with expressly in the subcontract instructions in paragraph (d) of the clause at 970.5204–82 and paragraph (f) of the clause at 970.5204–83, now requiring the application of the clause at 970.5204–82 in subcontracts for the management or operation of a DOE facility or site.

A commenter has questioned why we apparently merely repeat paragraph (h) of FAR 27.409. That FAR citation calls for use of the Additional Data Requirements clause at FAR 52.227–16 ''normally.'' DOE requires the use of that clause any time the clause at FAR 52.227–14 is used. Paragraph (h) as included in the DEAR as a result of this rule does not include the word ''normally.''

Another commenter objected to the proposed prescription at 927.409(s) for use of the Rights in Proposal Data clause at FAR 52.227–23. The Department chooses to take unlimited rights in proposal data as a condition of award of its contracts, believing that effective contract administration requires the use of the clause as proposed. The clause provides for the offeror's identifying and thereby exempting allegedly proprietary data included in the proposal from these unlimited rights. Furthermore, the clause will affect only the awardee. We have made no change.

Two commenters suggest that the paragraph at 970.2705 is misplaced and should be moved to regulations dealing

with organizational conflicts of interest. We disagree. The paragraph already was in the DEAR at 970.2705 as paragraph (c) rather than paragraph (b). The issue dealt with is limitations on use of contract data in proposals of the parent or affiliates of a DOE management and operating contractor. A general recognition of controlling the flow of data between the management and operating (M&O) contractor and its parent is discussed at 970.0905. We have made no change.

Those same commenters object to the proposed paragraph at 970.2705(c), saying it imposes restrictions on private use of what is otherwise data available in the public domain by DOE M&O contractors. Paragraph (c) is intended merely to reflect the conditions for the private use of contract data as provided in the two data rights clauses for DOE management and operating contractors. Those contractors are allowed to use contract data for private purposes but must respect restrictive markings of data acquired from third parties. We have deleted the proposed 970.2705(c), relying on the appropriate clause to control with no need for further explanation.

We have recognized the possibility of instances in which a DOE management and operating contractor or a contractor that manages or operates a DOE facility or site should be required to grant a limited license to responsible third parties or the Government in background limited rights data or restricted computer software. In the proposed rule this recognition was limited to contracts using the Rights in Data-General clause at 48 CFR 52.227–14 as amended by 48 CFR 927.209(a) with Alternate VI being prescribed for use when appropriate. We have added a discussion at 970.2706(d)(2) to discuss this subject treatment in the data clauses for use in DOE management and operating contracts and contracts for the management or operation of a DOE facility or site.

A commenter questioned the proposed paragraph (e) of 970.2706 in the context of paragraph (c) of the Rights in Data—Facilities clause at 970.5204–82. The commenter notes that 970.2706(e) recognizes the right to assert copyright in data first produced in performance of the contract as a valuable tool; yet, as proposed the facilities clause does not apparently require the M&O contractor to acquire DOE permission to copyright software. This clause would be used in M&O contracts that do *not* have technology transfer as a part of their performance obligations while those who have a technology transfer obligation are required under the clause at 970.5204–83 to acquire such permission. This situation results from an oversight in the use of the term technical data. Paragraph (c) of the clause at 970.5204–82 has been altered to require the contractor to acquire permission from DOE to assert copyright in technical data or computer software. In all cases describing the DOE's license in data produced under the contract where permission has been granted to assert copyright, we have used ''paid up'' throughout, replacing the term ''royalty free'' wherever it appeared in both the clauses at 970.5204–82 and 970.5204–83.

One commenter suggested that the Government's unlimited rights in paragraph (b)(1) of both data clauses for management and operating contracts should be modified to recognize exceptions for limited rights data and restricted computer software. We agree and have made the change.

Another commenter requested that the term ''specifically used'' as used in the same paragraph (b)(1) of those M&O data clauses be defined. We disagree, believing the term to be self-defining. Additionally, it should be noted that the FAR already uses the term in subparagraph (b)(2)(i) of the Rights in Data—General clause at FAR 52.227–14.

Four commenters question the right of ownership of the Government as stated in paragraph (b)(1)(i) of the clauses at 970.5204–82 and 970.5204–83. Generally, the concept of ownership is not meaningful in the context of data. However, these clauses are intended to be included in DOE's management and operating contracts, contracts under which the contractors are responsible for the management and operation of large reservations and many and varied facilities that are Government-owned and that fall under safety and health and national security stewardship responsibilities of DOE. The data necessary to the operation of those facilities must be readily available in the context of continuing and future operations, whether involving the past, current, or future operations of the incumbent contractor or the future operations of a successor contractor. To this end, ready access to any such data and unlimited rights in any other data specifically used is necessary. We understand the questions raised but have made no change in this regard.

In subparagraph (b)(1)(ii) of the clauses at 970.5204–82 and 970.5204–83, we have recognized as an exception to the reservation of unlimited rights, limited rights data, restricted rights computer software, data produced under a statutory program that establishes the treatment of data, and, as appropriate, data produced in conjunction with DOE's work for others program. In the clause at 970.5204–83 we have also excluded data produced under a Cooperative Research and Development Agreement where that agreement so provides.

Two commenters suggest that the copyright licenses granted the United States in any scientific or technical works as expressed in paragraph (d)(1) of the clause at 970.5204–83 should be repeated *verbatim* in the notice stated in paragraph (d)(2). We agree and have made the technical adjustments to bring this about.

Two commenters object to the requirement of paragraph (e)(1)(i)(C) of the clause at 970.5204–83 that a contractor include in any request for the right to assert copyright ''whether the data is subject to an international treaty or agreement,'' saying that the contractor may not have such knowledge. We have made a change recognizing that the contractor's obligation in this regard is subject to the contractor's best knowledge. We have recognized under paragraph (e)(1) that the right of the contractor to assert copyright in data produced under a Cooperative Research and Development Agreement will be controlled by that agreement.

Two commenters express a concern with regard to the current form of paragraph (e)(1)(i)(F) of the same clause that the requirement for the contractor to obtain the permission of ''all other funding sources'' prior to making the request. They question whether this requires a second permission if the contractor has in place an agreement that provides for such permission. Where an agreement between the contractor and any funding sources provides the necessary permission, states that such permission is not necessary, or allows each participant to copyright its data developed under the agreement, a special request is not necessary, and a mere statement of the applicable situation will satisfy the requirement as stated.

Two commenters recommend that the third sentence of the paragraph at (e)(1)(ii) of the clause at 970.5204–83 end after the phrase ''Intellectual Property'' and that the remaining phrase ''where data are determined to be subject to export controls'' become the introductory phrase to a new fourth sentence that would allow the contractor to obtain permission to copyright data subject to export controls and assert that copyright to the extent provided by export control statutes and regulations. We have made this change.

Several commenters have raised concerns about the system of the Department's granting permission to assert copyright contained in the clause at 970.5204–83, particularly in various subparagraphs of paragraph (e)(3). That system provides for the contractor's request to be for a five-year period with provision for extensions in increments of five years where that permission leads to commercialization of the data, generally computer software, that is the subject of the request. Some commenters state that commercialization is less likely where the permission is limited to a five-year period and extensions are subject to further requests for permission. Firms interested in commercializing such data often make their interest conditional upon periods longer than five years. In recognition of this possibility and to remove the potential for this process to impede commercialization of valuable contract data, we have changed the provisions of the clause to allow for requests for specific periods longer than five years where it can be shown that the longer period will aid commercialization. Additionally, where justified, extensions may also be requested for periods longer than five years with the same showing without regard to the length of the original permission.

We have also named in subparagraph (e)(3)(i) of the clause at 970.5204–83 the central depository for receipt of software from contractors and dissemination of software materials to the public, the Energy Science and Technology Software Center, to avoid any ambiguity in contractors' responsibilities for delivery to DOE of software developed under a DOE contract.

One commenter objected to the length of the copyright acknowledgment prescribed at paragraph (e)(3)(v) of the clause at 970.5204–83. We have made changes to simplify and shorten the notice.

One commenter opined that the disclaimer of the notice at paragraph (e)(4) of 970.5204–83 be capitalized. We agree and have made the change. In addition, we have added a paragraph (e)(5) to allow contractors to request from DOE permission to mark technical data with a restrictive legend similar to the one authorized for computer software, limiting their use pending disposition of a request to assert copyright.

Two commenters made suggestions about paragraph (f) of the clause at 970.5204–83, dealing with the treatment of rights in data in subcontracts under management and operating contracts, involving technology transfer. One suggests that the flowdown obligations are too specific. We have made this change since the introductory language allows the contracting officer to vary the subcontract obligations where appropriate. We have made corresponding changes to paragraph (f) of the clause at 970.5204–83 and paragraph (d) of the clause at 970.5204–82 to assure that they expressly comply with the explanatory regulatory coverage at 970.2706(c)(1). The second suggestion was a request that there be ''an option for the M&O contractor to acquire ownership of copyright in software developed under a subcontract, or at least an exclusive license,'' where a subcontract was for software development. Nothing in the clause as drafted precludes such an arrangement, where appropriate. In addition, the requirement for application of the clause at 970.5204–82 in certain subcontracts discussed earlier has been reflected in both clauses.

Two commenters object to the limited rights legend used in the clauses at 970.5204–82 and 970.5204–83, saying that paragraph (e) of the notice allows for the possibility that data developed at private expense could be released ''to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.'' The possibility exists but only for the purposes enunciated in the legend. The notice, including the language that is the subject of the comments, is the standard FAR limited rights legend of Alternate II to the clause at FAR 52.227–14.

Finally, commenters noticed several typographical errors. We appreciate their observations and have made the appropriate corrections.

III. Procedural Requirements

A. Review Under Executive Order 12866

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

B. 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 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, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The contracts to which this rulemaking would apply are agreements that contemplate the creation of technical data. Normally, such contracts, and any resulting subcontracts, would be cost reimbursement type contracts. Thus, there would not be an adverse economic impact on contractors or subcontractors. Accordingly, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the

Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this final rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This final rule merely reflects current practice relating to rights in technical data. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects private sector entities, and the impact is less than $100 million.

List of Subjects

10 CFR Part 600

Administrative practice and procedure.

48 CFR Parts 915, 927, 952, and 970

Government procurement.

Issued in Washington, D.C. on February 20, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Part 600 of Title 10 and Chapter 9 of Title 48 of the Code of Federal Regulations, respectively, are amended as set forth below.

10 CFR

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 of Title 10 continues to read as follows:

Authority: 42 U.S.C. 7254, 7256, 13525; 31 U.S.C. 6301–6308, unless otherwise noted.

2. In § 600.27, paragraph (b)(2)(i)(C) is removed, paragraph (b)(2)(i)(D) is redesignated as paragraph (b)(2)(i)(C), paragraph (b)(2)(i)(B) is amended by adding after ''non-profit organizations,'' the phrase ''the clause referred to in paragraph (b)(2)(i)(A) of this section shall be revised by deleting paragraph (d)(3) and inserting the following paragraph (c) in lieu of paragraph (c) of that clause:'', and paragraph (b)(2)(i)(A) is revised to read as follows:

§ 600.27 Patent and data provisions.

(b) * * *

(2) * * *

(i) *Rights in data—General.* (A) Incorporate 48 CFR 52.227–14 with its Alternate V and with the definitional paragraph (a) and paragraph (d)(3) of 48 CFR 927.409(a)(1). Solicitations shall also include the Representation of Limited Rights Data and Restricted Computer Software provision at 48 CFR 52.227–15. Contracting officers shall treat rights in data matters in accordance with 48 CFR 927.4.

* * * * *

Title 48 of the Code of Federal Regulations

PART 915—CONTRACTING BY NEGOTIATION

3. The authority citation for Part 915 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

4. Subsection 915.207–70 is added as follows:

915.207–70 Handling of proposals during evaluation.

(a) Proposals furnished to the Government are to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with the procedures in this subsection.

(b) While the Government's limited use of proposals does not require that the proposal bear a restrictive notice, proposers should, if they desire to maximize protection of their trade secrets or confidential or privileged commercial and financial information contained in them, apply the restrictive notice prescribed in paragraph (e) of the provision at 52.215–1 to such information. In any event, information contained in proposals will be protected to the extent permitted by law, but the Government assumes no liability for the use or disclosure of information (data) not made subject to such notice in accordance with paragraph (e) of the provision at 48 CFR 52.215–1.

(c) If proposals are received with more restrictive conditions than those in paragraph (e) of the provision at 48 CFR 52.215–1, the contracting officer or coordinating officer shall inquire whether the submitter is willing to accept the conditions of paragraph (e). If the submitter does not, the contracting officer or coordinating officer shall, after consultation with counsel, either return the proposal or accept it as marked. Contracting officers shall not exclude from consideration any proposals merely because they contain an authorized or agreed to notice, nor shall they be prejudiced by such notice.

(d) Release of proposal information (data) before decision as to the award of a contract, or the transfer of valuable and sensitive information between competing offerors during the competitive phase of the acquisition process, would seriously disrupt the Government's decision-making process and undermine the integrity of the competitive acquisition process, thus adversely affecting the Government's ability to solicit competitive proposals and award a contract which would best meet the Government's needs and serve the public interest. Therefore, to the extent permitted by law, none of the information (data) contained in proposals, except as authorized in this subsection, is to be disclosed outside the Government before the Government's decision as to the award

of a contract. In the event an outside evaluation is to be obtained, it shall be only to the extent authorized by, and in accordance with the procedures of, this subsection.

(e)(1) In order to maintain the integrity of the procurement process and to assure that the propriety of proposals will be respected, contracting officers shall assure that the following notice is affixed to each solicited proposal prior to distribution for evaluation:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, the procedures in DEAR subsection 915.207–70.

(End of Notice)

(2) The notice at FAR 15.609(d) for unsolicited proposals shall be affixed to a cover sheet attached to each such proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

(f)(1) Normally, evaluations of proposals shall be performed only by employees of the Department of Energy. As used in this section, ''proposals'' includes the offers in response to requests for proposals, sealed bids, program opportunity announcements, program research and development announcements, or any other method of solicitation where the review of proposals or bids is to be performed by other than peer review. In certain cases, in order to gain necessary expertise, employees of other agencies may be used in instances in which they will be available and committed during the period of evaluation. Evaluators or advisors who are not Federal employees, including employees of DOE management and operating contractors, may be used where necessary. Where such non-Federal employees are used as evaluators, they may only participate as members of technical evaluation committees. They may not serve as members of the Source Evaluation Board or equivalent board or committee.

(2)(i) Pursuant to section 6002 of Pub. L. 103–355, a determination is required for every competitive procurement as to whether sufficient DOE personnel with the necessary training and capabilities are available to evaluate the proposals that will be received. This determination, discussed at FAR 37.204, shall be made in the memorandum appointing the technical evaluation committee by the Source Selection Official, in the case of Source Evaluation Board procurements, or by the Contracting Officer in all other procurements.

(ii) Where it is determined such qualified personnel are not available within DOE but are available from other Federal agencies, a determination to that effect shall be made by the same officials in the same memorandum. Should such qualified personnel not be available, a determination to use non-Federal evaluators or advisors must be made in accordance with paragraph (f)(3) of this subsection.

(3) The decision to employ non-Federal evaluators or advisors, including employees of DOE management and operating contractors, in Source Evaluation Board procurements must be made by the Source Selection Official with the concurrence of the Head of the Contracting Activity. In all other procurements, the decision shall be made by the senior program official or designee with the concurrence of the Head of the Contracting Activity. In a case where multiple solicitations are part of a single program and would call for the same resources for evaluation, a class determination to use non-Federal evaluators may be made by the DOE Procurement Executive.

(4) Where such non-Federal evaluators or advisors are to be used, the solicitation shall contain a provision informing prospective offerors that non-Federal personnel may be used in the evaluation of proposals.

(5) The nondisclosure agreement as it appears in paragraph (f)(6) of this subsection shall be signed before DOE furnishes a copy of the proposal to non-Federal evaluators or advisors, and care should be taken that the required handling notice described in paragraph (e) of this subsection is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator or advisor. In all instances, such persons will be required to comply with nondisclosure of information requirements and requirements involving Procurement Integrity, see FAR 3.104; with requirements to prevent the potential for personal conflicts of interest; or, where a non-Federal evaluator or advisor is acquired under a contract with an entity other than the individual, with requirements to prevent the potential for organizational conflicts of interest.

(6) Non-Federal evaluators or advisors shall be required to sign the following agreement prior to having access to any proposal:

Nondisclosure Agreement

Whenever DOE furnishes a proposal for evaluation, I, the recipient, agree to use the information contained in the proposal only for DOE evaluation purposes and to treat the information obtained in confidence. This requirement for confidential treatment does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed all copies of the proposal and abstracts, if any, shall be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the Contracting Officer, I agree that I shall not contact the originator of the proposal concerning any aspect of its elements.

Recipient: _____

Date: _____

(End of Agreement)

(g) The submitter of any proposal shall be provided notice adequate to afford an opportunity to take appropriate action before release of any information (data) contained therein pursuant to a request under the Freedom of Information Act (5 U.S.C. 552); and, time permitting, the submitter should be consulted to obtain assistance in determining the eligibility of the information (data) in question as an exemption under the Act. (See also Subpart 24.2, Freedom of Information Act.)

5. Subpart 915.3, Source Selection, is added to read as follows:

915.3 Source selection.

915.305 Proposal evaluation. (DOE coverage—paragraph (d))

(d) Personnel from DOE, other Government agencies, consultants, and contractors, including those who manage or operate Government-owned facilities, may be used in the evaluation process as evaluators or advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are to be used as evaluators or advisors, approval and nondisclosure procedures as required by 48 CFR (DEAR) 915.207–70 shall be followed and a notice of the use of non-Federal evaluators shall be included in the solicitation. In all instances, such personnel will be required to comply with DOE conflict of interest and nondisclosure requirements.

PART 927—PATENTS, DATA, AND COPYRIGHTS

6. The authority citation for Part 927 continues to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9 (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, Sec. 152 (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), (42 U.S.C. 7261a.)

927.300 [Amended]

7. Section 927.300(b) is amended by replacing the phrase ''41 CFR 9–9.109'' as it appears in the second sentence with ''10 CFR part 784.''

927.303 [Amended]

8. Subsection 927.303(b) is amended by inserting the phrase '', pursuant to 10 CFR part 784,'' after ''advance waiver'' in the first sentence and after ''identified invention'' in the second sentence.

927.370 [Removed and reserved]

9. Remove and reserve section 927.370.

927.401 [Removed]

10. Section 927.401 is removed.

11. In section 927.402–1, paragraphs (c) through (g) are removed, paragraph (h) is redesignated as paragraph (c) , and paragraph (b) is revised to read as follows:

927.402–1 General.

* * * * *

(b) It is important to keep a clear distinction between contract requirements for the delivery of technical data and rights in technical data. The legal rights which the Government acquires in technical data in DOE contracts, other than management and operating contracts (see 970.2705) and other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, are set forth in Rights in Data—General clause at 48 CFR 52.227–14 as modified in accordance with 927.409 of this subpart. In those contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, after consultation with Patent Counsel the clause at 970.5204–82 shall be used. However, those clauses do not obtain for the Government delivery of any data whatsoever. Rather, known requirements for the technical data to be delivered by the contractor shall be set forth as part of the contract. The Additional Technical Data Requirements clause at 48 CFR 52.227–16 may be used along with the Rights in Data—General clause to enable the contracting officer to require the contractor to furnish additional technical data, the requirement for which was not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which a contractor may be required to deliver under either the contract or the Additional Technical Data Requirements clause. This limitation is found in the withholding provision of paragraph (g) of the Rights in Data—General clause at 48 CFR 52.227–14, as amended at 48 CFR 927.409(a), which provides that the Contractor need not furnish limited rights data or restricted computer software. Unless Alternate II or III to the Rights in Data—General clause is used, it is specifically intended that the contractor may withhold limited rights data or restricted computer software even though a requirement for technical data specified in the contract or called for delivery pursuant to the Additional Technical Data Requirements clause would otherwise require the delivery of such data.

927.402–3 [Removed]

12. Subsection 927.402–3 is removed.

13. Section 927.403 is revised to read as follows:

927.403 Negotiations and deviations.

Contracting officers shall contact Patent Counsel assisting their contracting activity or the Assistant General Counsel for Technology Transfer and Intellectual Property for assistance in selecting, negotiating, or approving appropriate data and copyright clauses in accordance with the procedures set forth in this subpart and 48 CFR part 27.4. In particular, contracting officers shall seek the prompt and timely advice of Patent Counsel regarding any situation not in conformance with this subpart and prescribed clauses, including the inclusion or modification of alternate paragraphs of the Rights in Data clause at 48 CFR 52.227–14, as amended at 48 CFR 927.409(a), the exclusion of specific items from said clause, the exclusion of the Additional Technical Data Requirements clause at 48 CFR 52.227–16, and the inclusion of any special provisions in a particular contract.

14. Section 927.404 is added to read as follows:

927.404 Rights in Technical Data in Subcontracts. (DOE coverage—paragraphs (g), (k), (l), and (m).)

(g)(4) Contractors are required by paragraph (d)(3) of the clause at FAR 52.227–14, as modified pursuant to 48 CFR 927.409(a)(1), to acquire permission from DOE to assert copyright in any computer software first produced in the performance of the contract. This requirement reflects DOE's established software distribution program, recognized at FAR 27.404(g)(2), and the Department's statutory dissemination obligations. When a contractor requests permission to assert copyright in accordance with paragraph (d)(3) of the Rights in Data—General clause as prescribed for use at 48 CFR 927.409(a)(1), Patent Counsel shall predicate its decision on the considerations reflected in paragraph (e) of the clause at 970.5204–82 Rights in Data—Technology Transfer.

(k) *Subcontracts.* (1)(i) It is the responsibility of prime contractors and higher tier subcontractors, in meeting their obligations with respect to contract data, to obtain from their subcontractor the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in this subpart, and subject to the approval of the contracting officer, where required, selection of appropriate technical data provisions for subcontracts is the responsibility of the prime contractors or higher-tier subcontractors. In many, but not all instances, use of the Rights in Technical Data clause of FAR 52.227–14, as modified pursuant to 48 CFR 927.409(a)(1), in a subcontract will provide for sufficient Government rights in and access to technical data. The inspection rights afforded in Alternate V of that clause normally should be obtained only in first-tier subcontracts having as a purpose the conduct of research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract.

(ii) If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the contractor shall so inform the contracting officer in writing and not proceed with the award of the subcontract without written authorization of the contracting officer.

(iii) In prime contracts (or higher-tier subcontracts) which contain the Additional Technical Data Requirements clause at FAR 52.227–16, it is the further responsibility of the contractor (or higher-tier subcontractor) to determine whether inclusion of such

clause in a subcontract is required to satisfy technical data requirements of the prime contract (or higher-tier subcontract).

(2) As is the case for DOE in its determination of technical data requirements, the Additional Technical Data Requirements clause at FAR 52.227–16 should not be used at any subcontracting tier where the technical data requirements are fully known. Normally, the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration work. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the subcontractor's limited rights data or restricted computer software for their private use, and they shall not acquire rights to limited rights data or restricted computer software on behalf of the Government for standard commercial items without the prior approval of Patent Counsel.

(l) *Contractor licensing.* In many contracting situations the achievement of DOE's objectives would be frustrated if the Government, at the time of contracting, did not obtain on behalf of responsible third parties and itself limited license rights in and to limited rights data or restricted computer software or both necessary for the practice of subject inventions or data first produced or delivered in the performance of the contract. Where the purpose of the contract is research, development, or demonstration, contracting officers should consult with program officials and Patent Counsel to consider whether such rights should be acquired. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of the small business or non-profit organization have been authorized in accordance with 35 U.S.C. 202(f). In all cases when the contractor has agreed to include a provision assuring commercial availability of background patents, consideration should be given to securing for the Government and responsible third parties at reasonable royalties and under appropriate restrictions, co-extensive license rights for data which are limited rights data and restricted computer software. When such license rights are deemed necessary, the Rights in Data-General clause at FAR 52.227–14 should be supplemented by the addition of Alternate VI as provided at 48 CFR 952.227–14. Alternate VI will normally be sufficient to cover limited rights data and restricted computer software for items and processes that were used in the contract and are necessary in order to insure widespread commercial use or practical utilization of a subject of the contract. The expression ''subject of the contract'' is intended to limit the licensing required in Alternate VI to the fields of technology specifically contemplated in the contract effort and may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in the patent clause at 48 CFR 952.227–13 pertaining to ''Background Patents.'' Where, however, limited rights data and restricted computer software cover the main purpose or basic technology of the research, development, or demonstration effort of the contract, rather than subcomponents, products, or processes which are ancillary to the contract effort, the limitations set forth in subparagraphs (k)(1) through (k)(4) of Alternate VI of 48 CFR 952.227–14 should be modified or deleted. Paragraph (k) of 48 CFR 952.227–14 further provides that limited rights data or restricted computer software may be specified in the contract as being excluded from or not subject to the licensing requirements thereof. This exclusion can be implemented by limiting the applicability of the provisions of paragraph (k) of 48 CFR 952.227–14 to only those classes or categories of limited rights data and restricted computer software determined as being essential for licensing. Although contractor licensing may be required under paragraph (k) of 48 CFR 952.227–14, the final resolution of questions regarding the scope of such licenses and the terms thereof, including provisions for confidentiality, and reasonable royalties, is then left to the negotiation of the parties.

(m) *Access to restricted data.* In contracts involving access to certain categories of DOE-owned Category C–24 restricted data, as set forth in 10 CFR part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. Accordingly, in contracts where access to such restricted data is to be provided to contractors, Alternate VII shall be incorporated into the rights in technical data clause of the contract. In addition, in any other types of contracting situations in which the contractor may be given access to restricted data, appropriate limitations on the use of such data must be specified.

15. Subsection 927.404–70 is added to read as follows:

927.404–70 Statutory Programs.

Occasionally, Congress enacts legislation that authorizes or requires the Department to protect from public disclosure specific data first produced in the performance of the contract. Examples of such programs are ''the Metals Initiative'' and section 3001(d) of the Energy Policy Act. In such cases DOE Patent Counsel is responsible for providing the appropriate contractual provisions for protecting the data in accordance with the statute. Generally, such clauses will be based upon the Rights in Data-General clause prescribed for use at 48 CFR 927.409(a) with appropriate modifications to define and protect the ''protected data'' in accordance with the applicable statute. When contracts under such statutes are to be awarded, contracting officers must acquire from Patent Counsel the appropriate contractual provisions. Additionally, the contracting officer must consult with DOE program personnel and Patent Counsel to identify data first produced in the performance of the contract that will be recognized by the parties as protected data and what data will be made available to the public notwithstanding the statutory authority to withhold the data from public dissemination.

16. Section 927.408 is added to read as follows:

927.408 Cosponsored research and development activities.

Because of the Department of Energy's statutory duties to disseminate data first produced under its contracts for research, development, and demonstration, the provisions of FAR 27.408 do not apply to cosponsored or cost shared contracts.

17. Section 927.409 is added to read as follows:

927.409 Solicitation provisions and contract clauses. (DOE coverage-paragraphs (a), (h), (s), and (t)).

(a)(1) The contracting officer shall insert the clause at FAR 52.227–14, Rights in Data-General, substituting the following paragraph (a) and including the following paragraph (d)(3) and Alternate V in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract; except contracting officers are authorized to use Alternate IV rather than paragraph (d)(3) in contracts for basic or applied research with educational institutions except where software is specified for delivery or except where other special circumstances exist:

(a) *Definitions.*

(1) *Computer data bases,* as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software,* as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) *Data,* as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) *Form, fit, and function data,* as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

(5) *Limited rights data,* as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.

(6) *Restricted computer software,* as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.

(7) *Technical data,* as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(8) *Unlimited rights,* as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

* * * * *

(d)(3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(2) However, rights in data in these specific situations will be treated as described, where the contract is—

(i) For the production of special works of the type set forth in FAR 27.405(a), but the clause at FAR 52.227–14, Rights in Data-General, shall be included in the contract and made applicable to data other than special works, as appropriate (See paragraph (i) of FAR 27.409);

(ii) For the acquisition of existing data works, as described in FAR 27.405(b) (See paragraph (j) of FAR 27.409);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (See paragraph (n) of FAR 27.409);

(iv) For architect-engineer services or construction work, in which case contracting officers shall utilize the clause at FAR 52.227–17, Rights in Data-Special Works;

(v) A Small Business Innovation Research contract (See paragraph (l) of FAR 27.409);

(vi) For management and operation of a DOE facility (See 970.2705) or other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, after consultation with Patent Counsel (See 927.402–1(b)); or

(vii) Awarded pursuant to a statute expressly providing authority for the protection of data first produced thereunder from disclosure or dissemination. (See 927.404–70).

(h) The contracting officer shall insert the clause at FAR 52.227–16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. See FAR 27.406(b). This clause may also be used in other contracts when considered appropriate.

* * * * *

(s) Contracting officers shall incorporate the solicitation provision at FAR 52.227–23, Rights to Proposal Data (Technical), in all requests for proposals.

(t) Contracting officers shall include the solicitation provision at 952.227–84 in all solicitations involving research, developmental, or demonstration work.

Subpart 927.70—[Removed and Reserved]

18. Subpart 927.70 consisting of 927.7000 through 927.7005 is removed and reserved.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

19. The authority citation for Part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

952.227–13 [Amended]

20. Subsection 952.227–13 is amended in paragraph (a) of the clause by inserting the sentence ''See 10 CFR part 784.'' at the end of the definition of ''DOE patent waiver regulations'' and in subparagraph (c)(1)(ii) introductory text of the clause by inserting ''(10 CFR part 784)'' after the phrase ''patent waiver regulations''.

21. Subsection 952.227–14 of Part 952 is added to read as follows:

952.227–14 Rights in data-general. (DOE coverage-alternates VI and VII)

Alternate VI (Feb 1998)

As prescribed at 48 CFR 927.404(l) insert Alternate VI to require the contractor to license data regarded as limited rights data or restricted computer software to the Government and third parties at reasonable royalties upon request by the Department of Energy.

(k) *Contractor Licensing.* Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted computer software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor

demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(End of Alternate)

Alternate VII (Feb 1998)

As prescribed in 48 CFR 927.404(m) make the change described in Alternate VII to limit the contractor's use of DOE restricted data.

Insert the parenthetical phrase ''(except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology).'' after the phrase ''data first produced or specifically used by the Contractor in the performance of this contract'' in paragraph (b)(2)(i) of the clause at FAR 52.227–14.

(End of Alternate)

952.227–73 through 952.227–83 [Removed]

22. In Part 952, subsections 952.227–73, 952.227–75, 952.227–76, 952.227–77, 952.227–78, 952.227–79, and 952.227–83 are removed.

23. Subsection 952.227–84 is revised to read as follows:

952.227–84 Notice of right to request patent waiver.

Include this provision in all appropriate solicitations in accordance with 48 CFR 927.409(t).

Right to Request Patent Waiver (Feb 1998)

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, *i.e.*, individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227–11 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

(End of Provision)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

24. The authority citation for Part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

25. Section 970.2705 is revised to read as follows:

970.2705 Rights in data—general.

(a) Rights in data relating to the performance of the contract and to all facilities are significant in assuring continuity of the management and operation of DOE facilities. It is crucial in assuring DOE's continuing ability to perform its statutory missions that DOE obtain rights to all data produced or specifically used by its management and operating contractors and appropriate subcontractors. In order to obtain the necessary rights in technical data, DOE contracting officers shall assure that management and operating contracts contain either the Rights in Data clause at 48 CFR 970.5204–82 or the clause at 48 CFR 970.5204–83. Selection of the appropriate clause is dependent upon whether technology transfer is a mission of the management and operating contract pursuant to the National Competitiveness Technology Transfer Act of 1989 (Pub. L. 101–189, as amended). If technology transfer is not a mission of the management and operating contractor, the clause at 48 CFR 970.5204–82 will be used. In those instances in which technology transfer is a mission, the clause at 48 CFR 970.5204–83 will be used.

(b) Employees of the management and operating contractor may not be used to assist in the preparation of a proposal or bid for the performance of services, which are similar or related to those being performed under the contract, by the contractor or its parent or affiliate organization for commercial customers unless the employee has been separated from work under the DOE contract for such period as the Head of the Contracting Activity or designee shall have directed.

26. Revise Section 970.2706 as follows:

970.2706 Rights in technical data—procedures.

(a) The clauses at 48 CFR 970.5204–82 and 48 CFR 970.5204–83 both provide generally for Government ownership and for unlimited rights in the Government for all data first produced in the performance of the contract and unlimited rights in data specifically used in the performance of the contract. Both clauses provide that, subject to patent, security, and other provisions of the contract, the contractor may use contract data for its private purposes. The contractor, under either clause, must treat any data furnished by DOE or acquired from other Government agencies or private entities in the performance of their contracts in accordance with any restrictive legends contained therein.

(b) Since both clauses secure access to and, if requested, delivery of technical data used in the performance of the contract, there is generally no need to use the Additional Technical Data Requirements clause at FAR 52.227–16 in the management and operating contract.

(c)(1) Paragraph (d) of the clause at 48 CFR 970.5204–82 and paragraph (f) of the clause at 48 CFR 970.5204–83 provide for the inclusion in subcontracts of the Rights in Technical Data—General clause at FAR 52.227–14, with Alternate V, and modified in accordance with DEAR 927.409. Those clauses also provide for the inclusion in appropriate subcontracts Alternates II, III, and IV to the clause at FAR 52.227–14 with DOE's prior approval and the inclusion of the Additional Technical Data Requirements clause at FAR 52.227–16 in all subcontracts for research, development, or demonstration and all other subcontracts having special requirements for the production or delivery of data. In subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated by the contractor under its contract with DOE, the management and operating contractor shall use the Rights in Data—Facilities clause at 48 CFR 970.5204–82.

(2) Where, however, a subcontract is to be awarded by the management and operating contractor in connection with a program, as discussed at 927.404–70,

which provides statutory authority to protect from public disclosure, data first produced under contracts awarded pursuant to the program, contracting officers shall ensure that the M&O contractor includes in that subcontract the rights in data clause provided by DOE Patent Counsel, consistent with any accompanying guidance.

(3) Management and operating contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use, nor may they acquire rights in a subcontractor's limited rights data or restricted computer software except through the use of Alternate II or III to the clause at FAR 52.227–14, respectively, without the prior approval of DOE Patent Counsel.

(d)(1) Paragraphs (e) and (f) of the clause at 48 CFR 970.5204–82 and paragraphs (g) and (h) of the clause at 48 CFR 970.5204–83 provide for the contractor's granting a nonexclusive license in any limited rights data and restricted computer software specifically used in performance of the contract.

(2) In certain instances the objectives of DOE would be frustrated if the Government did not obtain, at the time of contracting, limited license rights on behalf of responsible third parties and the Government in and to limited rights data or restricted computer software or both necessary for the practice of subject inventions or data first produced or delivered in the performance of the contract. This situation may arise in the performance of management and operating contracts and contracts for the management or operation of a DOE facility or site. Contracting officers should consult with program officials and Patent Counsel. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of the small business or non-profit organization have been authorized in accordance with 35 U.S.C. 202(f). Where such a background license is in DOE's interest, a provision that provides substantially as Alternate VI at 48 CFR 952.227–14 should be added to the appropriate clause, 48 CFR 970.5204–82 or 48 CFR 970.5204–83.

(e) The Rights in Data-Technology Transfer clause at 48 CFR 970.5204–83 differs from the clause at 48 CFR 970.5204–82 in the context of its more detailed treatment of copyright. In management and operating contracts that have technology transfer as a mission, the right to assert copyright in data first produced under the contract will be a valuable right, and commercialization of such data, including computer software, will assist the M&O contractor in advancing the technology transfer mission of the contract. The clause at 48 CFR 970.5204–83 provides for DOE approval of DOE's taking a limited copyright license for a period of five years, and, in certain rare cases, specified longer periods in order to contribute to commercialization of the data.

(f) Contracting officers should consult with Patent Counsel to assure that requirements regarding royalties and conflicts of interest associated with asserting copyright in data first produced under the contract are appropriately addressed in the Technology Transfer Mission clause of the management and operating contract. Where it is not otherwise clear which DOE program funded the development of a computer software package, such as where the development was funded out of a contractor's overhead account, the DOE program which was the primary source of funding for the entire contract is deemed to have administrative responsibility. This issue may arise, among others, in the decision whether to grant the contractor permission to assert copyright. See paragraph (e) of the Rights in Data-Technology Transfer clause at 970.5204–83.

(g) In management and operating contracts involving access to DOE-owned Category C–24 restricted data, as set forth in 10 CFR part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related restricted data and technology. Alternate I to each clause shall be used where access to Category C–24 restricted data is contemplated in the performance of a contract.

27. Section 970.2707 is added to read as follows:

970.2707 Rights in data clauses.

(a) Contracting officers shall insert the clause at 48 CFR 970.5204–82, Rights in Data-Facilities, in management and operating contracts which do not contain the clause at 48 CFR 970.5204–40, Technology Transfer Mission.

(b) Contracting officers shall insert the clause at 970.5204–83, Rights in Data-Technology Transfer, in management and operating contracts which contain the clause at 970.5204–40, Technology Transfer Mission.

(c) In accordance with 48 CFR 970.2706(g), in contracts where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors, Contracting Officers shall incorporate Alternate I of the appropriate rights in data clause prescribed in paragraph (a) or (b) of this section.

28. Subsection 970.5204–82 is added to read as follows:

970.5204–82 Rights in data—facilities.

Insert the following clause in the management and operating contracts in accordance with 48 CFR 970.2707.

Rights in Data—Facilities (Feb 1998)

(a) *Definitions.*

(1) *Computer data bases,* as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software,* as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) *Data,* as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term ''data'' does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) *Limited rights data,* as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) *Restricted computer software,* as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) *Technical data,* as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) *Unlimited rights,* as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and

for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.*

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause (''Rights in Limited Rights Data'') or paragraph (f) of this clause (''Rights in Restricted Computer Software''); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) *Copyrighted Material.*

(1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the technical data or computer software prior to its delivery.

(d) *Subcontracting.*

(1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled ''Rights in Data-General'' at 48 CFR 52.227–14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at FAR 52.227–16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at DEAR 970.5204–82 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) *Rights in Limited Rights Data.*

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Limited Rights Notice'' set forth. All such limited rights data shall be marked with the following ''Limited Rights Notice'':

Limited Rights Notice

These data contain ''limited rights data,'' furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the ''limited rights data'' may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(c) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(d) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the

United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) *Rights in Restricted Computer Software.*

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Restricted Rights Notice'' set forth below. All such restricted computer software shall be marked with the following ''Restricted Rights Notice'':

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____ . It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. _____ with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice ''Unpublished-rights reserved under the Copyright Laws of the United States.''

(g) *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

Alternate I (Feb 1998): In accordance with 970.2706(g), insert the phrase ''and except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology'' after ''laser isotope separation'' and before the comma in paragraph (b)(2)(ii) of the clause at 970.5204–83, as appropriate.

(End of Alternate)

29. Subsection 970.5204–83 is added to read as follows:

970.5204–83 Rights in Data-Technology Transfer.

Insert the following clause in management and operating contracts in accordance with 48 CFR 970.2707.

Rights in Data-Technology Transfer (Feb 1998)

(a) Definitions.

(1) *Computer data bases,* as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) *Computer software,* as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) *Data,* as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term ''data'' does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) *Limited rights data,* as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

(5) *Restricted computer software,* as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.

(6) *Technical data,* as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) *Unlimited rights,* as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.*

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The

Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software. the rights of the Government in such data shall be governed solely by the provisions of paragraph (g) of this clause (''Rights in Limited Rights Data'') or paragraph (h) of this clause (''Rights in Restricted Computer Software''); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the data prior to its delivery.

(d) *Copyrighted works (scientific and technical articles*).

(1) The Contractor shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) *Copyrighted works (other than scientific and technical articles and data produced under a CRADA).* The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) *Contractor Request to Assert Copyright.*

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes,

(B) The program under which it was funded,

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement,

(D) Whether the data is subject to export control,

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled ''Technology Transfer Mission,'' within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, *i.e.*, involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial

competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the Contracting Officer.

(2) *DOE Review and Response to Contractor's Request.* The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond and the reasons therefor.

(3) *Permission for Contractor to Assert Copyright.*

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) an abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the Contracting Officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by (insert name of Contractor) under Contract No. _____ with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data , apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—''Appeals''.

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the Contracting Officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer

software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

(5) a similar notice can be used for data, other than computer software, upon approval of DOE Patent Counsel.

(f) *Subcontracting.*

(1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled ''Rights in Data-General'' at 48 CFR 52.227–14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at FAR 52.227–16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Contractor shall use instead the Rights in Data—Facilities clause at DEAR 970.5204–82 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(g) *Rights in Limited Rights Data.*

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Limited Rights Notice'' set forth below. All such limited rights data shall be marked with the following ''Limited Rights Notice:''

Limited Rights Notice

These data contain ''limited rights data,'' furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the ''limited rights data'' may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(c) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(d) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(h) *Rights in Restricted Computer Software.*

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Restricted Rights Notice'' set forth below. All such restricted computer software shall be marked with the following ''Restricted Rights Notice:''

Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____ . It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. _____ with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to

be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice ''Unpublished-rights reserved under the Copyright Laws of the United States.''

(i) *Relationship to patents.*

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

Alternate I (Feb. 1998): In accordance with 970.2706(g), insert the phrase ''and except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology'' after ''laser isotope separation'' and before the comma in paragraph (b)(2)(ii) of the clause at 970.5204–83, as appropriate.

(End of Alternate)

[FR Doc. 98–5079 Filed 3–4–98; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB78

Loan Policies and Operations; Loan Sales Relief; Effective

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a direct final rule, with opportunity for comment, amending part 614 on December 2, 1997 (62 FR 63644). The final rule conforms the regulations to recent statutory amendments to the Farm Credit Act of 1971, as amended, (Act) made by sections 206 and 208 of the Farm Credit System Reform Act of 1996 (1996 Act). These amendments provide that loans designated by Farm Credit System institutions for sale into a secondary market are not subject to minimum stock purchase or borrower rights requirements. The opportunity for comment expired on January 2, 1998. The FCA received no comments and therefore, the final rule becomes effective without change. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 4, 1998.

EFFECTIVE DATE: The regulation amending 12 CFR part 614 published on December 2, 1998 (62 FR 63644) is effective March 4, 1998.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883–4498;

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: February 27, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–5551 Filed 3–3–98; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB81

Loan Policies and Operations; Interest Rates and Charges; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a direct final rule, with opportunity for comment, amending part 614 on December 22, 1997 (62 FR 66816). These amendments eliminated the prior approval requirement for changes in interest rate policies at banks for cooperatives (BCs), eliminated unnecessary or duplicative regulatory requirements, and clarified existing requirements that are retained. The opportunity for comment expired on January 21, 1998. The FCA received no comments and therefore, the final rule becomes effective without change. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 4, 1998.

EFFECTIVE DATE: The regulation amending 12 CFR part 614 published on December 22, 1998 (62 FR 66816) is effective March 4, 1998.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703)883–4498;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: February 27, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–5552 Filed 3–3–98; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Mergers or Conversions of Federally-Insured Credit Unions to Non Credit Union Status: NCUA Approval

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The final rule adds a new provision to the disclosure statement in regulations relating to NCUA approval of mergers or conversions of federally-insured credit unions to non credit union status. Credit unions are required to disclose in plain English on the cover page of the disclosure statement specific facts relating to the proposed transaction's impact on the members.

DATES: This rule is effective April 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1997, the NCUA Board requested comments on proposed changes to part 708a of its regulations. 62 FR 64187 (December 4, 1987). Part 708a sets forth the procedures and requirements for credit unions proposing to convert to non credit union status. The current rule requires credit unions to provide a disclosure statement to the members prior to the membership vote. The rule lists the information that must be included in the disclosure. The Board has had the opportunity to review several disclosure statements filed under the current rule. The disclosures are often in excess of fifteen pages and contain technical information which may be difficult for the average member to understand. The Board believes it would be helpful to the members if certain key information could be provided to them in plain English on the cover page of the disclosure. The proposal set forth three key areas the

Board believed should be highlighted to the members. These were voting rights, potential future transactions, and director compensation. Based on the comments, the Board has modified the provisions relating to voting rights and director compensation and deleted the provision on potential future transactions and replaced it with a provision noting the costs of conversion.

Summary of Comments and Discussion of Issues

In the proposal, the NCUA Board requested comment on the proposed uniform disclosure requirements. The NCUA Board received 28 comments on the proposal: seven from credit unions; three identical letters from three members of the same credit union; two from bank leagues; four from bank trade groups; four from law firms; one from a credit union conversion consultant; three from credit union trade groups; three from credit union state leagues; and one from an individual. The following is a summary of the comments received on the proposed rule's uniform cover page to the Disclosure. Twenty of the 28 commenters opposed the proposed disclosure. One of the general negative comments was that it is unfair to require credit unions to highlight the negative aspects on the cover without giving them the opportunity to highlight the positive aspects there as well. The positive commenters noted that it is appropriate that certain information be highlighted to help assure that it receives careful consideration. Some of the positive commenters noted that the language appeared somewhat biased and should be more neutral. The NCUA Board agrees with these commenters that, as originally drafted, the proposal highlighted negative information. The final rule has been amended to address this concern. The final rule references three areas the Board believes are important to the members and then refers them to the disclosure for a complete discussion of the issues.

The proposal required disclosure of voting rights, the potential for a stock conversion, and the right of the directors to be compensated. All 11 of the commenters that commented on the voting rights provision objected to the way it was worded. One of the objections is that it is incorrect to say that the institution is no longer democratically controlled, just because it is no longer one member one vote. Further, in some cases the institution will continue with one member one vote. The Board agrees with these comments and has taken the language relating to ''democratic control'' out of the final rule. In the event a credit union retains one member one vote, the proposal allowed for the disclosure statement to be modified appropriately. The final rule does as well. Five commenters noted that the issue of voting is often not important for credit union members and therefore, should not be highlighted. Although the Board is aware that not all credit union members take the opportunity to vote in credit union elections, the Board believes it is important for members to be made aware of such a fundamental change in the structure of their financial institution.

Eighteen commenters specifically addressed and opposed the requirement that the credit union inform the members that the credit union could further change its organizational structure in the future. All of these commenters noted that a disclosure should not contain speculative information. Some noted that the proposal gives the false impression that all mutuals convert to stock. Some commenters found the statement that ''members will lose their equity ownership interest'' confusing and misleading. After reviewing the comments, the NCUA Board agrees that credit unions should not be required to include information that may not apply to their transaction. This provision has been deleted from the final rule.

Ten of the commenters objected to the disclosure that board members may receive compensation after waiting the two years required by NCUA's regulation. Some of the commenters thought that the way it was being disclosed carried the negative implication that the Board's decision was motivated by greed. They objected to this negative implication because directors' fees are nominal. Further, the commenters stated that directors act on the basis of their good faith assessments of their members' best interests. The NCUA Board has modified the statement to remove any negative or speculative overtones. It merely states that Directors may receive compensation after waiting two years and refers the member to the disclosure for further information. The Board does not intend to imply that the transaction is motivated by greed, but believes it is important for the members to know that the spirit of volunteerism that motivated credit union directors may not be present in the proposed new financial institution. A couple of the commenters suggested that credit union directors do not really serve as volunteers because they may receive health and accident insurance and are allowed reasonable reimbursement for themselves and their spouse when traveling on credit union business. To compare this minimal insurance and reimbursement to direct compensation is not an accurate or fair comparison. The insurance is limited by regulation and reimbursement is not compensation.

Two commenters suggested a format change for the disclosures so that boxes could be checked to indicate those provisions that apply. The NCUA Board believes that this format is not necessary because the language the rule requires will generally apply. It is sufficient that the rule provides for modifications as necessary to ensure accuracy.

One of the commenters objected to using the term ''savings bank'' in the disclosure. This term has been eliminated from the final rule.

Although not part of the proposal, several of the commenters raised three other issues which the Board will briefly address. First, a number of the commenters object to the voting requirement in part 708a. The rule requires a majority of the members to vote in favor of the transaction for it to be approved. The negative commenters believe this is excessive since conversion from a federal to state charter only requires approval by a majority of the members who vote and conversion from federal to private insurance only requires approval by a majority of the members who vote, providing at least 20% vote. The commenters have failed to mention that termination of insurance like termination of a credit union charter requires approval by a majority of the credit union's members. 12 U.S.C. 1786(a)(1). Prior to issuing its final rule on credit union conversions to non credit union status, the Board requested and received comment on the issue of majority approval. The Board considered those comments when it issued the final rule. 60 FR 12659, 12660 (March 8, 1995). The six commenters that addressed the issue all supported approval by a majority of the members. Two defined majority as over 50%, two defined it as 60% to 66 2/3%, one defined it as 70% to 80% and one commenter did not define it. The Board continues to believe in ''the importance of a clear mandate on an issue of such significance to the members.'' 60 FR at 12660. It should be noted that in 1995 the Board chose the least burdensome voting requirement recommended by the commenters.

Second, several of the commenters object to § 708a.5(a)(2) of the rule. This provision requires the ballot to be mailed to the members not more than 30 days prior to the vote. The commenters contend that NCUA is more liberal with other forms of transactions and has

placed the 30-day limitation in an attempt to block the transaction. The 30-day time frame is the statutorily-required time frame for insurance conversions and for federal charter to state charter conversions. 12 U.S.C. 1771(a)(1) and 1786(d)(2). In 1995, the Board selected this time frame to be consistent with Congress' time frame for other types of transactions of comparable significance that require a membership vote.

Finally, a few of the commenters state that NCUA has overreached its regulatory authority over state chartered credit unions. They contend that state chartered conversions should be governed by state law. This issue was discussed in detail in the final rule. 60 FR at 12660. The Board explained how very few states have statutes or regulations that address the issue of conversions. However, in deference to the states that have regulations, the Board in 1995 incorporated into the final rule a provision that allows a federally insured state chartered credit union to file a request for a waiver of compliance with the procedural portions of part 708a and instead follow the applicable state regulation.

Final Rule

The final rule requires credit unions to provide in plain English on the cover page of the Disclosure the following information: (1) The control of the institution will no longer be based on each member having one equal vote; this could change a member's influence in any future decisions affecting the institution. Votes will be based on the amount of an individual's deposits. For further information, see page(s) _____ of the Disclosure Statement. (2) The institution will lose its tax-exempt status and there may be increased costs associated with the conversion. For further information, see page(s) _____ of the Disclosure Statement. (3) After waiting the two years required by NCUA's regulation, Board members may be compensated. For further information, see page(s) _____ of the Disclosure Statement.

In the event these statements do not apply to a particular transaction, they may be modified as necessary.

The NCUA Board has modified the proposal to remove any prejudicial inference. The Board believes that these three areas are important to the members. If the members are interested in learning more about the issue, they are referred to the appropriate place in the Disclosure Statement, so that the credit union can describe in its own words, the impact the issue will have on the members.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that it is highly unlikely that small credit unions would be engaged in a merger or conversion to a non credit union institution. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final amendments will apply to all federally insured credit unions. The final amendments are not designed or intended to interfere with the state regulation of state chartered institutions. However, existing statutory requirements mandate the Board approve transactions of this nature for all federally insured credit unions. The rule recognizes the interests of states and state regulators in supervising state chartered credit unions by including a provision that allows federally insured state chartered credit unions, on a case-by-case-basis, to obtain a waiver from NCUA's rule and follow state procedures if those procedures adequately address the concerns of NCUA's rule. With this provision in the rule, the NCUA Board has determined that the final amendments are not likely to have any direct effect on states, the relationship between the states, or the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The final amendment requires a credit union to provide its members information provided by NCUA. The Paperwork Reduction Act does not apply to disclosures that are directives for a person to disclose information completely supplied by the agency. 5 CFR 1320.3(c)(2).

Congressional Review

Awaiting OMB determination.

List of Subjects in 12 CFR Part 708a

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 25, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 708a as follows:

PART 708a—MERGERS OR CONVERSIONS OF FEDERALLY-INSURED CREDIT UNIONS TO NON CREDIT UNION STATUS: NCUA APPROVAL

1. Revise the heading of part 708a to read as set forth above.

1a. The authority citation for part 708a is revised to read as follows:

Authority: 12 U.S.C. 1766, 1785.

2. Amend Appendix A to part 708a by revising paragraph (2)(m) to read as follows:

Appendix A to Part 708a—Notice to Members of Special Meeting, Disclosure and Ballot

* * * * *

(2) * * *

(m) The cover of the Disclosure Statement must contain the following statement in bold, appropriately modified to the extent that this statement does not accurately describe the transaction:

PLEASE READ THIS DISCLOSURE DOCUMENT. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR CREDIT UNION.

The control of the institution will no longer be based on each member having one equal vote; this could change a member's influence in any future decisions affecting the institution. Votes will be based on the amount of an individual's deposits. For further information, see page(s) _____ of the Disclosure.

The institution will lose its tax-exempt status and there may be increased costs associated with the conversion. For further information, see page(s) _____ of the Disclosure.

After waiting the two years required by NCUA's regulation, Board members may be compensated. For further information, see page(s) _____ of the Disclosure.

* * * * *

[FR Doc. 98–5451 Filed 3–3–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708b

Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration (''NCUA'').

ACTION: Final rule.

SUMMARY: The final rule amends the disclosure forms in NCUA's regulations relating to mergers and voluntary termination or conversion of insured status. The amendments inform the members that, if their credit union converts to nonfederal insurance, the private insurance fund insuring their accounts is not backed by the full faith and credit of the United States government. It also informs the members that, if their credit union terminates insurance, their shares, excluding those covered for one year, are no longer insured by the federal government or any other entity.

DATES: The rule is effective April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1997, the NCUA Board requested comments on proposed changes to part 708b of its regulations. 62 FR 64187 (December 4, 1997). Part 708b sets forth the procedures and disclosure requirements for credit unions proposing to terminate insurance or convert to private insurance.

Sections 708b.301(a)(1) and (b)(1) contain the form notices that are sent to the members if a credit union is seeking to terminate federal insurance. The proposal amended the notices by clarifying that, if the credit union fails, the members' shares are no longer insured by the federal government or any other entity.

Sections 708b.302(a)(1), (a)(2), (b)(1) and (b)(2) contain the form notices and ballots that are sent to the members if a credit union is seeking to convert from federal to nonfederal insurance. The proposal added a sentence to the notice and ballot explaining that NCUA insurance is backed by the full faith and credit of the United States government and that the private insurance the member will receive if the credit union converts is not backed by the United States government.

Summary of Comments

The NCUA Board received 11 comments on the proposal: two from private insurers; three from credit union trade groups; three from state leagues; and three from credit unions. Ten of the 11 commenters generally supported the disclosure requirements. Six fully supported them and four had some suggested changes to the disclosure language. Two of the six that fully supported the proposal were the private insurers. Both private insurers stated that the proposed disclosures are fair, consistent with existing law, and in the best interest of the members.

Two of the commenters suggested that the rule allow credit unions to describe in the disclosure some of the positive aspects of the private insurer. The NCUA Board does not object to the credit union disclosing in another document positive aspects of the private insurer but believes that the disclosure and ballot should be limited to the key facts that distinguish private insurance from federal insurance.

Two of the commenters believe that proposed §§ 708b.302(a)(2) and (b)(2) give the impression that federal insurance is better than private insurance. One commenter suggests deleting the language at the end of each of those sections that states, unlike private insurance, federal insurance is backed by the full faith and credit of the United States government. The NCUA Board believes it is important that the members are aware of this fundamental difference between the two types of insurance.

Two of the commenters take exception to the implication that NCUA's federal insurance is backed by the full faith and credit of the United States government. One commenter acknowledges that ultimately it is backed by the United States government, but believes that the steps leading to that backing should be disclosed. The NCUA Board stands by the statement that the National Credit Union Share Insurance Fund is backed by the United States government and believes that the focus of the disclosure should be on this point. Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, section 901 (1987).

The negative commenter objects to the disclosures as they apply to the insurance provided by PROSAD–COOP which insures the shares of credit unions chartered under local law in Puerto Rico. The commenter states that PROSAD–COOP is guaranteed by the government of Puerto Rico. That statement is incorrect. Puerto Rican law provides only for the Secretary of the Treasury to lend funds to PROSAD in a limited amount. Contrary to the contention of the commenter that raised this issue, PROSAD's position with respect to the Puerto Rican government is quite different than the National Credit Union Share Insurance Fund's position with respect to the United States government. There is specific statutory authority in the Competitive Equality Banking Act of 1987 providing that the National Credit Union Share Insurance Fund is backed by the full faith and credit of the United States government.

Final Rule

Based on the comments and the Board's continued belief that the information as stated in the proposed rule must be disclosed in order for a member to make an informed vote on the proposed transaction, the Board has adopted the proposed rule as its final rule. Disclosure of this information is consistent with the disclosure requirements Congress imposes on credit unions lacking federal insurance.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. The reasons for this determination are that the proposed rule requires the addition of two sentences to the disclosure form used by credit unions converting to nonfederal insurance. The addition of these two sentences will not increase the costs of the conversion and therefore will not create a financial burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final amendments will apply to all federally insured credit unions. The final amendments are not designed or intended to interfere with the state regulation of state chartered institutions. However, the Board is modeling this rule on federal legislation that specifically applies to state chartered credit unions. The NCUA Board has determined that the final amendments

are not likely to have any direct effect on states, the relationship between the states, or the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The final rule requires the credit union to provide to its members information provided by NCUA. The Paperwork Reduction Act does not apply to disclosures that are directives for a person to disclose information completely supplied by the agency. 5 CFR 1320.3(c)(2).

Congressional Review

Awaiting OMB determination.

List of Subjects in 12 CFR Part 708b

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 25, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 708b as follows:

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

1. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1766, 1785, 1786, 1789.

2. In section 708b.301, paragraph (a)(1) is amended by revising the second paragraph of the *Notice of Proposal to Terminate Federal Insurance* and paragraph (b)(1) is amended by revising the third paragraph of the *Notice of Proposal to Merge and Terminate Federal Insurance* to read as follows:

§ 708b.301 Termination of insurance.

(a) * * *

(1) *Notice of Proposal to Terminate Federal Insurance.*

* * * * *

If approved, any deposits made by you after the date of termination, either new deposits or additions to existing accounts, will not be insured by the NCUA or any other entity. In the event the credit union fails, these deposits are not insured by the federal government. No provision has been made for alternative insurance, therefore, these deposits will be uninsured.

* * * * *

(b) * * *

(1) *Notice of Proposal to Merge and Terminate Federal Insurance.*

* * * * *

Any deposits made by you after the effective date of the merger, either new deposits or additions to existing accounts, will not be insured by the NCUA or any other entity. In the event the credit union fails, these deposits are not insured by the federal government. No provision has been made for alternative insurance, therefore, these deposits will be uninsured. Accounts in the *merging* Credit Union on the date of the merger, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the date of the merger, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

* * * * *

3. In Section 708b.302, paragraph (a)(1) is amended by adding two sentences at the end of the second paragraph of the *Notice of Proposal to Convert to Nonfederally-Insured Status*, paragraph (a)(2) is amended by adding a sentence at the end of the second paragraph of the ballot, paragraph (b)(1) is amended by adding two sentences at the end of the second paragraph of the *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status* and paragraph (b)(2) is amended by adding a sentence at the end of the second paragraph of the ballot to read as follows:

§ 708b.302 Conversion of insurance.

(a) * * *

(1) *Notice of Proposal to Convert to Nonfederally-Insured Status*

* * * * *

* * * The insurance provided by the National Credit Union Administration, an independent agency of the United States, is backed by the full faith and credit of the United States government. The private insurance you will receive from _____ is not guaranteed by the federal or any state government.

(2) * * *

* * * The private insurance provided by _____ is not backed by the full faith and credit of the United States government as is the federal insurance provided by the National Credit Union Administration.

* * * * *

(b) * * *

(1) *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status*

* * * * *

* * * The insurance provided by the National Credit Union Administration, n independent agency of the United States, is backed by the full faith and credit of the United States government. The private insurance you will receive from _____ is not guaranteed by the federal or any state government.

(2) * * *

* * * The private insurance provided by _____ is not backed by the full faith and credit of the United States government as is the federal insurance provided by the National Credit Union Administration.

* * * * *

[FR Doc. 98–5452 Filed 3–3–98; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–62–AD; Amendment 39–10375; AD 98–05–14]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models T210N, P210N, and P210R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna Aircraft Company Models T210N, P210N, and P210R airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective April 30, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Cessna Aircraft Company Models T210N, P210N, and P210R airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48535). The proposed action had inadvertently included the Cessna 337 series airplanes in the applicability section. Since the proposed action has been out for comment, the FAA has removed the Cessna 337 series airplanes from the applicability as these airplanes are not certificated for flight in icing conditions.

The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520.
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513.
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524.
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502.
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499.
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538.
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506.
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481.
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549.
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517.
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531.
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542.
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 48546.
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535.
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528.
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510.
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560.
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556.
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563.
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553.
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567.
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577.
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570.
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574.

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time

an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final

rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. One correction the FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 1,208 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

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

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–05–14 Cessna Aircraft Company: Amendment 39–10375; Docket No. 97–CE–62–AD.

Applicability: Models T210N (serial number (S/N) 21063641 through 21064897), P210N (S/N P21000386 through P21000834), and P210R (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN–FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10375) becomes effective on April 30, 1998.

Issued in Kansas City, Missouri, on February 24, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5474 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–64–AD; Amendment 39–10376; AD 98–05–15]

RIN 2120–AA64

Airworthiness Directives; SIAI Marchetti, S.r.1 Models SF600 and SF600A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to SIAI Marchetti, S.r.1 Models SF600 and SF600A airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective April 30, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–64–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to SIAI Marchetti, S.r.1 Models SF600 and SF600A airplanes was

published in the **Federal Register** on September 16, 1997 (62 FR 48510). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit flight in severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520.
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513.
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600.	62 FR 48524.
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502.
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499.
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538.
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506.
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P.	62 FR 48481.
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549.
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517.
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531.
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542.
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 48546.
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535.
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528.
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510.
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560.
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556.
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563.
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553.
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567.
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577.
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570.
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574.

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions

expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule.

However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request

for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flight crew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA has determined that there are no SIAI Marchetti, S.r.l. Models SF600 and SF600A airplanes currently in the U.S. registry that will be affected by this AD. If any of these airplanes were registered in the U.S., it would take approximately 1 workhour per airplane to accomplish this action, and the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

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

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–05–15 SIAI Marchetti, S.r.1: Amendment 39–10376; Docket No. 97–CE–64–AD.

Applicability: Models SF600 and SF600A airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing

conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing wing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as –18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10376) becomes effective on April 30, 1998.

Issued in Kansas City, Missouri, on February 25, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5475 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–191–AD; Amendment 39–10373; AD 98–05–12]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: April 8, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model ATP airplanes was published in the **Federal Register** on December 31, 1997 (62 FR 68236). That action proposed to require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences

of positioning the power levers below the flight idle stop during flight.

Comments

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

The commenter supports the proposed rule.

Conclusion

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

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 10 British Aerospace Model ATP airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–05–12 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10373. Docket 97–NM–191–AD.

Applicability: All Model ATP airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Roll-over Lever

Use is restricted to ground operation only. In-flight operations at power settings below flight idle are prohibited. Power settings below flight idle may lead to a loss of aircraft control, or may result in an engine overspeed condition and consequent loss of engine power.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) This amendment becomes effective on April 8, 1998.

Issued in Renton, Washington, on February 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5478 Filed 3–3–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

[Docket OST–96–1880]

RIN 2105–AC28

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending its rules implementing the Air Carrier Access Act of 1986. The amendments establish procedures for providing seating accommodations for individuals with disabilities, clarify the general nondiscrimination obligations of carriers, and provide for the in-cabin stowage of collapsible electric wheelchairs that can be stowed consistent with carry-on baggage requirements.

EFFECTIVE DATE: This rule is effective April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1996, the Department published a notice of proposed rulemaking (NPRM) asking for comment on a number of issues. The NPRM proposed to require seating accommodations for certain individuals with disabilities, to clarify the general nondiscrimination obligations of carriers, and to provide for the in-cabin carriage of electric wheelchairs that could be accommodated consistent with carry-on baggage rules. The Department is today issuing final rules based on these proposals, with modifications responsive to comments we received.

The preamble to the November 1, 1996, NPRM also asked for public comment on two matters concerning which we had received suggestions or petitions from members of the public. These were additional accommodations for persons with hearing impairments (e.g., captioning of in-flight movies, on-board TDDs where air phones are made available to other passengers, better message service in gate areas) and the provision of a smoke-free accessible path through airports for persons with respiratory disabilities.

The Department received a number of comments on the issue of accommodations for hearing impairments. We are continuing to consider whether to propose requirements for accommodations of this type, but we are deferring decision on this matter until a later time.

The Department received a large number of comments concerning the petitions for accessible paths through airports for persons with respiratory disabilities, many of which went beyond the issues directly raised by the petitions, reflecting the ongoing public debate about smoking by taking broad anti-smoking or ''smokers' rights'' positions. (Some of the comments from anti-smoking groups opposed regulation in this area, on the view that existing law already requires action by airports to ban or limit smoking.) While continuing to consider the issue the petitions raised, the Department is deferring a decision on whether to propose rules on this subject until a later time. In this connection, we note that a number of airports are taking action on the local level to limit the passengers' exposure to ambient smoke.

General Nondiscrimination Obligation

NPRM Proposal

The NPRM proposed to add language making explicit the existing obligation of carriers to provide accommodations to passengers with disabilities and remove barriers, applying the standards of section 504 of the Rehabilitation Act and Title III of the Americans with Disabilities Act (ADA). The purpose of this addition was to clarify that carriers must modify policies, practices, and facilities where needed to provide service to passengers with disabilities, even if a particular accommodation was not specifically mandated elsewhere in part 382.

Comments and DOT Response

Carriers and disability groups found themselves in somewhat ironic agreement that the reference in the proposal to ADA standards should be removed and that the provision should refer only to the standards of section 504. Disability groups took this position on the basis of their view that section 504 imposes a more stringent standard on carriers than Title III of the ADA. Carriers took this position on the basis of their view that section 504 imposes a less stringent standard on carriers than Title III of the ADA. Both found the dual reference to ADA and 504 standards to be vague and confusing.

As the Department noted in the preamble to the NPRM, the history of the ACAA clearly shows that Congress enacted the statute to fill a gap in nondiscrimination coverage left by a Supreme Court decision that said that section 504 of the Rehabilitation Act did not apply to air carriers, since they do not (with the exception of participants in the Essential Air Service program) receive Federal financial assistance. The intent of the statute was to achieve the same protection from discrimination for airline passengers that section 504 provides persons affected by Federally-assisted programs. For a summary of the history of the Act, see the preamble to the Department's 1990 final ACAA rule (55 FR 8009; March 6, 1990).

Given this history, and the common concerns of disability groups and carriers that the ADA reference in the NPRM was inappropriate and confusing, the Department is changing the text of the section in the final rule. The final rule version tells carriers, in addition to following the other specific provisions of Part 382, that they must modify policies, practices, or facilities as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended.

One carrier comment proposed an original list interpretation of the ACAA, under which only those accommodations that would have been required under section 504 in 1986 could ever be required under the ACAA. The Department is not persuaded that this interpretation is sound. It would, among other things, contravene the intent of Congress that airline passengers have the same protections that people with disabilities have in other situations under section 504. In interpreting what rights airline passengers have today, it is far more reasonable to look at what rights persons with disabilities have under section 504 today, rather than attempting a historical speculation about what rights they might have had in previous decades.

In any case, the nondiscrimination provisions of the DOT and Department of Justice section 504 regulations, as they read in 1986 and as they read today, clearly support the Department's amendment to § 382.7. They impose an obligation on covered entities to modify policies, practices, and facilities to ensure that persons with disabilities receive services on a nondiscriminatory basis. A carrier's argument that a requirement to modify polices, practices and facilities to ensure nondiscrimination is impermissibly vague is without merit. Like section 504 itself, the statutory language of the ACAA prohibits discrimination in general terms. There is no basis for asserting that the only modifications a carrier could ever be required to make are those specifically enumerated in the existing sections of the rule. From the beginning of section 504 rules in the 1970s, these rules have always imposed general, as well as specific, nondiscrimination obligations on covered entities.

We agree with the comments of both carriers and disability groups that, under section 504, carriers are not required to make modifications that would constitute an undue burden or fundamentally alter the nature of the carriers' service. As in section 504 and ADA practice generally, what constitutes an undue burden or a fundamental alteration is a judgment decision that must be made on the facts of a specific situation. The ACAA clearly provides that carriers not make modifications that would violate FAA safety rules.

This approach does not represent a departure from existing ACAA interpretation or practice. Indeed, the Department has consistently operated on the basis of this understanding of the law. For example, the issue of food allergies is not specifically mentioned in the text of Part 382. On several occasions, however, the Department has learned of situations in which passengers with severe allergies to peanuts have requested

accommodations from airlines. The Department has worked informally with airlines and passengers to arrange appropriate modifications to the airlines' normal food service practices on specific flights. For example, in some cases, airlines have agreed to serve an alternate snack (e.g., pretzels rather than peanuts) to passengers seated near the allergic passenger. This is an example of a modification to normal practices that is not unduly burdensome. On the other hand, some allergic passengers have requested much more sweeping actions by carriers (e.g., special cleaning of an aircraft to ensure that peanut residue does not remain on board; screening other passengers to ensure that they do not bring their own peanut products on board). We have regarded these requested accommodations as creating undue burdens, and we have consequently not requested carriers to undertake such steps. In assessing any requested accommodation, passengers, airlines, and the Department must exercise judgment on a case-by-case basis concerning what it is reasonable to expect and what constitutes an undue burden.

Comments from disability group commenters mentioned a number of examples of types of modification they thought would be appropriate under this provision. These included chest straps for some mobility-impaired passengers to provide greater lateral stability in aircraft seats, allowing a passenger to board last to reduce pain from sitting for long periods, allowing wheelchair users to check in at the gate rather than at the airport entrance or ticket counter, and allowing people who cannot carry luggage to have luggage carts in airport concourses. These requests—whatever their merits in a particular fact situation—illustrate the point that a regulation can never possibly enumerate all possible specific situations potentially calling for accommodations to achieve nondiscrimination.

This provision is not intended to replace the rulemaking process with respect to across-the-board changes in carrier policies and practices. For example, the Department does not intend, in implementing and enforcing this provision, to address industry-wide issues like on-board oxygen use by passengers, additional accommodations for passengers with hearing impairments, or smoking in airports. The provision is intended to deal with accommodations that take the form of case-by-case exceptions to otherwise reasonable general policies or practices of carriers.

The Department wants to take this opportunity to clarify an apparent misunderstanding that a disability organization had concerning the effect of the November 1, 1996, amendment the Department made to the airport facility standards in 14 CFR Part 382 and 49 CFR Part 27 (61 FR 56420, 56422). The group's concern was that the amendments substantively weakened the requirements for airlines and airports to meet accessibility standards. The amendments were not intended to do so, and they in fact did not do so.

As noted in the preamble to the November 1, 1996, final rule (61 FR 56416–18), the coverage of the ADA, section 504, and the ACAA at airports had been overlapping and confusing. The purpose of the amendments was to harmonize these authorities, simplifying issues of statutory and regulatory coverage without affecting substantive requirements. The amendments did this by saying that airlines and airports meet their ACAA and section 504 requirements if they meet, respectively, the standards of Title III and Title II of the ADA.

In doing so, the Department knew that section 10.4 of the Americans with Disabilities Accessibility Guidelines (ADAAG) incorporated many of the specific accessibility requirements of the pre-1996 ACAA and section 504 requirements for airport facilities (56 FR 45714; September 6, 1991). The amendments refer specifically to these provisions (see 49 CFR 27.71(e); 14 CFR 382.23(e)). Requirements not specifically referenced in the ADAAG provision are retained in the amended ACAA and section 504 provisions (14 CFR 382.23 (c) and (d) and 49 CFR 27.71 (c) and (d), which concern accessible paths of travel through airports and inter-terminal transportation systems, respectively). These provisions ensure that nothing is lost between the pre-amended and amended ACAA and 504 sections.

With respect to the issue of modifications for existing facilities, section 504 has always required recipients to modify policies, practices, and facilities to ensure nondiscrimination. Section 504 has never required recipients to incur undue burdens to make these modifications. The ''program accessibility'' requirements of the Department of Justice ADA Title II regulation (28 CFR 35.150) require no less than section 504 with respect to facility accessibility. Using the program accessibility standard does not in any way relieve recipients of the obligations they had under section 504 and the pre-amended 49 CFR part 27 to modify facilities for accessibility. Indeed, it is difficult to imagine circumstances, in the context of airport facilities, in which program accessibility could be fully achieved without facilities being made accessible.

The pre-amended version of the ACAA airport facilities provision required facility modifications to be made by carriers as of April 5, 1993 (former 14 CFR 382.23(d)). By the time of the amendment, any existing facility that had not been modified for accessibility had been out of compliance for approximately 3½ years. Nothing in the amendment to § 382.83 is intended to relieve carriers of that pre-existing compliance obligation. Obviously, any new facility construction or alterations have had to be accessible since the ACAA rules first went into effect, which the amendment does not change.

Seating Accommodations

NPRM Proposal

The NPRM proposed that carriers make available to passengers with disabilities four types of seating accommodations. These included seats in rows with movable aisle armrests for wheelchair users, seats for a personal care attendant (PCA) next to a disabled passenger needing the PCA's services during the flight, seats in either bulkhead or non-bulkhead rows for persons traveling with service animals, and seats providing additional legroom for persons with fused or immobilized legs. While a carrier might have to reassign other passengers to make these accommodations, no one would be ''bumped'' from a flight and the carrier would continue to follow all FAA safety rules, including the exit row seating rule. The carrier could establish up to a 48-hour advance notice requirement for someone requesting a seating accommodation.

Comments

Disability community commenters unanimously supported the proposal. Many of these comments said that even if some other passengers had their seats changed as a result, their inconvenience did not outweigh the need of passengers with disabilities for seats that they could readily access and use. These commenters argued that making seating accommodations was a reasonable modification of policies and practices that did not impose an undue burden on carriers or fundamentally alter the nature of the airlines' services.

There were some modifications that disability community commenters requested, however. Generally, they opposed the advance notice provision,

saying it was discriminatory and worked a hardship of passengers who had to make short-notice travel plans. They also objected to any requirement for documenting a disability, saying that this was burdensome for passengers. Some of these comments also suggested that, on airlines that do not assign seats in advance, carriers should be required to let people needing seating accommodations preboard before other passengers (e.g., families with small children) who also can preboard. In all preboardings, commenters said, carriers should give people with disabilities enough time to get settled in their seats before other passengers board. (It should be noted that some carriers are reported to be cutting back or eliminating traditional preboarding procedures. Since some provisions of the ACAA rule, such as the requirement for on-board stowage of wheelchairs, are premised on the availability of preboarding to passengers with disabilities, this change in industry practice may have implications for the accessibility of air travel to disabled passengers. The Department intends to watch developments in the preboarding policy area to determine if future rulemaking may be needed.)

Disability community commenters said that the four categories of people who the NPRM proposed as eligible for seating accommodations were too narrow. There would always be individual cases that did not fit into these or any set of categories, they said, so the rule should be structured in an ''including but not limited to * * *'' fashion. Examples of other disabilities cited as requiring accommodations included a person with a painful disability that made it necessary for her to minimize being jostled by other people (who thereby needed a window seat), someone with multiple sclerosis who could walk a few steps but needed a seat near the entrance to the aircraft, and someone with bladder or bowel control problems who needed an aisle seat near a lavatory.

Two commenters suggested that the movable aisle armrest row accommodation be limited to persons who need an aisle chair to board or who cannot transfer over a fixed armrest (as distinct from persons who could walk a few steps to a seat). Other commenters suggested that reservation systems ''block'' seats needed for accommodations so that disabled passengers needs could be met without having to displace other passengers. Alternatively, there could be designated ''priority'' seats for persons with disabilities, from which other passengers would move if a seating accommodation became necessary.

Carriers objected to the proposal on a number of grounds. The one they identified as the most significant had to do with the limitations of their computer reservation systems. These systems, the carriers said, could not retrieve the names of passengers by reference to seat assignments. That is, if a disabled passenger were assigned seat 6C as an accommodation, the carrier would not be able to determine who had previously been assigned the seat so as to be able to notify that passenger of a changed assignment. To provide this notice and avoid an unpleasant surprise, the carrier would either have to modify its computer system or comb through individual passenger records, both of which would be very expensive and unduly burdensome.

In any case, carriers said, it was unfair to impose inconvenience on other passengers who had expectations of sitting in their original seat assignment, especially since some of those had good reasons (e.g., they were tall, traveling with infants) for wanting a particular seat. This would create confusion, make the other passengers unhappy, increase denied boarding compensation claims and flight delays, and distract flight attendants from safety duties. If passengers requesting accommodations were not really disabled, it would add to this discontent. One carrier noted that its policy was to ask other passengers to move in situations where an expected accommodation for a disabled passenger did not materialize (e.g., because the equipment for a flight changed).

The proposal would make carriers discriminate against those disabled passengers who were not in one of the four categories and force carriers to ask inappropriate questions of disabled passengers, carrier comments added. Carriers who do not assign seats in advance requested that the NPRM preamble statement that their obligations could be met by their preboarding process be included in the final regulatory text (a comment seconded by a disability group).

Finally, carriers made a legal argument against the proposal, saying that it required ''preferential'' treatment and ''affirmative accommodation'' for disabled passengers, while the Department's authority was limited to ensuring nondiscrimination. The carriers already practiced nondiscrimination, they said, by treating all passengers the same through their ''first-come/first-served'' seat assignment policy. Requiring a change in this policy, especially as applied to seats withheld from the general passenger population for frequent fliers' benefit, would be a fundamental alteration of the carrier's services, the comments said.

Carriers noted that they already block seats in the reservation process, including some bulkhead and movable aisle armrest rows, for people with disabilities. One carrier said that it holds some of the seats for passengers with disabilities who may not have made their needs known until check-in.

DOT Response

With some substantive modifications in response to comments, the Department is adopting the NPRM proposal. Requiring seating accommodations is necessary to ensure nondiscrimination, is consistent with the language and intent of the ACAA, and does not create an undue burden or fundamentally alter the nature of airline services.

The Department strongly disagrees with carrier comments' characterization of a seating accommodations requirement as preferential treatment that exceeds the Department's authority under the ACAA. This requirement simply compels nondiscriminatory seating policies. It tells airlines they must provide to passengers with disabilities exactly what they provide to other passengers—a seat the passenger can readily access and use. A facially neutral policy that assigns seats to non-disabled passengers that they can readily access and use but fails to ensure that disabled passengers are assigned seats they can readily access and use is discriminatory. Comments to the NPRM, as well as the Department's experience in listening to consumer concerns about inability or unwillingness of airlines to provide seats that individuals can readily access and use, persuade us that this accommodation must be required if the intent of Congress in mandating nondiscrimination in air travel is to be properly carried out.

Under the ACAA, as with section 504, the Department has authority to require regulated parties to take steps to ensure nondiscrimination, as long as these steps do not create an undue burden or fundamentally alter the nature of an entity's program. This requirement is consistent with these provisions of disability law.

Airlines regularly provide their customers seats they can access and use. The seating accommodation requirement does not fundamentally alter the nature of this service. The rule explicitly provides that no one will be bumped from a flight to make a seating accommodation and that the airline will

continue to follow all applicable FAA safety rules. Contrary to carrier comments, it is hard to imagine denied boarding compensation claims increasing under a rule which explicitly provides that no one will be denied boarding on a flight to accommodate a disabled passenger. Carriers who assign seats in advance may continue to do so. Carriers who do not assign seats in advance may continue their practice. The provision does not require carriers to provide service to classes of passengers they do not now serve (e.g., passengers who have to travel on stretchers). Even carriers who hold back some seats for the benefit of frequent fliers (something that it is difficult to construe reasonably as fundamental to the nature of air transportation) can continue to do so, as long as they make exceptions when necessary to accommodate a passenger with a disability.

Particularly given the modifications the Department is making from the NPRM (see discussion below), the final rule does not impose undue burdens. In this connection, the Department observes that the ACAA permits the Department to impose some burdens on carriers. What the Department cannot do is impose ''undue'' burdens. The use of this term in disability law necessarily implies that some burdens are ''due,'' as a consequence of the obligation of regulated parties to ensure nondiscrimination. The Department can legally impose these ''due burdens.'' The primary ''undue burden'' alleged in carrier comments is the difficulty carriers cite with their computer systems. The Department accepts the carriers' representations about the limitations of their computer systems. However, these problems do not result in an undue burden in the context of the final rule.

This is true because the airlines do not have to do what they say their computer systems will not allow them to do. The NPRM did not propose, and the final rule does not require, that airlines retrieve the names of passengers previously assigned a seat and individually inform those passengers that their seat assignment has been changed. The structure of the final rule makes such a mechanism unnecessary, from a customer relations as well as a legal standpoint.

The first method carriers can use, suggested by both carrier and disability community comments, is for carriers to ''block'' an adequate number of seats usable for seating accommodations (e.g., seats in bulkhead rows, seats in rows with movable aisle armrests, some pairs of seats) from advance assignment until 24 hours before scheduled departure time. By an ''adequate'' number of seats, we mean enough seats to handle a reasonably expectable demand for seating accommodations of various kinds. It might not be necessary, for example, to block all aisles with movable armrests or, in an aircraft with multiple bulkhead areas, all bulkhead rows. Nor would it necessarily be essential to block all the seats in such rows. Carriers who use this approach should be aware, however, that they will need to block some pairs of seats, since someone who is eligible to receive an accommodation (e.g., a wheelchair user with respect to a row with a movable aisle armrest) may also be traveling with a personal care attendant. We anticipate that the burden of implementing this approach would be light, given that carriers already block seats for disability and other purposes.

If a disabled passenger specified in the rule calls the carrier prior to 24 hours before the scheduled departure time, the carrier will assign the person one of these seats. This would be done even if the seat is also one that is otherwise held for use of frequent fliers. Because these seats would never have been assigned to another passenger, reassignment of the seat will not be an issue, and no other passenger will ever have to be displaced from a previously assigned seat. If the disabled passenger makes his or her request later than 24 hours before scheduled departure, the carrier would still try to meet the passenger's seating accommodation need, but would not have to change another passenger's seat assignment to do so.

There could be rare situations in which all the seats blocked for a particular sort of accommodation are filled with individuals with disabilities and, subsequently but prior to 24 hours before departure, an additional passenger with a disability requests the same kind of accommodation. In this case, the carrier would not be required to change a seat assignment that had already been given to another disabled passenger. However, the carrier would have meet the disabled passenger's request by assigning him or her to a seat that provided the needed accommodation, was not a seat blocked for passengers listed in paragraph (a), and was still unassigned, even if that seat was otherwise blocked for frequent fliers or another category of passenger.

Under the second approach available to carriers, suggested by disability community comments and somewhat analogous practices in other modes of transportation, carriers would designate an adequate number of seats as ''priority seats'' for seating accommodations for disabled passengers. Carriers would provide notice that passengers who are assigned these seats are subject to being reassigned to another seat if necessary to accommodate a passenger with a disability.

In the Department's view, the best way to provide this information would be through notice to the passenger at the time he or she made a seat selection (e.g., by the airline reservationist or travel agent, via a screen notice when the passenger is making an on-line seat assignment, or via a recording when the passenger makes a seat selection through an automated telephone system). Other methods are acceptable, however, such as ticket notices, gate announcements, counter signs, seatback cards, notices in advertisements, timetables, web sites, or frequent flier literature. Whatever system a carrier chooses to provide this information, the Department believes it would be useful to place a sticker or decal (e.g., on the armrest for the seat or the tray table facing the seat) with an accessibility symbol and words like ''Priority Seat for Passengers with Disabilities,'' which would help inform passengers about this requirement.

By receiving this information, passengers would know that if they sat in a priority seat, they could be moved to another seat if a disabled passenger needed that seat for a seating accommodation. Because passengers would be on notice that sitting in a priority seat might occasionally result in having to change seats, passengers who had to move would not be surprised or have grounds for feeling that their legitimate expectations had been infringed.

In order to give carriers time to make any necessary adjustments, carriers could request that passengers with disabilities wishing to make use of designated priority seats must check in and make their request an hour before departure. If a passenger failed to do so, the airline would still have to try to accommodate the person's request, but would not have to reassign another passenger's seat to do so.

As in the case of carriers who use the ''seat blocking'' mechanism, there could be rare situations in which all the designated priority seats are filled with individuals with disabilities, and subsequently an additional passenger with a disability requests the same kind of accommodation. In this case, the carrier would not be required to change a seat assignment that had already been given to another disabled passenger. However, the carrier would have meet the disabled passenger's request by

assigning him or her to a seat that provided the needed accommodation, was not a designated priority seat, and was still unassigned, even if that seat was otherwise blocked for frequent fliers or another category of passenger.

The Department believes that, to implement these requirements appropriately, carriers would have to block or give priority designation to seats in all classes of service. This does not mean, however, that a passenger with a disability would have to be given an upgrade (e.g., provide a seat in first class to a purchaser of a coach ticket) in order to be accommodated.

To provide greater flexibility, the rule permits carriers to devise different approaches to achieving the objectives of this section. To implement a different approach, a carrier would have to obtain the written concurrence of the Office of the Secretary, DOT. Carriers interested in getting approval of a different approach should contact the Aviation Consumer Protection Division of the Office of the Assistant General for Aviation Enforcement and Proceedings in the DOT Office of General Counsel (202–366–5957).

The foregoing discussion has focused on carriers who assign seats in advance. Carriers who do not assign seats in advance would, as the NPRM suggested, meet the requirements of this section through the preboarding process. As requested, this provision has been made part of the final rule text. In response to a disability community comment, these carriers would permit persons needing seat accommodations under this section to preboard before other passengers, including other passengers who preboard. Regardless of whether the carrier assigns seats in advance or not, the rule never requires a carrier to choose between disabled persons who need the same seat accommodation.

The Department believes that these approaches minimize both the potential burdens on carriers and inconvenience to other passengers. To the extent that some inconvenience remains, the Department believes that the inconvenience to a non-disabled passenger who moves from one seat he or she can readily access and use to another such seat is far outweighed by the nondiscrimination-related necessity of ensuring that a disabled passenger can have a seat he or she can readily access and use. The Department has a statutory responsibility to ensure nondiscrimination on the basis of disability; there is no parallel mandate to preclude inconvenience to other passengers who may prefer some of the same seats that are needed to accommodate a disabled passenger.

As noted above, the rule specifically provides that no other passenger would ever be bumped off a flight to make room for an accommodation needed by a passenger with a disability. For example, suppose that all seats but one have confirmed reservations for a particular flight. A disabled passenger then calls to make a reservation for himself and his PCA. Someone who already had a confirmed reservation would not lose that reservation to make room for the PCA. This does not mean, however, that a carrier could not take action against a passenger who had a seat on the aircraft (e.g., a designated priority seat) who refused to move to another seat to accommodate a disabled passenger when the carrier requested it.

The Department is also modifying the types of situations in which airlines are required to provide seating accommodations. One important clarification is that carriers are required to provide seating accommodations only to passengers who self-identify as needing one of the specified accommodations. It is not unreasonable to ask passengers seeking a particular accommodation to take the initiative to specify the nature of their need for it. This will also mitigate the problem cited by carriers of having their personnel asking awkward or inappropriate questions about passengers' disabilities.

Paragraph (a) of the new rule sets forth four situations in which seat assignment accommodations are required. As suggested by commenters, the first accommodation (seating in a row with a movable aisle armrest) is clarified to apply to people who board the aircraft using an aisle chair and who cannot readily transfer over a fixed armrest. The third accommodation—a seat in either a bulkhead or non-bulkhead row for someone traveling with a service animal—is unchanged from the NPRM. It was not the subject of any specific comment. Some passengers with service animals prefer bulkhead rows, while others do not. The point of this accommodation is to allow the passenger to choose which type of row he or she and the service animal will occupy.

The second accommodation has been expanded in response to comments. In the NPRM, it was limited to persons traveling with a personal care attendant. Commenters pointed out that a deaf person traveling with an interpreter was in a similar situation. A blind person traveling with a reader also may need to have the person next to him or her during the flight. Unless a blind or deaf person were also eligible for a specific seat location as an accommodation—for example, because the person was a wheelchair user or was traveling with a service animal—the pair of seats could be anywhere in the aircraft.

In each case, the accommodation—a seat for the assistant next to the individual with a disability—is required to be provided only if the assistant is actually going to provide services to the disabled passenger during the course of the flight. Someone who is traveling to the same destination as the person with a disability to perform services there, but who will not actually perform services on the flight, is not covered by this paragraph.

Finally, for a person with a fused or immobilized leg (e.g., a surgically fused leg), the required accommodation is a bulkhead row seat or some other seat providing additional legroom for the leg. This provision is the same as in the NPRM, except for a clarification that the seat must be provided on the side of the aircraft aisle that is more useful to the passenger.

All these circumstances are likely to be visible to carrier personnel, and we agree with commenters that documentation of these circumstances is unnecessary and burdensome. We do not agree with the carrier comment that identifying these categories somehow discriminates against passengers with other disabilities. In any disability law or regulation, accommodations are specific to the specific disabilities in question. Having a ramp into a building for wheelchair users does not discriminate against ambulatory deaf people. Braille signage does not discriminate against individuals with mental disabilities. Nor does requiring a seat in a row with a movable armrest for a wheelchair user discriminate against blind passengers.

In the course of implementing the ACAA's nondiscrimination requirement, the Department has already required numerous accommodations for persons with specific disabilities, from movable aisle armrests, boarding assistance and wheelchair storage requirements for persons with mobility impairments to information in accessible formats for visually impaired persons. Seating accommodations are just one more set of such specific accommodations, of the sort that carrier comments, in the context of their argument concerning the general nondiscrimination requirement, agreed that the Department had the authority to impose.

The Department recognizes, as commenters pointed out, that some individuals with disabilities who do not fit into the four categories listed in paragraph (a) (e.g., individuals whose disabilities or needs for accommodation

are not obvious to observers) may need seat assignment accommodations in order to readily access and use airline services. No set of categories can ever encompass every possible individual or situation. At the same time, the Department wants to define the requirements for accommodations sufficiently narrowly as to facilitate implementation and limit the possibility of abuse. We also understand the objections of disability community commenters to requirements for documentation.

To address all these concerns, the final rule provides a different mechanism for individuals with disabilities other than those in the four categories specified in paragraph (a) who need seat assignment accommodations in order to readily access and use airline services. Such individuals will be assigned, on their request, any seat that has not already been assigned to another passenger, even if that seat is not otherwise available to the general passenger population at the time of the request. Such individuals would not be entitled to be assigned seats ''blocked'' for passengers specified in paragraph (a). If assigned to a designated priority seat, such an individual could, like other passengers, be reassigned to another seat if needed to accommodate a passenger specified in paragraph (a).

For example, suppose there are 100 seats available on a given flight operated by a carrier that blocks seats to provide the accommodations required by paragraph (a). The seats on the flights fall into three categories: Category A consists of 10 seats blocked for persons with disabilities specified in paragraph (a); Category B consists of 20 seats which are held for assignment to frequent fliers and full-fare passengers; Category C consists of the rest of the seats, which are available for assignment to all passengers. A person with a disability not specified in paragraph (a) calls for a reservation, self-identifying as to the nature of his or her disability and the need for a particular kind of seat assignment to accommodate the disability. The carrier would not assign the person a Category A seat. The carrier would assign any seat in Category B or C that successfully provided the needed accommodation and that had not already been assigned to someone, even though Category B seats are not normally made available to persons other than frequent fliers or full-fare passengers at this stage of the process. The carrier would not be required to reassign other passengers who had already received their seat assignments.

Carriers using the designated priority seats mechanism to comply with paragraph (a) would follow a somewhat similar pattern. In this case, Category A consists of designated priority seats. A person with a disability not specified in paragraph (a) calls for a reservation, self-identifying as to the nature of his or her disability and the need for a particular kind of seat assignment to accommodate the disability. The carrier would assign a seat in any of the three categories that successfully provided the needed accommodation and that had not already been assigned to someone, even though some or all Category A or B seats are not normally made available to other than frequent fliers or full-fare passengers at this stage of the process. The carrier would not be required to reassign other passengers who had already received their seat assignments. In the event that the passenger was assigned a Category A seat, the passenger would receive the same notice as non-disabled persons assigned Category A seats that he or she was subject to reassignment if needed to accommodate someone with a disability specified in paragraph (a).

Carriers that do not assign seats in advance would simply accommodate passengers with disabilities not specified in paragraph (a) in the same way as those who are, affording them priority in the preboarding process.

Carriers are not required to provide the seating accommodations specified in this section if the passenger does not request them. As noted in the NPRM, carriers are not required to provide more than one seat to a passenger per ticket (e.g., carriers could require a very obese passenger, who occupies the space of two seats, to purchase two tickets).

The Department realizes that carriers may need some time to implement the requirements of this section. For this reason, the final rule establishes a compliance date of six months from the effective date of the rule.

Collapsible Electric Wheelchairs

NPRM Proposals

The NPRM proposed to add collapsible, folding, or break-down electric wheelchairs to existing provisions requiring in-cabin storage for manual wheelchairs. These chairs would be regarded in the same way as manual wheelchairs are for in-cabin storage, and would be subject to FAA rules for carry-on items. In addition, a provision was proposed to be added to the section of the rule on battery stowage, providing that when a wheelchair was to be folded or broken down, the carrier would remove the battery and fold the wheelchair for in-cabin storage. Carriers would continue to follow DOT hazardous materials rules with respect to removal, packaging, and stowing of batteries.

Comments and DOT Response

There was less disagreement about this proposal than others in the NPRM. Both carriers and disability community commenters generally supported it. A number of these commenters, as well as some battery manufacturers, expressed concern about the issue of how to handle batteries. This has been a troublesome issue over time, primarily because carriers have had difficulty in distinguishing spillable from nonspillable batteries and believe they cannot rely on passengers' representations on the matter. The two kinds of batteries are treated differently under DOT hazardous materials rule. Several commenters sought additional clarification of rules concerning batteries.

One suggestion that has merit is that batteries labeled by manufacturers as nonspillable, as provided in a DOT hazardous materials rule (49 CFR 173.159(d)(2)), should be carried in the cabin. Carriers would be authorized to detach, package, and carry as cargo batteries that are not so labeled. Existing advance notice requirements for handling electric wheelchairs would continue to apply, regardless of whether the wheelchair itself were to be stowed in the cabin or as cargo. As a general matter, carriers and passengers should be aware that, except for the new reference to 49 CFR § 173.159(d)(2), today's amendment does not alter existing rules concerning batteries, but concerns merely the stowage location for the wheelchair itself.

The Department notes that the one-hour advance check-in provision of § 382.41(g)(1) would apply to electric wheelchairs that are carried in the cabin as well as to those that are carried as checked items. In addition, while the rule provides that carriers would not treat manufacturer-labeled nonspillable batteries as spillable batteries, there still may be circumstances under which carriers might have to take steps to prepare batteries for safe transportation (e.g., disconnect and tape connections to prevent possible sparking). Of course, if a labeled non-spillable battery appeared to be damaged or leaking, the carrier could determine that, for safety's sake, it was necessary to package it separately (or, even deny transportation for the battery if the potential safety hazard were serious enough).

Disability community commenters said there were continuing problems

with airlines' handling of wheelchairs, especially electric wheelchairs. Carriers too often fail to do the job properly, they asserted. One commenter asked for additional training requirements for carrier personnel concerning handling of wheelchairs; we do not believe that additional specific requirements are necessary at this time, given that the training to proficiency requirements already in the rule encompass handling of wheelchairs.

Some carrier comments suggested there should be discretion exercised by carrier personnel concerning on-board stowage of wheelchairs or parts of them, because the chairs or parts may be heavy or bulky, exceeding the capacity of storage bins and other spaces. The Department does not believe that any special rule language is necessary to accommodate this concern. Wheelchairs and parts stowed in the cabin must comply with FAA carry-on baggage requirements. In the enforcement of such FAA requirements, carrier personnel can exercise the same discretion concerning wheelchairs or parts that they do with respect to other items that passengers bring on board (though wheelchairs and other assistive devices do not count against a passenger's carry-on bag limit). Carriers should note, however, that § 382.41(e)(2) gives wheelchairs priority over other passengers' carry-on luggage.

Regulatory Analyses and Notices

This final rule is not a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this statement is that the modifications to airline practices and procedures that the rule requires involve little additional cost or burden to carriers or airports, whatever their size.

The Department has determined that there would be not be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment. As it implements a nondiscrimination statute, this rule is not subject to scrutiny under the Unfunded Mandates Act.

List of Subjects in 14 CFR Part 382

Aviation, Handicapped.

Issued this 24th day of February, 1998, at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 14 CFR part 382 as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

1. The authority citation for 14 CFR part 382 would continue to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

2. In 14 CFR 382.7, a new paragraph (c) would be added to read as follows:

§ 382.7 General prohibition of discrimination.

* * * * *

(c) Carriers shall, in addition to meeting the other requirements of this part, modify policies, practices, or facilities as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program.

3. A new § 382.38 is added, to read as follows:

§ 382.38 Seating accommodations.

(a) On request of an individual who self-identifies to a carrier as having a disability specified in this paragraph, the carrier shall provide the following seating accommodations, subject to the provisions of this section:

(1) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, the carrier shall provide a seat in a row with a movable aisle armrest.

(2) The carrier shall provide a seat next to a passenger traveling with a disability for a person assisting the individual in the following circumstances:

(i) When an individual with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (e.g., assistance with eating);

(ii) When an individual with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight; or

(iii) When an individual with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight.

(3) For an individual traveling with a service animal, the carrier shall provide, as the individual requests, either a bulkhead seat or a seat other than a bulkhead seat.

(4) For a person with a fused or immobilized leg, the carrier shall provide a bulkhead seat or other seat that provides greater legroom than other seats, on the side of an aisle that better accommodates the individual's disability.

(b) A carrier that provides advance seat assignments shall comply with the requirements of paragraph (a) of this section by any of the following methods:

(1) The carrier may ''block'' an adequate number of the seats used to provide the seating accommodations required by this section.

(i) The carrier shall not assign these seats to passengers not needing seating accommodations provided under this paragraph until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, the carrier shall assign a seat meeting the requirements of this section to an individual who requests it.

(iii) If an individual with a disability does not make a request at least 24 hours before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(2) The carrier may designate an adequate number of the seats used to provide seating accommodations required by this section as ''priority seats'' for individuals with disabilities.

(i) The carrier shall provide notice that all passengers assigned these seats (other than passengers with disabilities listed in paragraph (a) of this section) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section. The carrier may provide this notice through its computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(ii) The carrier shall assign a seat meeting the requirements of this section to an individual who requests the accommodation and checks in at least one hour before the scheduled departure of the flight. If all designated priority seats that would accommodate the individual have been assigned to other passengers, the carrier shall reassign the seats of the other passengers as needed

to provide the requested accommodation.

(iii) If the individual with a disability does not check in at least an hour before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(c) On request of an individual who self-identifies to a carrier as having a disability other than one in the four categories listed in paragraph (a) of this section and as needing a seat assignment accommodation in order to readily access and use the carrier's air transportation services, a carrier that assigns seats in advance shall provide such an accommodation, as described in this paragraph.

(1) A carrier that complies with paragraph (a) this section through the ''seat-blocking'' mechanism of paragraph (b)(1) of this section shall implement the requirements of this paragraph as follows:

(i) When the passenger with a disability not described in paragraph (a) of this section makes a reservation more than 24 hours before the scheduled departure time of the flight, the carrier is not required to offer the passenger one of the seats blocked for the use of passengers with disabilities listed under paragraph (a) of this section.

(ii) However, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) A carrier that complies with this section through the ''designated priority seats'' mechanism of paragraph (b)(2) of this section shall implement the requirements of this paragraph as follows:

(i) When a passenger with a disability not described in paragraph (a) of this section makes a reservation, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in paragraph (b)(2) of this section.

(d) A carrier that does not provide advance seat assignments shall provide seating accommodations for persons described in paragraphs (a) and (c) of this section by allowing them to board the aircraft before other passengers, including other ''pre-boarded'' passengers, so that the individuals needing seating accommodations can select seats that best meet their needs if they have taken advantage of the opportunity to pre-board.

(e) A carrier may comply with the requirements of this section through an alternative method not specified in paragraphs (b) through (d) of this section. A carrier wishing to do so shall obtain the written concurrence of the Department of Transportation (Office of the Secretary) before implementing the alternative method.

(f) The carrier shall assign a seat providing an accommodation requested by an individual with a disability, as specified in this section, even if the seat is not otherwise available for assignment to the general passenger population at the time of the individual's request.

(g) If the carrier has already provided a seat to an individual with a disability to furnish an accommodation required by paragraph (a) or (c) of this section, the carrier shall not reassign that individual to another seat in response to a subsequent request from another individual with a disability, without the first individual's consent.

(h) In no case shall any individual be denied transportation on a flight in order to provide accommodations required by this section.

(i) Carriers are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased.

(j) In responding to requests from individuals for accommodations required by this section, carriers shall comply with FAA safety rules, including those pertaining to exit seating (see 14 CFR 121.585 and 135.129).

(k) Carriers are required to comply with this section beginning August 31, 1998.

§ 382.41 [Amended]

4. In 14 CFR 382.41(b), the citation ''49 CFR 173.260(d)'' is amended to read ''49 CFR 173.159(d).''

5. In 14 CFR 382.41(e), the introductory paragraph is amended by adding, after the word ''wheelchairs'', the following words: ''(including collapsible or break-down battery-powered wheelchairs, subject to the provisions of paragraph (g)(5) of this section) as carry-on baggage''.

6. In 14 CFR 382.41(e)(2), in the first sentence, the word ''an'' is added before the word ''aircraft'' and a comma and the words ''collapsible, or break-down'' are added after the word ''folding,'' in both places where that word occurs.

7. In 14 CFR 382.41(e)(3), a comma and the words ''collapsible, or break-down'' are added after the word ''folding,''

8. In 14 CFR 382.41(f), the words ''When passenger compartment storage is not available'' are removed and the following words are added in their place: ''When a folding, collapsible, or break-down wheelchair cannot be stowed in the passenger cabin as carry-on baggage,''.

9. In 14 CFR 382.41, paragraph (g) is revised and paragraph (h) is added to read as follows:

§ 382.41 Stowage of personal equipment.

* * * * *

(g) Whenever baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept a passenger's battery-powered wheelchair, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(19) and (20) and the provisions of paragraph (f) of this section.

(1) Carriers may require that qualified individuals with a disability wishing to have battery-powered wheelchairs transported on a flight (including in the cabin) check in one hour before the scheduled departure time of the flight. If such an individual checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) If the battery on the individual's wheelchair has been labeled by the manufacturer as non-spillable as provided in 49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery is loaded, stored, secured and unloaded in an upright position, the carrier shall not require the battery to be removed and separately packaged. Notwithstanding this requirement, carriers may remove and package separately any battery that appears to be damaged or leaking.

(3) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(19) and (20) and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) Carriers shall not drain batteries.

(5) At the request of a passenger, a carrier shall stow a folding, break-down or collapsible battery-powered wheelchair in the passenger cabin stowage area as provided in paragraph

(e) of this section. If the wheelchair can be stowed in the cabin without removing the battery, the carrier shall not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, the carrier shall remove the battery and stow it in the baggage compartment as provided in paragraph (g)(3) of this section. In this case, the carrier shall permit the wheelchair, with battery removed, to be stowed in the cabin.

(h) Individuals with disabilities shall be permitted to provide written directions concerning the disassembly and reassembly of their wheelchairs.

[FR Doc. 98–5525 Filed 3–3–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300606; FRL–5767–1]

RIN 2070–AB78

Hydramethylnon; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of hydramethylnon in or on pineapple. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pineapple. This regulation establishes a maximum permissible level for residues of hydramethylnon in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on January 31, 1999.

DATES: This regulation is effective March 4, 1998. Objections and requests for hearings must be received by EPA on or before May 4, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300606], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300606], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300606]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9359, e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide hydramethylnon, in or on pineapple at 0.05 part per million (ppm). This tolerance will expire and is revoked on January 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

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

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

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

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

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

II. Emergency Exemption for hydramethylnon on pineapple and FFDCA Tolerances

On May 21, 1997 the state of Hawaii applied for an emergency exemption for the use of hydramethylnon to control big-headed and Argentine ants in pineapples. These ants are involved in the spread of mealy bugs in pineapple fields and the subsequent development of mealybug wilt, a devastating disease responsible for the near demise of the pineapple industry in the 1920's. Alternate control strategies are not effective. Currently registered materials for in-field ant control are not effective due to the mobility of the ants. After reviewing the submission the EPA authorized under FIFRA section 18 the use of hydramethylnon on pineapple for control of big headed and Argentine ants in Hawaii.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of hydramethylnon in or on pineapple. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on January 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on pineapple after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

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

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

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

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

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

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated.

High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

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

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

B. Aggregate Exposure

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

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants less than one year old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of hydramethylnon and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of hydramethylnon, also known as tetrahydro-5,5-dimethyl-2-(1*H*)-pyrimidinoine(3-(4-trifluoromethyl)phenyl)-1- [2-[4(trifluoromethly)phenyl]ethenyl)-2-propenylidene) hydrazone on pineapple at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity.* An acute endpoint has not been identified. This risk assessment is not required.

2. *Short - and intermediate - term toxicity.* For short-term MOE calculations, the Agency's Hazard Identification Committee recommended use of the Systemic No Observed Adverse Effect Level (NOAEL) (freestanding) of 250 milligrams/kilogram/day (mg/kg/day) from the 21–day dermal toxicity study in New Zealand white rabbits. Nonadverse signs at the NOAEL included decreased food consumption in males and females, and thrombocytopenia in females. For intermediate-term MOE calculations, the Agency's Hazard Identification Committee recommended use of the systemic NOAEL (freestanding) of 250 mg/kg/day from the 21–day dermal toxicity study in New Zealand white rabbits. Nonadverse signs at the NOAEL included decreased food consumption in males and females, and thrombocytopenia in females.

3. *Chronic toxicity.* EPA has established the RfD for hydramethylnon at 0.001 mg/kg/day. This RfD is based on a 6–month feeding study in dogs with a NOAEL of 1.0 mg/kg/day based on an increased incidence of soft stools, mucoid stools, and diarrhea at the Lowest Observed Adverse Effect Level (LOAEL) of 3.0 mg/kg/day. Since a NOEL was not defined in this study, an uncertainty factor of 1,000 was used during calculation of the RfD instead of the usual 100-fold factor.

4. *Carcinogenicity.* Hydramethylnon has been classified as a Group C chemical (possible human carcinogen) by the Agency's Cancer Peer Review Committee. The Committee recommended using the RfD approach for risk assessment.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.395) for the residues of hydramethylnon, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from hydramethylnon as follows:

a. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary (food only) risk assessment is not required as the Agency's Hazard Identification Committee did not

identify any acute dietary risk endpoints.

b. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, HED has made very conservative assumptions -- 100% of pineapple commodities will contain hydramethylnon residues and those residues will be at the level of the required tolerance -- which results in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, HED is taking into account this conservative exposure assessment. The hydramethylnon Section 18 tolerance results in a TMRC that is equivalent to the following percentages of the RfD:

Population Subgroup	% RfD
U.S. Population	<1%
Nursing Infants	<1%
Non-Nursing Infants (<1 year old).	2%
Children (1–6 years old)	1%
Children (7–12 years old)	<1%

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

2. *From drinking water.* Based on information that Agency has in files, hydramethylnon and its degradates are not expected to leach to groundwater. Information on its persistence is inconclusive. There are no established Maximum Contaminant Levels (MCLs) for residues of hydramethylnon in drinking water and no health advisory levels for this active ingredient in drinking water have been issued.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause hydramethylnon to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with hydramethylnon in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Hydramethylnon is currently registered for use on the following residential non-food sites: recreational areas, ornamental plants, lawns, turf, and household or domestic dwellings. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including hydramethylnon.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Hydramethylnon is a member of the amidinohydrazones class of pesticides. There are no other members of this class of pesticides. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether hydramethylnon has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hydramethylnon does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that hydramethylnon has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* An acute endpoint has not been identified. The Agency's Hazard Identification Committee determined that this risk assessment is not required.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to hydramethylnon from food will utilize <1% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to hydramethylnon in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will

result from aggregate exposure to hydramethylnon residues. According to Agency policy, the residential uses of hydramethylnon do not fall under a chronic exposure scenario. The Agency concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to hydramethylnon residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Although hydramethylnon has residential uses, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including hydramethylnon.

D. Aggregate Cancer Risk for U.S. Population

Hydramethylnon has been classified as a Group C chemical (possible human carcinogen) by the Cancer Peer Review Committee . The Committee recommended using the RfD approach for risk assessment. Thus, the cancer risk estimate is the same as our estimate of chronic aggregate risk, which is discussed above. Based upon the discussion of the chronic aggregate risk estimate, we conclude the cancer risk estimate does not exceed HED's level of concern.

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

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

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies* —a. *Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 3 mg/kg/day. The maternal (systemic) NOAEL was 10 mg/kg/day, based on an 8% decrease in body weight and yellowish discoloration of the fat. The maternal (systemic) LOAEL was 30 mg/kg/day based on a 16% decrease in body weight; increased incidence of nasal mucus, alopecia, soft stool, and staining of the ano-genital fur; and yellowish discoloration of the fat and small thymus. The developmental (fetal) NOEL was 10 mg/kg/day, based on decreased mean fetal weights and the increased incidence of rudimentary structures and incompletely ossified supraoccipitals at the LOAEL of 30 mg/kg/day.

b. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOEL could not be defined. The maternal (systemic) NOAEL was 5 mg/kg/day, based on decreased body weight gain (~6%), soft stool, and reduced amount of stool. The maternal LOAEL was 10 mg/kg/day based on soft stool, reduced amount of stool, and anogenital matting and discharge. The developmental (fetal) NOEL could not be defined. The developmental (fetal) NOAEL was 5 mg/kg/day based on decreased fetal weight (8%). The developmental (fetal) LOAEL was 10 mg/kg/day based on decreased fetal weight (16%).

iii. *Reproductive toxicity study.* In the 2–generation reproductive toxicity study in rats, the maternal (systemic) NOEL was 25 ppm (1.66 / 2.01 mg/kg/day, (male/female)), based on degeneration of the germinal epithelium and aspermia at the LOAEL of 50 ppm (3.32 / 4.13 mg/kg/day, (male/female)). No adverse effects were observed in the pups.

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

v. *Conclusion.* Based on the above, HED concludes that reliable data support use of the standard 100–fold uncertainty factor and that an additional factor is not needed to protect infants and children. However, because a NOEL was not established in the chronic toxicity study, an additional uncertainty factor of 10 was added.

2. *Acute risk.* There is no reliable endpoint that can be attributed to an acute exposure. Therefore, this risk assessment is not appropriate.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to hydramethylnon from food ranges from <1% for several population subgroups to 2% for non-nursing infants (<1 year old) of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to hydramethylnon in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to hydramethylnon residues.

F. Endocrine Disruptor Effects

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

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood for this section 18 use. The Agency's Metabolism Committee determined that the residue of concern in grass is hydramethylnon per se. The Agency believes that this conclusion can be translated to pineapple.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available in PAM II (Method I) to enforce the tolerance expression. A confirmatory method has recently been submitted to the FDA for inclusion in PAM II.

C. Magnitude of Residues

Residues of hydramethylnon are not expected to exceed 0.05 ppm in/on pineapple. Residues are not expected to concentrate in pineapple processed products. The Agency is establishing a time-limited tolerance at this level. Secondary residues of hydramethylnon are not expected in animal commodities as a result of this section 18 use. Tolerances for secondary residues of hydramethylnon in livestock commodities are not currently established.

D. International Residue Limits

There are no Codex, Canadian or Mexican residue limits established for hydramethylnon in/on pineapple. Thus, harmonization is not an issue for this section 18.

E. Rotational Crop Restrictions

Pineapple is not typically rotated. Thus, rotational crop restrictions are not required.

VI. Conclusion

Therefore, the tolerance is established for residues of hydramethlynon in pineapple at 0.05 ppm.

VII. Objections and Hearing Requests

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

Any person may, by May 4, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300606] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

IX. Regulatory Assessment Requirements

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

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the

Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 20, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. Section 180.395 is amended as follows:

a. By revising the section heading.

b. By designating the existing text as paragraph (a) and adding a paragraph heading.

c. By adding paragraph (b).

d. By adding and reserving paragraphs (c) and (d).

§ 180.395 Hydramethylnon; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the insecticide hydramethylnon; tetrahydro-5,5-dimethyl-2-(1*H*)-pyrimidinoine(3-(4-trifluoromethyl)phenyl)-1-[2-[4(trifluoromethly)phenyl]ethenyl)-2-propenylidene) hydrazone in connection with the use of the pesticides under section 18 emergency exemptions granted by EPA. The tolerance will expire and is revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Pineapple	0.05	1/31/99

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

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

[FR Doc. 98–5417 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300620; FRL–5772–8]
RIN 2070–AB78

Myclobutanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide myclobutanil in or on strawberries at 0.5 part per million (ppm) for an additional 1-year period, to March 31, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective March 4, 1998. Objections and requests for hearings must be received by EPA, on or before May 4, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300620], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300620], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-9362; e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 11, 1997 (62 FR 17730) (FRL–5597–9), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of myclobutanil and its

metabolite in or on strawberries at 0.5 ppm, with an expiration date of March 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of myclobutanil on strawberries for this year's growing season due to continued incidence of powdery mildew in Florida and the claimed ineffectiveness of registered alternatives at controlling the disease. After having reviewed the submission, EPA concurs that emergency conditions exist for this State. EPA has authorized under FIFRA section 18 the use of myclobutanil on strawberries for control of powdery mildew in strawberries.

EPA assessed the potential risks presented by residues of myclobutanil in or on strawberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997 (62 FR 17730). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on March 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by May 4, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

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

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300620]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

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

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the

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

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: February 18, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.443 [Amended]

2. In § 180.443, by amending paragraph (b) in the table, for the commodity ''Strawberries'' by removing ''March 31, 1998'' and by adding in its place ''3/31/99''.

[FR Doc. 98–5409 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300621; FRL–5772–9]
RIN 2070–AB78

Pendimethalin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time-limited tolerances for residues of the herbicide pendimethalin and its metabolite in or on fresh mint hay at 0.1 part per million (ppm) and mint oil at 5.0 ppm for an additional 1-year period, to May 31, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on mint. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective March 4, 1998. Objections and requests for hearings must be received by EPA, on or before May 4, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300621], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300621], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-9362; e-mail: schaible.stephen@epamail.epa.gov. .

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 23, 1997 (62 FR 28355) (FRL–5718–5), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite (CL 202,347) in or on fresh mint hay at 0.1 ppm and mint oil at 5.0 ppm, with an expiration date of May 31, 1998. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of pendimethalin on mint for this year growing season due to the continued emergency situation for Idaho, Oregon and Washington mint growers. Due to the potential spread of *Verticillium* wilt by tillage equipment, mechanical control of kochia and redroot pigweed is no longer considered a viable option. The continuous use of terbacil in past years has resulted in development of resistance to this chemical in pigweed and kochia, resulting in inadequate control of this pest by registered alternatives. After having reviewed the submission, EPA concurs that emergency conditions exist for these States. EPA has authorized under FIFRA section 18 the use of pendimethalin on mint for control of kochia and redroot pigweed in mint.

EPA assessed the potential risks presented by residues of pendimethalin in or on fresh mint hay and mint oil. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2),

and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 23, 1997 (62 FR 28355). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1-year period. Although these tolerances will expire and are revoked on May 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on fresh mint hay or mint oil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by May 4, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

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

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300621]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

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

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

IV. Submission to Congress and the Comptroller General

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 18, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.361 [Amended]

2. In § 180.361, by amending paragraph (b) in the table, for the commodities ''Mint hay, fresh'' and ''Mint oil'' by removing ''5/31/98'' and by adding in its place ''5/31/99''.

[FR Doc. 98–5410 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 56

[USCG–1998–3560]

Coast Guard Acceptance of Resiliently Seated Valves

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy; request for comments.

SUMMARY: The Coast Guard announces an interim policy concerning the acceptance of resiliently seated valves as an alternatives to the requirements in 46 CFR 56.20–15. Additionally, the Coast Guard requests the public's comments on how the Coast Guard should proceed in the future regarding any regulatory revision of the current criteria for the acceptance of resiliently seated valves as contained in 46 CFR 56.20–15.

DATES: Comments must reach the Docket Management Facility on or before May 4, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–1998–3560], U.S. Department of Transportation, Room PL–401, 400 7th Street SW., Washington DC 20590–0001, or deliver them to Room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the address above between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne M. Lundy, Systems Engineering Division (G–MSE–3), U.S. Coast Guard Headquarters, telephone (202) 267–2206 for questions concerning the substance of this notice or Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone (202) 366–9329 for questions concerning the filing and reviewing of comments.

SUPPLEMENTARY INFORMATION:

Request for Comments

Persons submitting comments should include their names and addresses, identify this notice [USCG–1998–3560] and 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 to the DOT Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period and may change this policy in view of the comments.

Background and Purpose

Over the past twelve months, the Coast Guard has received several inquiries from the marine industry, including valve manufacturers and distributors, regarding the acceptance criteria for resiliently seated valves addressed in 46 CFR 56.20–15. The current issue is whether the existing acceptance criteria found in the 1989 version of 46 CFR 56.20–15. The current issue is whether the existing acceptance criteria found in the 1989 version of 46 CFR 56.20–15 is significantly stricter than the criteria previously applied to the resiliently seated valves grandfathered by the regulatory project on vessel piping systems (CGD 77–140; 50 FR 1072, January 9, 1985, and 54 FR 40592, October 2, 1989). In the preamble to the Notice of Proposed Rulemaking on vessel piping systems (CGD 77–140; 50 FR 1074, January 9, 1985), Category A resiliently seated valves were previously recognized by the Coast Guard as acceptable for continued service, without additional testing, provided there were no changes in the design or materials, and no casualty data or Coast Guard tests which would indicate a need to withdraw the acceptance. The preamble to the Final Rule on vessel piping systems (CGD 77–140; 54 FR 40592, October 2, 1989), stated that 46 CFR 56.20–15 was revised to clarify the requirements of resiliently seated valves. However, neither the Notice of Proposed Rulemaking nor the Final Rule discussed that the intent of the regulatory changes to 46 CFR 56.20–15 was to increase the acceptance criteria for new resiliently seated valves beyond the previous acceptance criteria applied to resiliently seated valves.

Recent inquiries have caused the Coast Guard to review and re-evaluate past policies and practices employed in the development and evolution of the acceptance criteria for resiliently seated valves over the past 35 years. In addition, the Coast Guard reviewed its casualty data available during the same period. From this effort, the Coast Guard concluded that the existing acceptance criteria contained in 46 CFR 56.20–15 did, in fact, exceed the acceptance criteria applied to previously accepted resiliently seated valves, but that the change in acceptance criteria was unintended. Additionally, the Coast Guard was unable to identify any casualty data which justified an increase in the stringency of the criteria for acceptance of new resiliently seated valves.

As a result of this review, the Coast Guard will, as an interim policy until a regulatory project can be published to revise 46 CFR 56.20–15, consider new resiliently seated valves for acceptance as Category A that demonstrate a level of safety equivalent to previously accepted resiliently seated valves that have shown satisfactory service for at least 5 years. This may be done by demonstrating that the valves provide for performance or dimensional equivalence to previously accepted resiliently seated valve designs. Precedent for acceptance of equivalents

exists in other sections of Title 46, such as 46 CFR 30.15–1. The comparisons for performance or dimensional equivalence must be certified by a recognized independent testing facility, a classification society recognized under the Alternate Compliance Program, or a licensed professional engineer (P.E.) acceptable under the provisions of Navigation and Vessel Inspection Circular (NVIC) 10–92. This written certification should be submitted with other supporting documentation when applying for approval by the Coast Guard.

Comparison tests of performance should demonstrate that the effective closure (internal leakage with the resilient seat removed) of a new resiliently seated valve is equivalent with that of a previously accepted resiliently seated valve. New resiliently seated valves being submitted for acceptance by the Coast Guard based on performance equivalency must have a flow coefficient (Cv), when in the closed condition with the resilient material removed, that is within acceptable tolerances, as indicated in Instrument Society of America standard ISA–S75.02–1996, of the Cv of a previously accepted resiliently seated valve. New resiliently seated valves being submitted to the Coast Guard for acceptance based on dimensional equivalency must demonstrate that the dimensions of the pressure-containing components (valve body, disk, and stem, etc.) are within acceptable tolerances, based on a recognized industry standard, such as American Petroleum Institute (API) 609 (1997), Manufacturers Standardization Society (MSS) SP–67 (1990), or American National Standards Institute (ANSI) B16.10 (1992), of the dimensions of the previously accepted resiliently seated valve. Regardless of which method is demonstrated, the materials of the pressure-containing components for all new resiliently seated valves shall comply with the requirements of 46 CFR 56.60.

Notwithstanding this interim policy, valve manufacturers continue to have the option of demonstrating compliance with the existing regulations in 46 CFR 56.20–15. Those seeking acceptance of new resiliently seated valves under the provisions of this policy notice or, alternatively, those choosing to continue to use the existing 46 CFR 56.20–15, should submit supporting documentation for approval to the Coast Guard Marine Safety Center, 400 7th Street, SW., Washington, DC 20590–0001.

Additionally, the Coast Guard solicits the public's comments on how it should proceed with the revision or amendment of the existing regulatory requirements for resiliently seated valves as contained in 46 CFR 56.20–15. The Cost Guard has identified five potential options on how to proceed as follows: incorporation by reference of an industry standard (develop a suitable industry standard working in conjunction with a voluntary standards development organization, e.g., the American Society for Testing and Materials F–25 Technical Committee on Shipbuilding); evaluation of the need to have any standard for resiliently seated valves; revise the acceptance criteria requirements within existing 46 CFR 56.20–15 to reflect acceptance criteria applied to previously accepted resiliently seated valves; maintain the acceptance criteria contained in existing 46 CFR 56.20–15 and set an effective date upon which the acceptance of previously accepted resiliently seated valves would terminate; or maintain the acceptance criteria as currently exists in 46 CFR 56.20–15. The preferred option for the Coast Guard, at this juncture, is to pursue development of an industry standard which can be considered for incorporation by reference into 46 CFR 56.20–15. Therefore, the Coast Guard encourages submission of written data, views, or arguments regarding the five options addresses above or any other alternative option. Also, the Coat Guard is soliciting comments which address. The service history of previously accepted resiliently seated valves; compliance of previously accepted resiliently seated valve designs with the current leakage rate criteria found in 46 CFR 56.20–15(c)(1); the need for a leakage rate criteria with the seat removed as an option in lieu of fire tests; compliance of designs with an acceptable fire test (e.g., American Petroleum Institute (API) standard 607); and the need for the current three categories of resiliently seated valves, (Category A, Category B, and positive shut-off). The Cost Guard will carefully consider all comments received and may initiate a regulatory project to adopt one of these or another alternative.

Dated February 26, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection

[FR Doc. 98–5447 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1511, 1515, and 1552

[FRL–5968–9]

Acquisition Regulation: Administrative Amendments

AGENCY: Environmental Protection Agency.

ACTION: Interim rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to include a requirement that any report prepared under an Agency contract identify the contract under which it was prepared and the name of the contractor who prepared the report, and to make an administrative change in the approval levels for Source Selection.

DATES: This interim rule is effective on March 4, 1998. Comments should be submitted not later than May 4, 1998.

ADDRESSES: Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street, SW, Washington, D.C. 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: Senzel.Louise@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 6.1 format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this rule may be filed on-line at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, U.S. EPA, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4367.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule includes a requirement that any report prepared under an Agency contract identify the contract under which it was prepared and the name of the contractor who prepared the report as required by section 411 of Public Law 105–65, October 27, 1997, and makes an administrative change in the approval levels for Source Selection.

Section 411 of Public Law 105–65 (EPA's appropriation act) states except

as otherwise provided by the law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 *et. seq*), for a contract for services unless such executive agency: (1) Has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder; and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report pursuant to such contract, to contain information concerning: (A) The contract pursuant to which the report was prepared; and (B) the contractor who prepared the report to such contract.'' Because immediate compliance is essential for EPA contracting activities, urgent and compelling circumstances exist that make it impracticable for EPA to promulgate this rule using notice and comment procedures. Therefore, pursuant to 41 U.S.C. 418b(d), EPA is promulgating these revisions on a temporary basis and is providing for a public comment period of 60 days from the date on which this notice is published. After considering the comments received, EPA may issue a final rule. The revisions will be in effect during the interim period while EPA receives, reviews and responds to any comments.

B. Executive Order 12866

The interim rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

D. Regulatory Flexibility Act

The EPA certifies that this interim rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA),

Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This interim 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 one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Submission to Congress and the General Accounting Office

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

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 1511, 1515, and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

PARTS 1511, 1515 AND 1552—[AMENDED]

1. The authority citation for Parts 1511, 1515, and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. 1511.011–70, is revised to read as follows:

1511.011–70 Reports of work.

Contracting officers shall insert one of the contract clauses at 1552.211–70 when the contract requires the delivery of reports, including plans, evaluations, studies, analyses and manuals. Alternate I should be used to specify reports in contract schedule, whereas the basic clause should be used when reports are specified in a contract attachment.

3. 1515.612 is amended by revising paragraph (a)(1) introductory text to read as follows:

1515.612 Formal source selection.

(a) * * *

(1) Acquisitions having a potential value exceeding $25,000,000.

* * * * *

4. Section 1552.211–70 is amended by revising the first paragraph, the heading of the clause, the first paragraph of the clause, the heading of Alternate I and the first paragraph of Alternate I to read as follows.

1552.211–70 Reports of Work.

As prescribed in 1511.011–70, insert one of the contract clauses in this subsection when the contract requires the delivery of reports, including plans, evaluations, studies, analyses and manuals. The basic clause should be used when reports are specified in a contract attachment. Alternate I is to be used to specify reports in the contract schedule.

REPORTS OF WORK (February 98)

The Contractor shall prepare and deliver reports, including plans, evaluations, studies, analyses and manuals in accordance with Attachment _____. Each report shall cite the contract number, identify the U.S. Environmental Protection Agency as the sponsoring agency, and identify the name of the contractor preparing the report.

* * * * *

ALTERNATE I (February 98)

The Contractor shall prepare and deliver the below listed reports, including plans, evaluations, studies, analyses and manuals to the designated addressees. Each report shall cite the contract number, identify the U.S. Environmental Protection Agency as the sponsoring agency, and identify the name of the contractor preparing the report.

* * * * *

Dated: February 11, 1998.

Ronald L. Kovach,

Acting Director, Office of Acquisition Management.

[FR Doc. 98–4818 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AE11

Migratory Bird Permits; Establishment of a Depredation Order for the Double-Crested Cormorant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service) establishes a depredation order for the double-crested cormorant (*Phalacrocorax auritus*). In those States in which double-crested cormorants have been shown to be seriously injurious to commercial freshwater aquaculture, and when found committing or about to commit depredations upon aquaculture stocks, persons engaged in the production of commercial freshwater aquaculture stocks may, without a Federal permit, take or cause to be taken such double-crested cormorants as might be necessary to protect aquaculture stocks.

DATES: This rule is effective March 4, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife, Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, MBMO, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Double-crested cormorant (*Phalacrocorax auritus*) populations are at an all-time high in the modern era, and commercial aquaculturists (especially catfish farmers) in many parts of the country are experiencing economic losses due to cormorant depredation. Three avenues currently are available to aquaculturists for dealing with cormorant depredation problems: (1) birds can be harassed (with shotgun blasts, fire crackers, propane cannons, or other scare devices) without a Federal permit; (2) ponds can be fitted with physical barriers (or exclusionary devices) such as wire or mesh netting that prevent birds from landing; and (3) private aquaculturists and State-operated fish hatcheries can apply to the Service for a permit to kill cormorants.

The Service is the Federal agency with the primary responsibility for managing migratory birds. The Service's authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–711), which implements conventions with Great Britain (for Canada), the United Mexican States (Mexico), Japan, and the Soviet Union (Russia). The double-crested cormorant is afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States—Mexico, as amended, 50 Stat. 1311, T.S. No. 912, as well as the Convention Between the United States of America and the Union of Soviet Socialist Republics [Russia] Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073 (16 U.S.C. 703, 712). The take of double-crested cormorants is strictly prohibited except as may be permitted under regulations implementing the MBTA. In addition to Federal statutes, the double-crested cormorant may also be protected by State regulations.

Regulations governing the issuance of permits for migratory birds are authorized by the MBTA and subsequent regulations (50 CFR Parts 13 and 21). Regulations in Subpart D of Part 21 deal specifically with the control of depredating birds. Section 21.41 outlines procedures for issuing permits. Sections 21.43 through 21.46 deal with special depredation orders for specific species of migratory birds to address particular problems in specific geographical areas, establishing a precedent for species and geographic treatments in the permitting process. Service policies for issuing depredation permits for aquaculture were described by Trapp et al. (1995).

Federal responsibility for the management of depredating wildlife, including migratory birds, lies with the Wildlife Services (WS) formerly Animal Damage Control program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service. The primary authority for WS activities is the Animal Damage Control Act of 1931, as amended, (7 U.S.C. 426–426c). Animal damage control activities are conducted at the request of, and in cooperation with, other Federal, State, and local agencies; private organizations; and individuals. Management responsibilities of WS in the cormorant-aquaculture conflict were reviewed by Acord (1995).

Commercial Aquaculture Industry

Aquaculture, the cultivation of finfish and invertebrates in captivity, has grown exponentially in the past several decades (Price and Nickum 1995). The five principal aquaculture fish species in the United States are catfish, trout, salmon, tilapia, and hybrid striped bass. There are also two categories of non-food fish: baitfish and ornamental fish (U.S. Department of Agriculture, 1995). While each of these industries has its own unique set of bird depredation problems, they all share a basic concern for developing and implementing the best methods for protecting fish stocks from predation.

The market for channel catfish (*Ictalurus punctatus*) is the largest segment of the aquaculture industry, and the one which is perhaps most susceptible to predation by cormorants. The catfish accounts for about one-half of the value of aquaculture in the United States.

The number of catfish farms in the United States increased 44 percent between 1982 and 1990 (from 1,494 to 2,155). Most of this increase occurred between 1982 and 1987. Growth was fairly steady throughout the 1980s, with production leveling off in the past few years. Production was estimated at 224,875 metric tons (247,933 short tons, or 496 million pounds, or 225 million kilograms) worth $353 million in 1993 and is expected to expand 5–7 percent annually due to increasing sales prices.

Mississippi is the center of catfish production, producing 75–80 percent of the United States output. Alabama, Arkansas, and Louisiana are also major producers. California, Florida, Illinois, Kentucky, Missouri, North Carolina, Oklahoma, South Carolina, Texas, and Virginia also produce catfish and all have, or will have, problems with fish-eating birds. In the four principal catfish-producing States, the number of farms increased 67 percent between 1982 and 1992 (from 794 to 1,193); increases in individual States were 24 percent in Alabama (327–405), 40 percent in Mississippi (316–442), 67 percent in Arkansas (115–191), and 330 percent in Louisiana (36–155).

The more than 64,300 hectares (158,840 acres) of catfish ponds in the United States in 1995 represented a 2.3-fold increase from about 28,300 hectares (69,900 acres) in production in the 1970s. The four principal catfish-producing States accounted for 93 percent of the total area, with Mississippi alone accounting for about 60 percent. Catfish ponds range in size from 4–14 hectares (10–35 acres) each, with a mean size of 5 hectares (12 acres). Farms with 100 hectares (247 acres) in production are not uncommon, and many are more than 400 hectares (990 acres). In the Delta region of Mississippi, catfish farms average about 100 hectares (247 acres) of ponds, with

a typical rectangular pond size of 8 hectares (20 acres); ponds are shallow, ranging from 1–2 meters (3.3–6.6 feet) deep. The large size of the ponds makes them highly visible to fish-eating birds from the air, and the high stocking levels (from 5,000 to more than 150,000 fish/hectare [or 2,000 to more than 60,700 fish/acre], Glahn and Stickley 1995) make them especially attractive to cormorants. The catfish industry's practice of using large ponds developed in the early 1970s when cormorant numbers were low.

The physical dimensions of the ponds are the secret to the catfish farmers' success (as well as the source of today's predation problem). The most efficient production ponds are circular, but they can not be harvested as easily. So, the ponds are generally rectangular and can be as wide as 80–95 meters (262–312 feet). At harvest time, crews drag 100 meter (325 foot) wide seine nets strung between tractors on both sides of the rectangular ponds along the length of each pond. Undersize fish slip through the mesh and are harvested the next year. Because catfish farmers stock more than one year class of fish in a pond, it is not possible to drain the ponds and to reconfigure them to a size and shape that can be covered easily with bird-excluding nets. Also, the levees between the ponds are not wide enough to install extensive net structures and yet leave room for tractors to maneuver. Thus, several economic factors (e.g., low profit margin, the cost to modify the ponds, and a heavy investment in current harvest technologies) combine to preclude major changes in pond shape and size at the present time.

Population Status of the Double-crested Cormorant

The size of the North American breeding population of the double-crested cormorant was recently estimated at about 360,000 pairs (Hatch 1995). Using values derived from the published literature of 1–4 nonbreeding birds for each breeding pair yields an estimated total population of about 1–2 million birds (Hatch 1995).

The double-crested cormorant breeds widely throughout much of coastal and interior North America. As of 1992, it had been found breeding in 40 of the 50 United States, all 10 Canadian provinces, and in Mexico, Cuba, and the Bahamas (Hatch 1995). However, it is not uniformly distributed across this broad area. Sixty-one percent of the breeding birds belong to the Interior population, while another 26 percent belong to the Atlantic population. Two major areas of concentration are apparent in the vast range of the Interior population: (1) the prairie lakes of Alberta, Manitoba, and Saskatchewan (which account for 69 percent of the Interior population); and (2) the U.S. and Canadian Great Lakes (accounting for another 12 percent).

Seven political units account for 70 percent of the North American breeding birds, with Manitoba alone accounting for 36 percent. Thirty (52 percent) of the 58 political units listed by Hatch (1995) each harbor fewer than 100 breeding pairs. In the catfish-producing States identified by Price and Nickum (1995), only Florida and California have sizeable breeding populations.

In the south-central United States (Arkansas, Louisiana, Mississippi, and west Tennessee), the double-crested cormorant has been known since pre-colonial times and has been recorded as an occasional breeder throughout the swampy forests of the region since at least the early 1800s (Jackson and Jackson 1995). Jackson and Jackson predicted that (in the absence of major limiting factors) the cormorant will once again become a regular member of the mid-South breeding avifauna, with birds dispersed more widely because of reservoir construction and with concentrations expected in the vicinity of aquaculture facilities.

The double-crested cormorant has always been widely distributed as a breeding species. The only suspected instance of range expansion in the 20th century is in the United States and Canadian Great Lakes, which apparently were colonized by birds expanding eastward from the Canadian prairies beginning with Lake Superior about 1913 and ending with lakes Erie and Ontario in the late 1930s (Weseloh et al. 1995). It is possible, however, that these events represented recolonization of former (but previously undocumented) breeding localities from which the species was extirpated before 1912. For example, although Barrows (1912: 67) knew of no breeding records for Michigan, he noted that it was ''generally distributed over the State during the migrations'' (with specimens from almost every county) and speculated that ''probably there are few sheets of water any size within our limits which are not visited by this bird at least occasionally.''

The core of the wintering range (i.e., the regions of greatest density) did not change appreciably between 1959–1972 and 1959–1988 (Root 1988: 11, Sauer et al. 1996b). Cormorant wintering populations are concentrated in coastal States and Provinces, from North Carolina to Texas in the east and from California to British Columbia in the west. In the midsouth, there also are appreciable concentrations inland from the coast (e.g., east Texas, eastern Oklahoma, southeastern Arkansas, west-central Mississippi, and northeastern Alabama). Of the 9 catfish-producing States for which Christmas Bird Count data are available, 6 have indices of relative abundance that exceed the national mean; the median abundance in these 6 States (including the major catfish-producers of Alabama, Louisiana, and Mississippi) was 2.0 times the national mean (range: 1.4–9.6).

The scattered occurrence of early winter stragglers throughout much of the interior of the continent as far north as Minnesota and southern Saskatchewan (Sauer et al. 1996b) is probably a natural phenomenon of longstanding (i.e., it probably does not represent a northward expansion of the wintering range). As evidence of this, we find that 11 percent of 227 winter recoveries (December-February 1923–1988) of birds banded in Saskatchewan, Lake Huron, and eastern Lake Ontario were from latitudes north of the major catfish-producing States of Alabama, Arkansas, Louisiana, and Mississippi (Dolbeer 1991). Forty percent of these 227 winter recoveries are from 1° blocks of latitude and longitude that intersect the Gulf Coast and another 22 percent are from degree blocks that intersect the main stem of the Mississippi River. Analysis of 5,589 band recovery records for the period 1923–1988 (Dolbeer 1991) revealed that southward movement from areas north of latitude 42° N occurs primarily in October and November. Cormorants of all ages are at their greatest median distance from northern nesting areas—about 1,900 kilometers (1,200 miles)—from December through March.

Cormorants nesting in Canada and the northern United States from Alberta to the Gulf of St. Lawrence migrate in winter primarily to the southern United States between Texas and Florida. There is considerable mixing and overlap in winter of nesting populations from widely divergent areas. From 38 to 70 percent of the birds from Saskatchewan through the Great Lakes region winter in the lower Mississippi Valley (States of Arkansas, Louisiana, and Mississippi) as do 10 percent of the birds from such disparate areas as Alberta and the New England coast (Dolbeer 1991). In other words, the major catfish-producing States of the lower Mississippi may be envisioned as lying at the apex of an inverted triangle, with cormorants from a 3,000 kilometer (1,860 mile) expanse of breeding range being funneled into the region in the winter by topographic features and the flow of the major rivers. In commenting on this funneling effect,

Jackson and Jackson (1995) noted that ''It is a most unfortunate coincidence that the very heart of the catfish-farming industry is located in the Mississippi Delta at the confluence of the Arkansas and Mississippi rivers.''

Our knowledge of double-crested cormorant population trends before 1959 is based on fragmented and largely anecdotal accounts from scattered portions of the range. Syntheses of much of this information (Hatch 1995, Weseloh et al. 1995, and Jackson and Jackson 1995) reveal the following general patterns: (1) by 1900, cormorant numbers had been reduced, and their range possibly restricted, by human persecution and the extensive drainage and degradation of natural wetlands; (2) the widespread construction of reservoirs and impoundments (beginning in the 1920s), in concert with sport fish stocking programs and the creation of refuges and other conservation lands (beginning in the 1930s), had beneficial effects on cormorant numbers; (3) the widespread use of DDT and other pesticides (beginning in the 1940s) had devastating effects on cormorant reproductive success, with the result that populations reached their lowest point in the mid-1970s; (4) the ban on DDT in 1972 and the general decrease in levels of environmental contamination, in concert with development of the catfish industry in the mid-1970s, created a favorable environment for the growth of cormorant populations.

Quantitative information on double-crested cormorant population trends is available from three sources: (1) Breeding Bird Survey data (1966–1994), (2) Christmas Bird Count data (1959–1988), and (3) published accounts of censuses of breeding colonies. Trend information from these sources is discussed in the following paragraphs:

(1) Between 1966 and 1994, the continental breeding population increased at an estimated rate of 6.1 percent/year (Sauer et al. 1996a). The very high rate of growth in the early years (13.0 percent/year), and to a lesser extent for the entire period, is partly an artifact of the extremely small population in the early years of the survey period (late 1960s and early 1970s). Compared to the earlier (1966–1979) time period, the growth of the continental and Canadian populations appears to have slowed appreciably in the later (1980–1994) period; however, the U.S. population has continued to show a significant rate of increase in the 1980s and 1990s, apparently due primarily to the continued rapid growth of populations in the mountains and plains States. The only significant declines noted were in the West Coast region (1966–1994) and in North Dakota (1980–1994), although the West Coast trend appears to be contradicted by rather dramatic site-specific increases in British Columbia, Washington, and California (Carter et al. 1995). Most of the recent increase in numbers has occurred within the known historical breeding range (Hatch 1995).

(2) Between 1959 and 1988, the continental wintering population increased at an average rate of 7.3 percent/year (Sauer et al. 1996b); significant increases were registered for 17 of the 20 States or Provinces for which data were available. Trends are available for 9 of the primary catfish-producing States; 6 of these States (Alabama, Louisiana, Mississippi, Oklahoma, Texas, and Virginia) have trends (median 16 percent, range 12–19 percent) that are well above the continental average. Most of the localities in the mid-South for which information is available show dramatic population increases between the mid-1970s and the early 1990s, with the trends paralleling a similar magnitude of growth in the area of catfish ponds in the region during the same period (Jackson and Jackson 1995).

(3) Rather dramatic increases in breeding pairs are documented at colonies in the Great Lakes (Weseloh et al. 1995), the St. Lawrence River and associated waters (Chapdelaine and B°dard 1995), New England (Krohn et al. 1995), the West Coast (Carter et al. 1995), and elsewhere (Weseloh et al. 1995). The trends documented by these studies generally parallel those from the Breeding Bird Survey and the Christmas Bird Count.

Foraging Behavior of the Double-crested Cormorant at Aquaculture Facilities

Daily Movements and Activity Budgets

In the Mississippi Delta, cormorants fly an average of 16 kilometers (25 miles) from their night roosts to feeding sites. Each bird spends about 18 percent of daylight hours feeding; 88 percent of their foraging is done at catfish ponds and 12 percent near roost sites. The average cormorant forages for 60 minutes each day, but spends just 20 minutes underwater in actual pursuit of fish (King et al. 1995).

Feeding Rates

Feeding rates may be dependent on the size and abundance of the available fish and the metabolic demands of the birds, and can be quite variable. Actively feeding cormorants in commercial catfish ponds capture an average of about 5 fish/cormorant/hour (Stickley 1991, Stickley et al. 1992), but can vary from 0–28 (Schramm et al. (1984). Partly because of this variability, the rate of 5 fish/cormorant/hour reported by Stickley et al. (1992) is highly skewed; the median was only 2 fish/cormorant/hour, and the mean was equaled or exceeded at only 3 (21 percent) of the 14 ponds studied. Stickley et al. (1992) did not find a significant relationship between the mean number of cormorants present and the number of catfish consumed, but ponds with 40 or more cormorants generally had a feeding rate of 1 or fewer fish/cormorant/hour. Similarly, cormorant feeding rates were not related to the density of fingerling catfish, density of all catfish (all size classes combined), or mean length of fish.

Diet Composition

Cormorants eat a wide variety of prey items, and there is thus a great deal of variation in prey composition, both geographically and seasonally. Nearly all of the published information on diet composition at aquaculture facilities has been gathered in the vicinity of catfish farms in the southeastern United States (Bivings 1989, Conniff 1991, Glahn and Stickley 1992, Glahn et al. 1995, and Glahn and Brugger 1995). These studies show that, among birds actively feeding on catfish ponds, the average proportion of catfish in the winter diet (by number) is most commonly in the range of 50–55 percent. The proportion varies seasonally from less than 30 percent in October and November to more than 80 percent in February, March, and April.

Prey Size

Although cormorants are capable of taking catfish up to 42 centimeters (16 inches) in length (Campo et al. 1993), studies repeatedly have shown that the vast majority of catfish caught by cormorants at commercial facilities are in the range of 7–20 centimeters (3–8 inches), with most averaging about 10–15 centimeters (4–6 inches) (Schramm et al. 1984, Stickley 1991, Stickley et al. 1992). This range of prey sizes is remarkably close to that of prey taken by cormorants in natural freshwater habitats. In five such studies (Durham 1955, Hirsch 1986, Haws 1987, Hobson et al. 1989, Campo et al. 1993), prey size ranged from 6–21 centimeters (2–8 inches), with a median value of about 12 centimeters (5 inches).

Prey Preferences

Lacking a precise knowledge of the species composition and size distribution of the prey population, it is impossible to make definitive

statements about prey preferences. However a few tendencies are apparent. For example, the 10–15 centimeter (4–6 inch) fingerling catfish preferred by cormorants in one study represented about 64 percent of the catfish (by number) in the ponds (from Stickley et al. 1992), suggesting that the birds were merely preying on the most readily available fish. In this same study, 1 of the 14 ponds contained gizzard shad in addition to catfish. Nineteen shad were consumed for every catfish eaten, even though the pond contained about 5,100 fingerling catfish/hectare (2,100/acre). The apparent preference for gizzard shad in this instance may be related to their being more easily caught, handled, and swallowed by cormorants (the mean handling time for catfish was 6–7 times greater than that of gizzard shad).

Daily Food Consumption Rates

Estimates of daily food consumption rates of cormorants at or in the vicinity of aquaculture facilities in the southeastern United States vary widely, from 208–504 grams (7–17 ounces, or 0.4–1.1 pounds) (Schramm et al. 1984, Schramm et al. 1987, Bivings et al. 1989, Conniff 1991, Brugger 1993, Glahn and Brugger 1995). The most widely accepted figure is about 320 grams (11 ounces, or 0.7 pounds) of fish/day, of which about one-half (or 160 grams [5.5 ounces, or 0.35 pounds]) would be catfish (Brugger 1993).

Impacts of Double-Crested Cormorants on Aquaculture

With the exception of catfish, quantitative accounts of the impacts of cormorants on freshwater aquaculture stocks generally are lacking. The fairly large body of literature that has developed in the past 12 years represents an attempt to assess the impacts of cormorants on the commercial catfish industry. Synopses of the pertinent literature are given in the following paragraphs.

In the past, cormorants have been reported only infrequently at fish hatcheries. For example, questionnaire surveys conducted in 1977 (Scanlon et al. 1979) and 1984 (Parkhurst et al. 1987) indicate that cormorants were considered to be problems at only 4–5 percent of these facilities nationwide. Of the more than 90 other (including non-avian) species mentioned as predators, 45–50 percent were listed more frequently than cormorants. Purported instances of cormorant damage to hatchery fish in Texas (Dukes 1987) include the loss of 90 percent of the smallmouth bass (*Micropterus dolomieui*) 2-year-old brood stock at the Jasper facility.

The frequency of occurrence of cormorants at a given catfish pond is a function of many interacting factors, including: (1) size of the regional cormorant population; (2) the number, size, and distribution of catfish ponds; (3) the size distribution, density, health, and species composition of fish populations in the catfish ponds; (4) the number, size, and distribution of ''natural'' wetlands in the immediate environs; and (5) the size distribution, density, health, and species composition of ''natural'' fish populations in the surrounding landscape. Cormorants are adept at seeking out the most favorable foraging sites. As a result, cormorants rarely are distributed evenly over a given region, but rather tend to be highly clumped or localized. For example, in 27 weekly surveys at 50 catfish ponds in Humphreys County, Mississippi, 1987–1988, cormorants were observed at only 9 of the 50 ponds and only on 14 occasions (Hodges 1989). Thus, it is not uncommon for many fish farmers in a region to suffer little or no economic damage from cormorants, while a few farmers experience exceptionally high losses.

Cormorants clearly respond in a positive way to the presence of shallow-water ponds stocked with high densities of easy-to-capture prey fish. For example, within two weeks of stocking 2 ponds in Hendry County, Florida, with 5–20 centimeter (2–8 inch) fingerling catfish, 12 cormorants were feeding in the ponds and roosting on nearby poles. A nearby 2.5 hectare (6 acre), 2.5-meter (8-foot) deep pond, stocked with 75,000 3–8 centimeter (1–3 inch) fish in August 1980, had attracted 13 cormorants by September. These birds continued to feed at the pond throughout the fall and winter, and in spring 1981 they nested in a nearby cypress dome. By November 1981, about 50 cormorants were feeding in the pond (Schramm et al. 1984). The positive response of cormorants to the presence of shallow-water ponds stocked with high densities of easy-to-capture prey fish (as illustrated above) is clearly a major factor responsible for their impacts in a variety of aquaculture situations (e.g., baitfish ponds in Minnesota, koi ponds in Missouri and elsewhere, ornamental fish ponds in Florida, and catfish ponds in the southeastern United States and elsewhere).

Assuming averages of 5 fingerling catfish consumed/cormorant/hour and 30 cormorants/pond (a constant number of feeding birds present throughout an 8-hour day), the catfish population of a typical pond in the Mississippi Delta (51,000 fish/hectare in a 8-hectare pond, which is equivalent to 20,650 fish/acre in a 20-acre pond) would be halved in 167 days (Stickley et al. 1992). However, if actual values were nearer the median values of 2 fish/cormorant/hour and 15 birds/pond (from Stickley et al. 1992), the number of days required for the cormorants to reduce the population by half would be increased to 850 days (a 5-fold increase).

Of 281 catfish farmers queried on the Mississippi Delta in 1988 (Stickley and Andrews 1989), 87 percent felt that they had a bird problem. Moderate to heavy cormorant activity (defined as at least 25 birds/day) was reported by 57 percent of Delta farmers. Losses to birds (harassment costs plus value of fish lost) were estimated at $5.4 million (3 percent of total sales).

Overall, there appears to be little conflict between cormorants and the food- or game-fish industry in Florida (Brugger 1992), but losses of food fish, primarily catfish, can be locally severe (Brugger 1995); for example, cormorants were responsible for the loss of up to 50 percent of the fingerling catfish in open 0.125 hectare (0.31 acre) ponds during 1991 at the University of Florida.

Although fish of commercial value made up only a small percentage of the diet of cormorants collected in the vicinity of aquaculture facilities in central and southeast Arkansas from mid-October to early December, the finding of a few fish of very high value (e.g., grass carp with wholesale value of about $4 and koi worth $5–10 each) suggests that cormorant depredations can be locally or seasonally severe.

On the Mississippi Delta, cormorants consumed an estimated 18–20 million catfish during the winters of 1989–1990 and 1990–1991, which was equivalent to 842–939 metric tons (928–1,035 short tons, or 1.86–2.07 million pounds, or 844–939 thousand kilograms). Based on the cost of replacing these fish, annual losses to the catfish industry were estimated at $1.8–2.0 million, which corresponds to about 4 percent of the estimated catfish standing crop each year. Although losses were documented over a six-month period, the majority (about 64–67 percent) occurred in February and March (Glahn and Brugger 1995).

At catfish farms in Oklahoma (with about 324 hectares [800 acres] of surface water in production) in 1993, cormorants consumed an estimated 7,196 kilograms (15,900 pounds, or 7.9 short tons) of catfish valued at $14,000–36,000 (depending on size of the fish consumed), or about 3–7 percent of Oklahoma catfish sales (Simmonds et al. 1995).

Cormorant Depredation Permits

Depredation permits to take double-crested cormorants at commercial aquaculture facilities have been issued by the Fish and Wildlife Service since 1986. Composite data for a recent two-year period (1993–1994) show that about 8,200 cormorants were taken each year by 2,261 permit holders. Cormorants represented the majority (about 57 percent) of the total number of birds killed nationwide; two-thirds of the cormorants were taken in the southeastern region of the United States, with substantial numbers also taken in the southwest and the upper Midwest.

Between 1989 and 1996, the number of permits issued to take double-crested cormorants in the southeastern United States more than quadrupled, from 50 to 215 (Coon et al. 1996). The reported take of 4,000–8,000 birds annually has had no noticeable effect on the size of the regional wintering population.

Mastrangelo et al. (1995) noted that the reported take never exceeded 68 percent of the authorized take and attributed this to the frightening effect that lethal control has on bird behavior. Hess (1994) described a recent study in which catfish farmers at three complexes in Mississippi were authorized (under Fish and Wildlife Service permits) to remove as many as 2,500 cormorants in a 19-week period. Participants were supplied with ammunition and encouraged to kill as many birds as allowed by the permit. The fact that only 290 birds had been killed by the end of the project was attributed to a learned behavior by the birds to avoid areas where they might be shot (Hess 1994).

Environmental Consequences of This Rule

Cormorant Population

The depredation order is expected to result in a moderate increase in the number of double-crested cormorants taken at aquaculture facilities. The impact is expected to be localized (e.g., possible reductions in the size of wintering populations in the immediate vicinity of catfish farms). To calculate the potential maximum harvest, we can assume that 42 cormorants (the average number reported taken by holders of depredation permits in the southeastern United States, 1989–1995; from Coon et al. 1996) will be shot at each of the about 2,200 catfish farms in the United States. The resultant annual take of 92,400 birds will represent about 5–10 percent of the continental population. This level of take will be more than offset by the recruitment of young birds into the population; a reproductive success of 1.7–3.2 young/nest (Duffy 1995) will equate to a minimum recruitment, at current population levels, of 612,000 young into the population each year. In reality, the action is expected to result in only a modest increase in the number of double-crested cormorants taken at aquaculture facilities.

Socio-Economic

The rule is expected to reduce the direct economic losses caused by cormorants at commercial aquaculture facilities. It also will enhance the effectiveness of current nonlethal control programs, thus reducing overall damage control costs to producers. The depredation order will reduce paperwork and costs associated with administering the current permit system and will promote quicker and more efficient depredation control operations by shifting responsibility to the individual aquaculturists. The depredation order will demonstrate cooperation between the Federal agency responsible for protecting and enhancing wildlife (Service), the Federal agency responsible for dealing with wildlife damage issues (WS), and the individual producers in dealing with a problem that has the potential to expand far beyond the wildlife management arena.

Other Fish-Eating Birds

Although the action does not authorize the taking of other fish-eating birds, it is possible that a few birds could be taken accidentally on occasion. The two species that are most likely to be confused with the double-crested cormorant are the neotropic cormorant (*Phalacrocorax brasilianus*) and the anhinga (*Anhinga anhinga*). These species have foraging habits very much like those of the double-crested cormorant and may occur on or in the vicinity of catfish ponds in the Gulf Coast States. The likelihood of other fish-eating birds being mistaken for double-crested cormorants and shot accidentally is not expected to increase above that which presently occurs . However, because of a projected increase in the number of producers conducting lethal control operations for cormorants, it is possible that there will be a slight to moderate increase in the actual number of other fish-eating birds (especially neotropic cormorants and anhingas) taken accidentally. Any negative effects on these species would be extremely localized, and long-term impacts on populations would be unlikely.

Endangered and Threatened Species

Negligible impacts to endangered or threatened species are expected under the action. Few endangered or threatened species have ever been taken by aquaculturists with depredation permits. The likelihood of endangered or threatened species being taken by accident is not expected to increase.

Summary of Public Comments

On June 23, 1997, the Service published a proposed rule (62 FR 33960) to establish a depredation order for the double-crested cormorant. Three hundred and thirty letters or postcards were received from 347 individuals, businesses, organizations, agencies, and elected officials during the 60-day public comment period. Some parties submitted multiple letters, other letters were signed by more than one entity, and letters from two organizations were supplemented by form letters or postcards submitted by individual members.

For consistency and standardization in analyzing the comments, each of the following examples was regarded as one distinct set of comments: (a) 1 letter from an aquaculture facility signed by 2 individuals, (b) 5 identical letters from 5 different employees of an aquaculture facility, (c) 2 different letters (signed by the same individual) from 1 aquaculture facility, (d) 3 different letters from a private citizen, (e) 2 identical letters from an aquaculture-related business signed by 2 different individuals, (f) 1 letter from the Louisiana Catfish Farmers Association supplemented by 42 identical letters signed by individual members of LCFA, (g) 1 letter from the Catfish Farmers of Mississippi supplemented by 112 postcards supporting the position of CFM and signed by individual members, (h) 7 identical letters from an aquaculture facility signed by 7 different individuals, (i) 2 different letters from an elected State official, (j) 1 letter from the National Audubon Society co-signed by representatives of 6 other environmental organizations (i.e., American Bird Conservancy, Center for Marine Conservation, Defenders of Wildlife, Environmental Defense Fund, Izaak Walton League of America, and World Wildlife Fund), and (k) 1 letter signed by 13 different Congressmen.

Thus, the 330 letters are considered to represent 161 distinct sets of comments distributed among segments of the public as follows: private individuals (52), aquaculture-related businesses (50), aquaculture organizations (21), environmental organizations (18), State agencies (13, representing 10 States),

Federal agencies (5), Federal elected officials (1), State elected officials (1).

The proposed action was supported by 13 members of the U.S. House of Representatives (Representatives from the states of Alabama, Arkansas, Louisiana, and Mississippi), who emphasized the economic importance of the aquaculture industry in their States and the potentially devastating impacts of cormorants on that industry.

The action was supported (or at least not opposed) by State agencies in 9 of the 10 States from which comments were received: Alabama, Arkansas, Illinois, Louisiana, Mississippi, North Carolina, Oklahoma, Texas, and Vermont. The Missouri Department of Conservation questioned why the current permit procedure was inadequate, and noted that if the depredation order were implemented ''it will be important to monitor control records to evaluate changes in numbers, locations, and dates that cormorants are taken.''

The WS—a program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service and the only Federal agency that submitted comments—supported the action, with the recommended addition of several items (*e.g.,* include roost sites, western States, control on breeding grounds, sport fisheries, mariculture facilities, and unintentional or ''incidental'' take of similar species) and recommended deletion of the certification requirement.

The proposed rule received overwhelming support from aquaculture-related businesses and organizations. Many of the comments received from this group expressed concern that the scope of the depredation order was not broad enough (*e.g.,* expand geographically, include additional species, add roost control, implement widespread population control).

Among the scientific and environmental organizations commenting on the proposed action, it was supported by the Wildlife Management Institute and the Arkansas Wildlife Federation. The action was opposed (or at least not supported) by 12 national organizations and 7 State or local organizations. A sample of the concerns raised by these opponents includes the following: lack of good scientific data on magnitude of economic impacts; non-lethal techniques have not been adequately implemented; will remove incentives for using non-lethal control; will result in unintentional take of non-target birds; adequate methods (*e.g.,* non-lethal and permits) are already available; effects on cormorants and other species should be monitored; geographic scope is unnecessarily broad; minimize effects on non-target species (educational materials); does not address spatially-localized nature of problem; does not address seasonal nature of problem; and sets a dangerous precedent for other bird species.

Written comments received during the comment period are discussed in the following summary. Comments of a similar nature are grouped into general issues. These issues and the Service's response to each are discussed below.

Issue 1: Numerous individuals and a few organizations, including the Bass Anglers Sportsman Society (BASS), commented that the depredation order should be expanded to include situations in which double-crested cormorants commit depredations on sport fish populations in public waters.

Service Response: Based on a review of the best available science, the Service concludes that cormorants generally have only minor direct impacts on sport fish populations (Trapp *et al.* 1997). Cormorants are just one of myriad biotic and abiotic factors, including water quality, aquatic habitat, natural predation, and angler take, that can affect sport fish populations. However, the Service also recognizes that there may be highly localized situations in which cormorants can potentially impact sport fish populations. These are generally situations in which sport fish are concentrated in extremely high densities, often by human activities (*e.g.,* massive releases of hatchery-reared fingerlings, intensively managed put-and-take fisheries, and temporary congregations of fish at nearshore spawning sites). The Service currently does not issue cormorant depredation permits to benefit sport fish populations in public waters, but is exploring potential options that could be used to deal on a case-by-case basis with localized cormorant predation when it has been proven to be a significant problem. Two possible options include: (1) Modification of release practices for hatchery-reared fish to reduce their vulnerability to cormorant predation, and (2) harassment of depredating birds.

Issue 2: Wildlife Services, as well as a majority of aquaculturists, requested that the depredation order be expanded to allow lethal take in conjunction with roost dispersal activities.

Service Response: Studies conducted in the Mississippi Delta by WS over the past 6–7 years indicate that coordinated roost harassment/dispersal (without lethal take) is a promising technique for diverting roosting cormorants away from the immediate vicinity of aquaculture facilities. Typically, the effort has involved coordinated teams of fish farmers harassing birds as they return to night roosts by shooting cracker shells, screamers (whistlers), and other nonlethal noise-making devices. The major objective of coordinated roost harassment is to move birds from the interior Delta (*i.e.,* the location of major catfish aquaculture facilities) to sites along the Mississippi River.

During the winter of 1996–1997, WS monitored the movements of 50 cormorants outfitted with radio transmitters and examined the effects of a Delta-wide roost harassment effort (Tobin and King 1997). Harassment substantially reduced the fidelity of cormorants to roost sites (*e.g.,* 11 percent of birds returned to the roost within 48 hours versus 81 percent at control roosts). Compared to birds from control roosts, birds from roosts that were harassed tended to move long distances between successive night roosts (*i.e.,* 0 and 26 km, respectively) and travelled further to feed (*i.e.,* 22 and 31 km, respectively). Ninety-six percent of the birds that roosted in the interior Delta foraged there the next day compared to only 7 percent of birds that roosted along the Mississippi River, and catfish comprised 80 percent of the diet of birds from Delta roosts versus 20 percent of the diet of birds from river roosts. The evidence clearly shows that the roost harassment efforts conducted by WS in conjunction with commercial fish farmers has been successful in dispersing roosting cormorants away from the immediate vicinity of aquaculture facilities on the interior Delta, and is an effective nonlethal means for reducing cormorant damage at catfish farms.

Wildlife Services contends that the ability to shoot double-crested cormorants at their night roosts in conjunction with harassment would make it much easier to disperse them from such areas, and would probably increase the effectiveness of the technique (*e.g.,* increased dispersal distance, longer period of roost abandonment). However, the Service is not aware of any documented evidence that the addition of lethal take would significantly increase the efficacy of roost harassment.

Roost dispersal/harassment efforts such as those conducted on the Mississippi Delta can continue unabated under auspices of WS. The Service will consider applications for depredation permits for lethal take of double-crested cormorants at roosts on a case-by-case basis. The Service will also consider a request for a depredation permit to take cormorants at roost sites in conjunction

with a research study designed to determine if lethal take significantly increases the effectiveness of roost harassment.

Issue 3: Conflicting comments were received on the geographical focus of the depredation order. Aquaculturists requested that the geographical extent of the order be expanded, citing actual or potential problems in States (*e.g.,* western U.S.) not covered by the proposed rule. Environmentalists noted a lack of documented evidence of problems in some of the geographical areas (*e.g.,* northcentral and northeastern U.S.) included in the proposed rule.

Service Response: In the proposed rule, the Service proposed that the action be applicable to 32 States in the eastern U.S. Based on the public comments received, the Service re-evaluated the need for a depredation order based on documented evidence of the magnitude of the problems that double-crested cormorants posed to commercial aquaculture in individual States.

The Service concludes that double-crested cormorants pose significant problems to the commercial aquaculture industry in the following 12 States in the southcentral and southeastern U.S.: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. This finding is based on the following lines of evidence: (1) Existing commercial catfish industry is sizeable, with predicted continued growth; (2) sizeable populations of migrant or wintering double-crested cormorants, with predicted continued growth; (3) documented evidence of economic losses due to cormorant predation on catfish (Stickley and Andrews 1989, Brugger 1995, Glahn and Brugger 1995, Simmonds *et al.* 1995); (4) history of issuing aquaculture depredation permits to take substantial numbers of double-crested cormorants (Coon *et al.* 1996); (5) predicted increase in conflicts between catfish industry and cormorants due to projected expansion of industry and growth of cormorant population; and (6) potential conflicts between cormorants and other aquaculture industries, including baitfish, ornamental fish, and tilapia (Bivings *et al.* 1989).

The Service also finds that double-crested cormorants pose significant problems to the commercial aquaculture industry in the State of Minnesota. Within the northcentral region of the U.S. (encompassing eight States), Minnesota accounts for 67 percent of all aquaculture depredation permits issued, 93 percent of all cormorants reported taken, and 82 percent of all economic losses claimed. A total of $388,750 in losses due to double-crested cormorant predation was claimed by Minnesota aquaculturists in 1997. Most of the aquaculture conflicts with cormorants in Minnesota involve the baitfish industry, although a variety of other stocks are also involved (U.S. Fish and Wildlife Service, unpubl. data).

Individual aquaculture depredation permits will still be available on a case-by-case basis for dealing with damages caused by cormorants at commercial aquaculture facilities in States not covered by the depredation order. The Service will also consider adding additional States to the depredation order upon receipt of evidence that double-crested cormorants are responsible for significant economic losses at aquaculture facilities.

Issue 4: Wildlife Services thought that it was excessive and burdensome to require aquaculturists to contact one of its State offices to obtain certification of non-lethal harassment activities prior to implementing lethal control activities under the depredation order.

Service Response: Prior to implementing the lethal control activities authorized by this rule, an aquaculturist must obtain a statement from WS certifying that his or her facility has a cormorant depredation problem and that lethal take of cormorants is necessary to supplement existing non-lethal harassment efforts. This requirement does not differ substantially from the certification statement that the Service requires before issuing a depredation permit. The Service considers this a reasonable and prudent measure that will help to ensure that (1) the privileges and purposes of the depredation order are not abused; and (2) non-lethal harassment remains an essential part of integrated cormorant management activities at aquaculture facilities.

Issue 5: Both aquaculturists and environmentalists stressed the need for an accurate system for documenting the number of cormorants taken under the depredation order, and several environmental organizations recommended that the reporting requirements be strengthened.

Service Response: The rule requires that any person exercising the privileges of the depredation order must keep and maintain a monthly log recording the date and number of all birds killed each month under this authorization, that the log must be maintained for a period of three years (and that three previous years of takings must be maintained at all times thereafter), and that the log be made available to Federal and State wildlife enforcement officers upon request. Any mandated reporting requirement would be difficult to enforce, and the submitted information difficult to interpret due to non-reporting bias. The Service intends to supplement the monthly log of cormorants shot with phone or mail surveys of a stratified random sample of aquaculturists. This survey is anticipated to provide more reliable and useful information on levels of take than reports submitted by individual aquaculturists. These surveys are also subject to OMB approval under the Paperwork Reduction Act of 1995.

Issue 6: Aquaculturists indicated a desire for a provision to allow the unintentional (or ''incidental'') take of similar species, while environmentalists pointed out that any such take would be a potential problem.

Service Response: Control actions taken under this order can be effectively implemented without killing other species of birds. Therefore, authorization to take is limited to double-crested cormorants. To the extent a person takes a bird or birds other than double-crested cormorants, it is a violation of the MBTA. In that event, the Service will exercise its discretion in determining what enforcement action, if any, is appropriate.

The Service will attempt to minimize the unintentional take of non-target species by (1) restricting shooting to daylight hours; and (2) working with WS and nongovernmental organizations to develop educational identification materials.

Issue 7: Aquaculturists interpreted the proposed rule as applying only to the owners of aquaculture facilities, which would make on-site implementation of the depredation order much more restrictive than that of existing depredation permits.

Service Response: The rule was intended to be applicable to landowners, operators, and tenants actually engaged in the production of commercial freshwater aquaculture stocks (plus their employees or agents). The wording of the depredation order has been changed to more accurately reflect this fact.

Issue 8: Many aquaculturists suggested that the depredation order be expanded to include other species of fish-eating birds, such as egrets and herons, that cause damage at aquaculture facilities.

Service Response: Of the approximately 46 species of fish-eating waterbirds that occur in freshwater habitats of the contiguous U.S., the

double-crested cormorant is by far the greatest economic threat to commercial aquaculture because of its abundant and increasing population, its attraction to certain types of aquaculture facilities, its habit of foraging in large flocks, and its ability to consume large quantities of fish daily (i.e., about 320 grams, or 0.7 pounds). This is reflected in the distribution of aquaculture depredation permits over the past decade. Nationwide, double-crested cormorants have accounted for about 57 percent of the individual birds of all species reported taken under aquaculture depredation permits annually; this species is an even greater problem in the southcentral and southeastern U.S., where it has represented about 65 percent of all individuals taken at aquaculture facilities.

Other species frequently cited as causing damage at aquaculture facilities include the great blue heron (*Ardea herodias*), great egret (*Casmerodias albus*), and black-crowned night-heron (*Nycticorax nycticorax*). Based on a review of the available information, the Service does not believe that inclusion of these or any other species of fish-eating birds in the depredation order is warranted at this time. Individual depredation permits will still be available on a case-by-case basis for dealing with damages caused by other species of fish-eating birds.

Thus, while aquaculturists may take unlimited numbers of double-crested cormorants under the depredation order without need of a permit, they will still be required to obtain a depredation permit to take any other species that may be causing economic damages.

Issue 9: Aquaculturists noted that a prohibition against removing dead cormorants from the aquaculture facility at which they were killed would present logistical and potential health problems.

Service Response: The Service reviewed this issue and found no valid reason for prohibiting off-site disposal of carcasses. The depredation order has been reworded to allow both on-site and off-site burial or incineration of dead cormorants.

Issue 10: Many respondents in the aquaculture community felt that State agencies should have more authority in the management of aquaculture-cormorant depredation conflicts.

Service Response: There is a long tradition of Federal-State cooperation in the management of migratory bird populations. Typically, the Service issues broad regulatory guidelines (such as this rule) while individual States retain the authority to implement regulations that are more, but not less, strict than the Federal regulations. In this regard, it is important to note that the depredation order does not authorize the killing of cormorants contrary to the laws or regulations of any State, and that the privileges of the depredation order may not be exercised unless the person possesses any appropriate State permits that may be required. The Service is committed to working closely with State (as well as other Federal) agencies in developing and implementing long-term solutions to the aquaculture-cormorant problem.

Issue 11: Widespread population management of the double-crested cormorant, including actions on the breeding grounds, was advocated by aquaculturists and WS to reduce the size of the North American population.

Service Response: A widespread, coordinated effort to reduce the cormorant population would be extremely labor-intensive and expensive, with little likelihood of long-term success. Furthermore, there is no guarantee that regional reductions in cormorant populations would reduce impacts at individual aquaculture facilities. The purpose of the depredation order is to provide individual aquaculturists an opportunity to deal with site-specific cormorant depredation problems in a timely and effective fashion, not to achieve a broadscale reduction in the continental double-crested cormorant population.

Issue 12: Aquaculturists noted that methods of lethal take other than shooting (such as netting and traps) may be effective in killing cormorants, and that such methods should be authorized in the depredation order.

Service Response: To the Service's knowledge, shooting with firearms has been the only method employed for the lethal take of cormorants in aquaculture settings. In the event that other effective and safe methods of taking cormorants are developed, the Service will consider adding these to the depredation order.

Issue 13: Aquaculturists requested authorization to use decoys, vocalizations, and other lures to bring cormorants into closer gun range.

Service Response: Anything that makes it easier to kill depredating double-crested cormorants by bringing them into closer range is considered beneficial to the purposes of the depredation order. Consequently, language has been inserted allowing the use of such devices.

The intent of this provision is not to lure cormorants onto aquaculture facilities from the surrounding landscape (which would clearly be counter-productive), but to make it easier to shoot birds that are already present and committing or about to commit depredations on fish stocks.

Issue 14: Some aquaculturists suggested that the depredation order be expanded to include mariculture facilities located in brackish and saltwater situations.

Service Response: In the past decade, the Service has issued a very limited number of cormorant depredation permits to mariculture operations. The problems caused by cormorants to mariculture facilities are not well documented, and are not deemed to be of sufficient magnitude to warrant their inclusion in the depredation order at this time. Mariculture operators experiencing significant problems due to cormorant predation can still apply for individual depredation permits.

Issue 15: Efforts should be made to monitor the numbers of cormorants taken under the depredation order, as well as trends in cormorant populations.

Service Response: In addition to gathering information on the numbers of cormorants shot (see response to Issue 5), the Service intends to monitor potential impacts of the depredation order on regional and continental cormorant populations by means of: (a) Breeding Bird Survey and Christmas Bird Count trend data; (b) breeding colony survey data; (c) counts of cormorants on waterfowl breeding pairs surveys; and (d) analysis of band recovery data.

Issue 16: The National Audubon Society et al. and other environmental groups argued that non-lethal control techniques were effective in alleviating conflicts between cormorants and commercial aquaculture and should remain a high priority, while also expressing concern that the depredation order would effectively discourage aquaculturists from investing in non-lethal, long-term solutions to depredation.

Service Response: The Service has long recognized non-lethal control as the preferred alternative for dealing with cormorant damage complaints (Trapp et al. 1995), as has WS (Accord 1995). Of the many non-lethal (exclusionary and frightening) devices tested over the last decade, none has proven totally effective in deterring cormorants from aquaculture facilities. Typically, birds learn to avoid or ignore these devices in a relatively short period of time through habituation. Some form of behavioral reinforcement (such as limited lethal take) helps to reinforce and prolong the effectiveness of non-lethal deterrents. In reality, then, the take of limited numbers of birds will always have to be considered as a viable option in an effective, integrated

strategy for minimizing the deleterious effects of cormorants on aquaculture.

The depredation order does not absolve aquaculturists from the responsibility of employing non-lethal techniques (see response to Issue 4); rather, it simply provides them with another tool for application in an integrated management approach designed to reduce problems caused by cormorants at their facilities.

The Service believes that the aquaculture industry shares responsibility for alleviating bird depredation problems and that the industry should aggressively promote: (1) The design of new facilities (and the retrofitting of old ones where economically feasible) that exclude or repel cormorants; and (2) the use of nonlethal deterrents.

The Service also encourages WS to continue an aggressive research effort to develop effective nonlethal means of alleviating bird depredation problems in aquaculture.

Issue 17: The Ornithological Council and other scientific and environmental groups stated their opinion that there is very little good scientific data and no consensus on the extent and magnitude of the cormorant predation problem at commercial fish ponds.

Service Response: The Service believes that an objective review of the available scientific information (as presented in the **SUPPLEMENTARY INFORMATION** section) provides an accurate indication of the actual and potential problems caused by cormorants at commercial aquaculture facilities, as well as reliable figures on the magnitude of economic losses. In reviewing Foraging Behavior of the Double-crested Cormorant at Aquaculture Facilities, the Service synthesized data from 17 peer-reviewed scientific papers to summarize what is currently known about daily movements and activity budgets, feeding rates, diet composition, prey size, prey preferences, and daily food consumption rates. This information provides the basic background for understanding the nature of potential interactions between cormorants and aquaculture.

In assessing Impacts of Double-crested Cormorants on Aquaculture, the Service provided synopses of 12 peer-reviewed scientific papers that furnished information of a quantitative nature on actual or potential impacts. For the catfish industry, economic losses in the Mississippi Delta have been calculated by different methods as about 3 percent of total sales (Stickley and Andrews 1989) or about 4 percent of the estimated standing crop (Glahn and Brugger 1995), and in Oklahoma as about 3–7 percent of sales (Simmonds et al. 1995). It is important to recognize that these are average values. Cormorants rarely are distributed evenly over a given region, but rather tend to be highly clumped or localized. Thus, economic losses also tend to be clumped or localized, with a minority of growers suffering a majority of losses in a given year. Since the distribution and severity of economic losses is unpredictable from year to year, it is prudent to provide all aquaculture producers in the affected States an opportunity to avail themselves of the privileges of the depredation order.

The Service finds no reason to question the validity or conclusions of the scientific studies that it has reviewed, but acknowledges that others might interpret the same data differently. Although it agrees that better scientific information is always desirable, the Service must make management decisions using the best information available while relying on accepted ecological and wildlife management principles. The Service will continue to review new scientific studies documenting the impacts of double-crested cormorants on commercial aquaculture stocks as they become available.

Issue 18: The proposed action appeared to be an application for recreational hunting to Animal People, who viewed it as a pretext to kill double-crested cormorants for sport and revenge, not because they are genuinely a threat or problem.

Service Response: The Service is not establishing a recreational hunting program. Depredation orders are an established method for dealing with situations in which migratory birds are causing significant damage to human interests. Damages to freshwater commercial aquaculture stocks due to cormorant predation have been well documented in the scientific literature (see response to Issue 17).

A decision to propose establishment of a depredation order was made only after: (1) determining that there was documented scientific evidence that cormorants were indeed a source of severe economic losses at aquaculture facilities; and (2) evaluating 12 different potential management options for reducing the problem (U.S. Fish and Wildlife Service 1997). The depredation order was determined to be the best alternative. The depredation order authorizes the take of double-crested cormorants, under limited conditions, for the express purpose of reducing economic impacts to aquaculture facilities. This rule will allow aquaculturists to shoot cormorants not for fun, but because they are causing damage to commercial fish stocks.

Issue 19: Many environmental groups believed that aquaculturists should modify their ponds to incorporate the use of physical barriers and other exclusionary devices to reduce the impacts of double-crested cormorants on fish stocks.

Service Response: This would be an ideal situation if economically feasible. But the reality is that requiring aquaculturists to retrofit existing ponds to accommodate physical barriers and other exclusionary devices would create an economic hardship for small businesses and local economies. Nevertheless, the Service encourages the aquaculture industry to aggressively promote the design of new facilities (and the retrofitting of old ones where economically cost-effective) that exclude or repel cormorants.

Issue 20: Concern was expressed by one environmental group that the depredation order would allow an aquaculturist to implement lethal control of cormorants regardless of whether or not they are a persistent threat and without having to demonstrate economic impacts due to cormorant predation.

Service Response: The proposed rule and the Environmental Assessment (U.S. Fish and Wildlife Service, 1997) established that double-crested cormorants can cause severe damage at aquaculture facilities under certain circumstances, and that lethal take (in conjunction with a suite of non-lethal harassment techniques) was an appropriate depredation control action. The depredation order merely provides individual aquaculturists the opportunity to deal with site-specific cormorant depredation problems in a timely and effective manner.

Issue 21: The National Audubon Society et al. and others stated that the proposed action does not acknowledge the seasonal nature of cormorant depredation problems, and suggested that authority to take cormorants should be limited to those months when depredation is most common.

Service Response: The intent of the depredation order is to give aquaculturists the flexibility to take double-crested cormorants whenever they are present at their facilities and committing or about to commit depredations on fish stocks. The Service anticipates that the take of depredating cormorants at aquaculture facilities will be self-limiting and directly related to the numbers of birds present (e.g., catfish producers in the southcentral and southeastern U.S. will take birds

primarily in the winter months, and baitfish producers in Minnesota will take birds primarily in the summer months). Thus, while the Service acknowledges the seasonal nature of cormorant depredation problems, it does not believe that seasonal restrictions are necessary.

Issue 22: The creation of a depredation order for the double-crested cormorant establishes a dangerous precedent for other bird species and is contrary to the purposes of the Migratory Bird Treaty Act.

Service Response: The MBTA provides strong measures for the protection and conservation of migratory birds, while at the same time providing opportunities for people to use the migratory bird resource for sport, recreation, and scientific endeavors. The MBTA also provides considerable flexibility for dealing with situations where birds may come into conflict with human interests, such as the aquaculture-cormorant situation (Trapp et al. 1995).

Depredation orders have been in place for various species of migratory birds since at least 1974. Brief descriptions of each of the existing depredation orders authorizing take of designated species without need of a Federal permit follow:

Blackbirds (*Agelaius* spp., *Euphagus* spp., *Xanthocephalus xanthocephalus*), cowbirds (*Molothrus* spp.), grackles (*Quiscalus* spp.), crows (*Corvus brachyrhynchus, C. caurinus, C. ossifragus*), and magpies (*Pica* spp.) ''when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance'' (50 CFR 21.43).

Horned larks (*Eremophila alpestris*); golden-crowned, white-crowned, and other crowned sparrows (*Zonotrichia* spp); and house finches (*Carpodacus mexicanus*) ''when seriously injurious to agriculture or other interests'' in California (50 CFR 21.44).

Purple gallinules (*Porphyrula martinica*) ''when found committing or about to commit serious depredations to growing rice crops'' in Louisiana (50 CFR 21.45).

Scrub jays (western scrub-jays, *Aphelocoma californica*) and Steller's jays (*Cyanocitta stelleri*) ''when found committing or about to commit serious depredations to nut crops'' in Washington and Oregon (50 CFR 21.46).

Issue 23: Several organizations and individuals questioned why the current procedure of issuing individual depredation permits to aquaculturists experiencing problems with cormorants was not adequate.

Service Response: Because of the administrative procedures involved in the issuance of permits, there may be lag time of several weeks between an aquaculturist's request for a permit and his or her receipt of a permit authorizing lethal take; in the interim, cormorant depredations can result in significant economic losses. The depredation order will allow aquaculturists to employ lethal take as soon as it becomes apparent that cormorant depredation is a problem.

Issue 24: The Ornithological Council expressed concern that the estimated take of 92,000 double-crested cormorants annually was ''way too high,'' as it could represent a tremendous proportion of the North American population.

Service Response: The figure of 92,400 cormorants published in the proposed rule was a calculation of the potential maximum harvest, and was presented as a worst-case scenario. The Service estimates that adult and juvenile cormorants will be taken in proportion to their occurrence in the population, and that the annual take will never exceed 10 percent of the total population. Enactment of the depredation order is expected to result in only a modest increase in the number of depredating cormorants killed at aquaculture facilities under depredation permits (e.g., about 10,900 birds currently reported killed annually in the 13 affected States), and is not likely to have a detrimental impact on the population.

Cormorants are difficult to kill in large numbers, as indicated by one study (Hess 1994) in which investigators were able to kill only 11.6 percent of the number authorized (2,500) over a 19-week period. From 1989–1995, aquaculturists in the southeastern U.S. reported taking only about 65 percent of the cormorants that they had been authorized to take (Coon et al. 1996). Impacts of the depredation order on double-crested cormorants will be monitored by reviewing several independent sets of data (see responses to Issues 5 and 15).

Issue 25: The Wisconsin Society for Ornithology and others pointed out the value of bird band recovery information.

Service Response: Substantial numbers of double-crested cormorants have been banded on their breeding grounds. Recoveries of banded birds at aquaculture facilities provides valuable scientific information on the origin of birds causing depredation problems, and are potentially useful for documenting effects of the depredation order on cormorants. Aquaculturists will be encouraged to submit band recovery information to the Bird Banding Laboratory via its toll-free telephone number.

Issue 26: The Arkansas Game and Fish Commission and several other respondents recommended that non-toxic shot be required for use in all control efforts using shotguns.

Service Response: The Service agrees, and language requiring the use of nontoxic shot has been included in the depredation order.

The detrimental impacts of lead shot on waterfowl and non-target species such as bald eagles (*Haliaeetus leucocephalus*), as well as secondary impacts on the environment, are well-documented (U.S. Fish and Wildlife Service, 1986). Based on this evidence, the Service adopted regulations (50 CFR 20.108) in 1991 requiring the use of nontoxic shot for hunting waterfowl, coots, and certain other species throughout the U.S. Recent studies (e.g., Locke et al. 1991, DeStefano et al. 1992, Elliott et al. 1992, Blus 1994, Daury et al. 1994, and Franson and Hereford 1994) further document lead poisoning in a variety of migratory bird species due to the ingestion of spent lead shot.

Holders of aquaculture depredation permits in Minnesota have been required to use steel shot since 1989, while permittees in the southeastern U.S. have not heretofore been required to use nontoxic shot. Beginning in 1998, all aquaculture depredation permits issued by the Service will require the use of nontoxic shot. As producers of commodity products marketed for human consumption, aquaculturists have a vested interest in maintaining high environmental quality standards on their facilities.

The 30-day delay between publication of this final rule and its effective date is provided by the Administrative Procedures Act (5 U.S.C. 553(d)). March is a critical time for the fish farmers as the cormorants congregate heavily in the areas in question feeding in preparation for the Spring migration north. Since this a peak depredation time on catfish, the Service is providing relief to the farmers by allowing a streamlined process of dealing with cormorant depredation. Further, the Service has been directed to move on this issue by report language from the House and Senate dated October 22, 1997, mandating that the Service effectively respond to this issue by January 1, 1998. Therefore, the Service believes good cause exists to waive the 30-day effective date.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the Service prepared an Environmental Assessment, and issued a Finding of No Significant Impact. Copies of these documents are available from the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, ms 634-ARLSQ, Arlington, VA 22203.

Endangered Species Act Consideration

A consultation was conducted to ensure that actions conducted in accordance with the depredation order will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from this consultation are included in a biological opinion, which is available for public inspection at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act, Executive Order (E.O.) 12866 and Paperwork Reduction Act

Based on the economic impacts discussed in ''Impact of Double-crested Cormorants on Aquaculture,'' the Service determined under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this rule would not have a significant effect on a substantial number of small entities, which include businesses, organizations and governmental jurisdictions. This rule was reviewed by the Office of Management and Budget under E.O. 12866.

The Service examined the rule under the Paperwork Reduction Act of 1995 and found that it does contain information collection requirements. OMB has issued the following emergency information collection number 1018–0087, which expires August 31, 1998. Information collection is required to better enable the Service to assess the benefits of the depredation order on aquaculturists and to assess impacts to the double-crested cormorant population. Burden hours to aquaculturists are calculated as follows: An average of 41 birds may be taken by each of some 2,200 aquculturists per season. An estimated total of 800 hours will be required to keep and maintain the monthly logs, and produce the logs for inspection, yielding an average of 22 minutes per aquaculturists per year.

Unfunded Mandates

The Service has determined and certifies, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

References Cited

A complete list of all references cited herein is available upon request from John L. Trapp, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, ms 634–ARLSQ, Arlington, Virginia 22203.

Author

The primary author of this rule is John L. Trapp, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, the Service hereby amends part 21, Subpart D, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

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

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Section 21.47 is added to Subpart D to read as follows:

SUBPART D—CONTROL OF DEPREDATING BIRDS

* * * * *

§ 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

The Service examined the rule under the Paperwork Reduction Act of 1995 and found that it does contain information collection requirements. OMB has issued the following emergency information collection number, 1018–0097, which expires on August 31, 1998. Information collection is required to better enable the Service to assess the benefits of the depredation order on aquaculturists and to assess impacts to the double-crested cormorant population. Burden hours to aquaculturists are calculated as follows: an average of 41 birds may be taken by each of some 2,200 aquculturists per season. An estimated total of 800 hours will be required to keep and maintain the monthly logs, and produce the logs for inspection, yielding an average of 22 minutes per aquaculturists per year. Landowners, operators, and tenants actually engaged in the production of commercial freshwater aquaculture stocks (or their employees or agents) in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas may, without a Federal permit, take double-crested cormorants (*Phalacrocorax auritus*) when found committing or about to commit depredations to aquaculture stocks on the premises used for the production of such stocks: Provided that:

(a) Double-crested cormorants may be taken by shooting during daylight hours only, and only when necessary to protect freshwater commercial aquaculture and State-operated hatchery stocks from depredation; none of the birds so taken may be sold; and all dead birds must be buried or incinerated, except that any specimens needed for scientific purposes as determined by the Director must not be destroyed, and information on birds carrying metal leg bands may be submitted to the Bird Banding Laboratory by means of a toll-free telephone number at 1–800–327–BAND (or 2263).

(b) Double-crested cormorants may be shot at freshwater commercial aquaculture facilities or State-operated hatcheries only in conjunction with an established non-lethal harassment program as certified by officials of the Wildlife Services' program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service.

(c) Double-crested cormorants may be taken with firearms only within the boundaries of freshwater commercial aquaculture facilities or State-operated hatcheries, and persons using shotguns are required to use nontoxic shot.

(d) Persons operating under the provisions of this section may use decoys, taped calls, or other devices to lure birds committing or about to commit depredations within gun range.

(e) Any person exercising the privileges of this section must keep and maintain a log recording the date and number of all birds killed each month under this authorization, that the log must be maintained for a period of three years (and that three previous years of takings must be maintained at all times thereafter), that the log and any related records be made available to Federal or State wildlife enforcement officers upon request during normal business hours.

(f) Nothing in this section authorizes the killing of double-crested cormorants

contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State permits, when required; nor the killing of any migratory bird species other than double-crested cormorants when committing or about to commit depredations to aquaculture stocks.

(g) The authority granted in this section will automatically expire on April 30, 2005, unless revoked or specifically extended prior to that date.

Dated: January 30, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–5485 Filed 3–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970606131–8033–02; I.D. 041497C]

RIN 0648–AG25

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 8

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures in Amendment 8 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). These measures revise the earned income requirement for a commercial vessel permit for king or Spanish mackerel, establish a moratorium on the issuance of commercial vessel permits for king mackerel, extend the management area for cobia to include the exclusive economic zone (EEZ) off the states of Virginia through New York, specify allowable gear in the fisheries for coastal migratory pelagic resources, allow the retention of up to five cut-off king mackerel in excess of an applicable commercial trip limit, and add to the management measures that may be established or modified by the FMP's framework procedure. In addition, NMFS clarifies that a Federal vessel permit is not required for the use of a sea bass pot north of Cape Hatteras, NC; clarifies what constitutes commercial fishing for the purpose of obtaining a commercial vessel permit; revises the definition of ''charter vessel'' to conform to a new definition of charter fishing in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); and makes explicit the authority of NMFS to reopen a fishery that has been closed prematurely, i.e., prior to a quota having been reached. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries and to clarify and correct the regulations.

DATES: This rule is effective April 3, 1998, except that changes to § 622.4 are effective March 4, 1998.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are managed under the FMP. The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On June 23, 1997, NMFS published a proposed rule to implement the measures in Amendment 8 and additional measures proposed by NMFS (62 FR 33800). The background and rationale for those measures are contained in the preamble to the proposed rule and are not repeated here. On July 23, 1997, NMFS partially approved Amendment 8. Two measures were not approved, namely, the removal of the current prohibition on the use of a drift gillnet in a directed fishery for coastal migratory pelagic fish north of Cape Lookout, NC, and revisions of the FMP's definitions of overfishing and overfished.

Drift Gillnets in Directed Fisheries North of Cape Lookout

NMFS disapproved the proposal to authorize the use of drift gillnets in directed fisheries for coastal migratory pelagic species north of Cape Lookout, NC, because Amendment 8 does not contain any rationale for such use. Specifically, Amendment 8 describes neither impacts on existing harvesters under the current prohibition on the use of this gear nor any benefits that would result from approving its use. Under section 303(a)(1) of the Magnuson-Stevens Act, an FMP must contain, among other things, the conservation and management measures that are necessary and appropriate for the conservation and management of the fishery. In addition, E.O. 12866 specifies that NMFS should promulgate only such regulations that are required by law, necessary to interpret the law, or are made necessary by compelling public need and must base its decisions regarding appropriate regulations on the best reasonably obtainable information concerning the need for, and consequences of, the intended regulations. Finally, the Administrative Procedure Act requires NMFS to incorporate in a final rulemaking a concise statement of its basis and purpose. Lacking information on the need for and consequences of the proposal to authorize the use of drift gillnets in directed fisheries for coastal migratory pelagic species north of Cape Lookout, NC, NMFS disapproved this measure.

Definitions of Overfishing and Overfished

NMFS disapproved the revised FMP definitions of overfishing/overfished for all coastal migratory pelagic species because they were found to be inconsistent with the Magnuson-Stevens Act definitions of overfishing and overfished, and with national standards 1 and 2. Specifically, reducing the overfished threshold from 30 percent to the 20 percent level of the spawning potential ratio (SPR) would allow the Councils to recommend a higher level of fishing mortality, which could jeopardize the capacity of the fisheries to produce maximum sustainable yield (MSY) on a continuing basis. Retention of the overfished threshold at the 30 percent SPR level, in combination with the Magnuson-Stevens Act mandate to rebuild an overfished stock within a definite time period if it falls below that threshold, will provide a more risk-averse management strategy for attaining MSY on a continuing basis than would be the case with the 20–

percent SPR overfished threshold. Currently, the Mackerel Stock Assessment Panel's best estimate of MSY is 30 percent SPR, the FMP defines long-term optimum yield (OY) as MSY, and stock assessment scientists advise that the best estimate of OY for mackerels ranges between 30–percent and 40–percent SPR. With disapproval of the proposed overfishing/overfished definitions, Gulf group king mackerel is still considered to be overfished; therefore, the rebuilding requirements of section 304(e) of the Magnuson-Stevens Act still apply to this stock.

Unauthorized Gear and Directed Fishery

As used in this rule, unauthorized gear is any gear not specifically authorized in a directed fishery for a species, migratory group, and/or geographical area. ''Directed fishery'' is not defined. Nevertheless, the specification of authorized gear in a ''directed fishery'' is included in this rule as a statement of the Councils' intent. Conformance with that intent will be accomplished by enforcement of the limitations on possession of species, by migratory group and/or geographical area, when specific unauthorized gear is on board a vessel. For example, as specified at § 622.41(c)(2)(i), a vessel with a long gillnet on board in the Gulf, Mid-Atlantic, or South Atlantic EEZ may not have on board any coastal migratory pelagic fish. Specific possession limitations at § 622.41(c)(2)(ii) and (iii) apply to vessels with other unauthorized gear on board in specified areas and/or for species of migratory pelagic fish.

Comments and Responses

Ninety-nine individuals and two government agencies provided written comments on Amendment 8 and the proposed rule. Comments in opposition focused on the moratorium for issuing new commercial permits for king mackerel, the exclusion of gillnets as an authorized gear for Atlantic group king mackerel south of Cape Lookout, NC, the restriction of the incidental catch by unauthorized gear to the bag limit, the revision of the earned income qualifications to obtain vessel permits for commercial king and Spanish mackerel fishing, and the exclusion of spearfishing gear as authorized gear in the directed fishery for cobia.

About 75 percent of the responses expressed support for Amendment 8. Seventy-three individuals submitted comments, mainly on form letters, that supported the exclusion of gillnets as an authorized gear for directed fishing for Atlantic group king mackerel off the Florida east coast. Implementation of that measure, they believe, would eliminate illegal drift gillnet fishing for king mackerel occurring in that area. Six commenters, including the Florida Marine Fisheries Commission and the U.S. Fish and Wildlife Service, supported all proposals in Amendment 8. Two commenters each supported the revised earned income requirements to obtain commercial mackerel permits and the allowance for five cut-off (damaged) king mackerel above established commercial trip limits. Single responses were received from individuals supporting provisions to transfer king mackerel permits during the moratorium, to restrict the incidental catch of Atlantic group king mackerel by unauthorized gear to the bag limit, and to allow possession above the commercial trip limits of five cut-off (damaged) king mackerel. Specific comments and NMFS responses are discussed below.

Revised Earned Income Requirements

Comment: Three individuals opposed revising the earned income requirement for a commercial king or Spanish mackerel permit because they would be unable to qualify for a permit if the revisions were approved.

Response: NMFS finds that increasing the earned income requirement from 10 to 25 percent of earned income, or at least $10,000, derived from sale of fish or from charter fishing is necessary to differentiate clearly between fishermen subject to the bag limits and those subject to the commercial quotas. Such clarification is necessary to limit harvest of commercial mackerel quotas to fishermen who are primarily dependent on commercial or charter fishing for their livelihoods. Under the revised earned income or gross sales requirement, some fishermen who currently qualify for permits based on sales of small amounts of fish will be unable to qualify for a commercial permit and will be restricted to the bag limits.

A recent analysis of commercial mackerel permit files by NMFS indicates that approximately 57 vessel owners, or about 2 percent of the commercial mackerel permit holders, do not currently meet the revised earned income requirement. However, if a fisherman in the future meets the revised earned income requirement, he or she may apply for and obtain a commercial Spanish mackerel permit and may obtain a commercial king mackerel permit if the moratorium criteria are met.

Comment: One person commented that the income requirement should be 50 percent of earned income.

Response: The Councils rejected, as too restrictive, an alternative that would have required at least 50 percent of earned income, or $20,000, be derived from sale of fish or from charter fishing in 1 of the 3 calendar years preceding the application to qualify for a commercial vessel permit for king or Spanish mackerel. Some long-time commercial fishermen, faced with increasingly restrictive state and Federal fishing regulations, would have been ineligible under that alternative.

Comment: One individual commented that an exception to the income requirements should be available to fishermen over age 62 or to retirees.

Response: In Amendment 8, the Councils considered an alternative that would have grandfathered into the fishery fishermen age 62 or older who had held a mackerel permit for longer than 10 years. However, that option also had a minimum threshold income from the sale of fish of $5,000. The Councils rejected this alternative because some part-time and recreational fishermen would still be able to meet the minimum threshold income level and, thus, the desired reduction in the number of current permit holders would not have been realized. Under the current regulations, no qualifying income exceptions exist for fishermen over age 62 or for retirees. Such actions may be considered in future amendments.

Moratorium on Commercial Permits for King Mackerel

Comment: Eighteen commenters opposed the use of the control date, i.e., October 16, 1995, to determine eligibility for retaining a permit to commercially fish for king mackerel under the quotas. Most stated that current permit holders should continue to maintain their king mackerel permit even if it was initially issued after the control date. Some opposed the provision that will allow individuals to renew expired permits while those currently holding permits that were issued after October 16, 1995, will be denied renewal opportunities. Several stated that they did not apply for a permit prior to the control date because they fished only in Florida's waters and were unaware of the state regulations specifying requirements for vessel owners to hold a Federal mackerel permit.

Response: NMFS approved the permit moratorium as a necessary measure to stabilize participation in the king

mackerel fishery, to prevent speculative entry and further increases in effort on stocks that currently are undergoing rebuilding, and to possibly reduce the number of permitted vessels, while the Councils consider a limited access program. Further increases in participation would be expected if fishermen displaced from inshore commercial fisheries by state restrictions were not prevented from entering offshore king mackerel fisheries in the EEZ. Currently, Gulf group king mackerel quotas are taken quickly in areas where there are no trip limits, and Gulf and Atlantic group king mackerel quotas are taken by the end of the season in areas where harvests are controlled by trip limits. Any increase in the number of harvesters would hasten closures and negatively impact traditional participants. Those losing king mackerel permits under this measure may still participate in king mackerel fisheries up to 14 months after the final rule is published. They may also acquire a king mackerel permit through the transfer provisions, and most of them will likely retain their commercial permits to fish under the commercial Spanish mackerel quotas.

Permits to harvest king mackerel commercially in the EEZ have been required for the Gulf group king mackerel since the implementation of Amendment 1 in 1985 (50 FR 34840, August 28, 1985) and for the Atlantic group since the implementation of seasonal framework adjustments in 1986 (51 FR 9659, March 20, 1986). To possess more than the king mackerel bag limit in state waters, Florida has required a vessel to hold a Federal mackerel permit since December 1985 for the Gulf migratory group and since March 1987 for the Atlantic migratory group.

Authorized Gear and Incidental Catch Allowance for Unauthorized Gear

King Mackerel, Atlantic Migratory Group

Comment: Four Florida gillnetters opposed prohibiting directed gillnet fishing for Atlantic group king mackerel and restricting possession of that group to the bag limit aboard a vessel using a gillnet, particularly a shark drift gillnet off the Florida east coast. They stated that, as mackerel permit holders and current fishery participants, they are entitled to the commercial trip limit for Atlantic group king mackerel, even if using a gillnet.

Response: NMFS found the approved measures for authorized gear and incidental catch allowance for unauthorized gear to be consistent with the Magnuson-Stevens Act and other applicable laws. The approved authorized gear measures and incidental catch allowances for gillnets should clarify the Council's intent and enhance enforceability of the current regulations, end harvest of coastal migratory pelagic species with illegal driftnet gear, and prevent gear conflicts. Nonetheless, under the newly implemented and existing regulations, no commercial mackerel permit holders will be excluded from harvesting king or Spanish mackerel under the daily trip limits as long as they use authorized gear.

Fisheries information indicates that directed fishing for Atlantic group king mackerel with drift gillnets has continued in the EEZ off the Florida east coast after the gear was prohibited in that fishery and in the fisheries for all coastal migratory pelagic species on April 13, 1990 (55 FR 14834, April 19, 1990). That regulatory action also prohibited possession of coastal migratory pelagic species on vessels with a drift gillnet on board or a gillnet with a float line longer than 1,000 yd (914 m) that has fished in the Gulf, Mid-Atlantic, or South Atlantic EEZ. Those prohibitions, previously contained in the regulations at 50 CFR 622.31(d), remain in force and unaltered by this action. To simplify references to a gillnet with a float line length greater than 1,000 yd (914 m), the term is now defined in the regulations as ''long gillnet.''

Cobia

Comment: One commenter expressed concern that cobia could not be taken in a directed fishery by spearfishing gear, including powerheads, unless that gear was added to the authorized gears for cobia.

Response: Fishermen may continue to use spearfishing gear, including powerheads, in the EEZ to harvest cobia under the provisions for incidental take, i.e., the 2–fish per day possession limit, except in the special management zones in the South Atlantic where spearfishing or use of a powerhead is not allowed. The 2–fish per day harvest/possession limit applies to both commercial and recreational fishermen and does not represent a change from current regulations.

Miscellaneous

Comment 7: One fisherman commented that the use of live bait and chum to capture king mackerel should be prohibited to save stocks.

Response: Restrictions on the type and use of bait were not considered in Amendment 8 but may be considered in future amendments.

Comment 8: One commenter expressed support for the authorized gear proposals, provided that nets be unauthorized gear for king mackerel, Spanish mackerel, cero, and bluefish, and that nets and longlines be unauthorized gear for cobia, dolphin, and little tunny.

Response: Approved authorized gear measures in Amendment 8 will allow the continued use of nets and surface longlines in some coastal pelagic fisheries. The Councils proposed the gear changes to clarify their intent, to prevent gear conflicts, and to enhance enforceability by specifying possession limits for incidental catch when gear not authorized in directed fishing is on board. The approved measures evidence the Councils' intent to allow continued use of traditional gear. NMFS found the measures to be consistent with the Magnuson-Stevens Act, other applicable law, and the FMP, and approved them.

NMFS also approved a number of Amendment 8's revisions to the annual FMP framework procedures for adjusting management measures. One authorizes the adjustment of gear limitations that range from restrictions to complete prohibition. The Councils may use this modified framework procedure in the future to revise authorized gears for coastal migratory pelagic species.

Changes from the Proposed Rule

To clarify that the definition of a long gillnet includes all gillnets, either attached or unattached to the bottom, that have float lines that are more than 1,000 yd (914 m) in length, this final rule revises the current definition of drift gillnet by excluding a long gillnet. Such exclusion is consistent with the proposed and final rule's definitions of run-around gillnet and stab net.

As discussed above, this final rule does not allow the use of a drift gillnet north of Cape Lookout, NC, in a directed fishery for coastal migratory pelagic fish. Appropriate changes from the proposed rule are made at § 622.41(c)(1)(i)(A), (c)(1)(iii), and (c)(1)(vi).

The proposed rule inadvertently did not include the current prohibition on the use of a drift gillnet in the Gulf EEZ in a directed fishery for bluefish, cero, dolphin, and little tunny. Amendment 8 does not change this prohibition. Appropriate changes from the proposed rule are made at § 622.41(c)(1)(vii) and (c)(2)(ii).

In § 622.41(c)(2)(iii) and (iv), the language is changed to clarify that bag limits apply to persons aboard vessels,

rather than to vessels. In addition, § 622.41(c)(2)(iv), the exception for the possession of king mackerel in excess of the bag limits, is restructured for ease of understanding and revised to clarify that (1) the exception applies to king mackerel in the Gulf EEZ and to king mackerel taken in the Gulf EEZ and possessed in the Gulf—it does not apply to king mackerel taken in the Gulf and possessed in the South Atlantic EEZ, and (2) the possession of king mackerel remains subject to the king mackerel closures and trip limits.

This final rule does not include the revisions to § 622.34 that were in the proposed rule. Those revisions, which remove references to figures that are not contained in the regulations in part 622, have been made by another rulemaking.

Classification

The Regional Administrator, Southeast Region, NMFS, with concurrence by the Assistant Administrator for Fisheries, NOAA, determined that the approved measures of Amendment 8 are necessary for the conservation and management of the fishery for coastal migratory pelagic resources of the Gulf of Mexico and South Atlantic, and that, with the exception of those measures that were disapproved, Amendment 8 is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Councils prepared an initial regulatory flexibility analysis (IRFA) that described the impact the proposed rule, if adopted, would have on small entities. Based on the IRFA, NMFS concluded that Amendment 8, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities. NMFS considered the comments received on Amendment 8 and the proposed rule that relate to the IRFA, and the effects of disapproval of two measures in Amendment 8, discussed above, and prepared an FRFA. Based on the FRFA, NMFS concludes that the economic impacts on small entities previously identified in the IRFA remain unchanged.

The few commenters who directly addressed the conclusions of the IRFA did not disagree with the findings but stressed that they would be unfairly treated by portions of the rule. In particular, they opposed the use of the October 16, 1995, control date and the increased income requirement for obtaining commercial vessel permits because they would be excluded from the commercial fishery by those measures. (See Comments and Responses, above.) These effects were identified in the IRFA as bases for the conclusion of significant economic impacts on a substantial number of small entities. Because no public comments were received that disagreed with the analysis or conclusions of the IRFA and no additional information was received that would change the analysis or conclusions of the IRFA regarding the impacts on small entities, the FRFA is based on the IRFA without substantive change. Copies of the FRFA are available (see **ADDRESSES**). A summary of the FRFA follows.

The approved management measures contained in Amendment 8 are necessary to assist in stock recovery, address gear problems, provide a more flexible and responsive regulatory system, address increasing numbers of participants in the fishery, and better utilize information on stock identification of migratory groups of king mackerel when the information becomes available.

Amendment 8 will affect most of the approximately 3,906 vessels from Atlantic and Gulf states (1,714 and 2,192 vessels, respectively) that have permits to operate in the commercial and/or charter mackerel fisheries in the EEZ. No data are available that describe the precise average or range of vessel operating costs or annual gross revenues. However, all are considered to be small entities as defined by the Small Business Administration. Regarding changed or increased compliance costs related to reporting and recordkeeping, the proposed moratorium on commercial permits will allow transfer of permits with the vessel and these transfers will be subject to a fee of $40 to cover administrative costs. Further, increased costs may result from the need to obtain a special permit for conducting exempted fishing and to submit special reports pursuant to regulations contained in 50 CFR 600.745(b) and from the need to convene a special assessment group, however, these costs have not been quantitatively estimated. The requirement for special buoys on certain gillnet gear will create a small level of compliance costs. The requirements that limit the types of commercial gear in the fishery to the specified gear types will have a compliance cost to the extent that some fishermen currently may be using non-conforming gear. Also, a small additional burden will be associated with providing fishery information for obtaining a new permit.

Significant alternatives were identified for most of the actions proposed in Amendment 8. Maintaining the status quo in certain allowable gear would have resulted in no associated compliance cost increases. However, the status quo was rejected on the basis that the alternatives would provide more effective law enforcement. To counter potential negative effects of reducing innovation in gear types, a procedure is available to allow the use of approved experimental gear under special permit and reporting requirements. Alternatives were proposed for the increased income requirements to obtain a permit. The status quo would have less of an effect on small entities than the approved measure. The number of owners whose vessels would no longer be qualified for commercial mackerel permits is estimated at 57. This level of impact was deemed to be acceptable because it is perceived that most of the people potentially impacted are not dependent on the commercial mackerel fishery for their livelihood. The more restrictive alternatives were rejected because they would have demanded a larger dependence on fishing as a source of income and would have eliminated an unacceptably large number of historical commercial fishermen.

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

This rule contains a new collection-of-information requirement subject to the PRA—namely, the requirement that the float line of a gillnet used or possessed in the EEZ off Florida north of 25°20.4' N. lat. be marked with distinctive floats bearing the official number of the vessel using or possessing the floats. This collection of information has been approved by OMB under OMB Control Number 0648–0305. The public reporting burden for this new collection of information is estimated at 20 minutes per float. This rule involves the collection of information on applications for commercial vessel permits. That collection is currently approved under OMB Control No. 0648-0205 and its public reporting burden is estimated at 20 minutes per response. This rule also involves the collection of information on fishing records of vessels permitted in the commercial king or Spanish mackerel fisheries. That collection is currently approved under OMB Control No. 0648-0016 and its public reporting burden is estimated at 10 minutes per response. Finally, this

rule restates without significant change the collection of information for the marking of traps, pots, and associated buoys in the Caribbean, Gulf of Mexico, and South Atlantic EEZ. That collection is currently approved under OMB Control No. 0648–0305 and its public reporting burden is estimated at 7 minutes per trap, pot, or buoy. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

As explained in the preamble to the proposed rule, the revised earned income requirement for a king or Spanish mackerel permit and the moratorium on commercial permits for king mackerel will be fully implemented on May 1, 1999. After that date, only those king or Spanish mackerel vessel permits that were issued under the revised earned income requirement and only those king mackerel permits that were issued under the moratorium criteria will be valid. This delayed implementation was specified so that the new criteria could be applied as existing annual permits expired, rather than requiring special applications, and so that currently valid permits would remain effective at least through the dates specified on the permits. As explained in the preamble to the proposed rule, a permit that is renewed after the date of publication of this final rule will be valid for the normal period, generally 1 year, if the revised criteria are met, and will be valid until the implementation date if the revised criteria are not met. The Assistant Administrator for Fisheries, NOAA, finds that the need to comply with this implementation schedule constitutes good cause under 5 U.S.C. 553(d) to waive the normal 30-day delay in effectiveness of the revisions to § 622.4(a)(2)(iii) and (iv) and (q). To not waive the 30-day delay would be contrary to the public interest. The revisions in this final rule to other paragraphs of § 622.4 are nonsubstantive clarifications for which delayed effectiveness is not required by 5 U.S.C. 553(d). Accordingly, all of the revisions to § 622.4 are effective March 4, 1998.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 25, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.1, footnote 2 to Table 1 is revised to read as follows:

§ 622.1 Purpose and scope.

* * * * *

Table 1.—FMPs Implemented Under Part 622

* * * * * * *

[2] Only king and Spanish mackerel and cobia are managed under the FMP in the Mid-Atlantic.

* * * * * * *

3. In § 622.2, in the definition of ''Dealer'', the reference ''§ 600.15'' is revised to read ''§ 600.10''; definitions of ''Automatic reel'', ''Bandit gear'', ''Handline'', ''Hook-and-line gear'', ''Long gillnet'', ''Longline'', ''Rod and reel'', ''Stab net'', and ''Trammel net'' are added in alphabetical order; and the definitions of ''Charter vessel'', ''Drift gillnet'', and ''Run-around gillnet'' are revised to read as follows:

§ 622.2 Definitions.

* * * * *

Automatic reel means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel electrically or hydraulically.

Bandit gear means a rod and reel that remain attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Drift gillnet, for the purposes of this part, means a gillnet, other than a long gillnet or a run-around gillnet, that is unattached to the ocean bottom, regardless of whether attached to a vessel.

* * * * *

Handline means a line with attached hook(s) that is tended directly by hand.

* * * * *

Hook-and-line gear means automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel.

* * * * *

Long gillnet means a gillnet that has a float line that is more than 1,000 yd (914 m) in length.

Longline means a line that is deployed horizontally to which gangions and hooks are attached. A longline may be a bottom longline, i.e., designed for use on the bottom, or a pelagic longline, i.e., designed for use off the bottom. The longline hauler may be manually, electrically, or hydraulically operated.

* * * * *

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

Run-around gillnet means a gillnet, other than a long gillnet, that, when used, encloses an area of water.

* * * * *

Stab net means a gillnet, other than a long gillnet, or trammel net whose weight line sinks to the bottom and submerges the float line.

* * * * *

Trammel net means two or more panels of netting, suspended vertically in the water by a common float line and a common weight line, with one panel having a larger mesh size than the other(s), to entrap fish in a pocket of netting.

* * * * *

4. Effective March 4, 1998, in § 622.4, in paragraph (d), the reference ''§ 622.6(b)(1)(i)'' is revised to read ''§ 622.6(b)(1)(i)(B)''; paragraphs (a)(2)(iv) through (vi) and (g) are revised; and paragraphs (a)(2)(iii) and (q) are added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(iii) *King mackerel*. For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel

permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel valid through April 30, 1999, at least 10 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) during one of the 3 calendar years preceding the application. To obtain or renew a commercial vessel permit for king mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application. See paragraph (q) of this section regarding a moratorium on commercial vessel permits for king mackerel, initial permits under the moratorium, transfers of permits during the moratorium, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel valid through April 30, 1999, at least 10 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) during one of the 3 calendar years preceding the application. To obtain or renew a commercial vessel permit for Spanish mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a moratorium on commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

(vi) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kg) of tilefish on board is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb (90.7 kg) of tilefish on board harvested such tilefish in the EEZ. To obtain or renew a commercial vessel permit for South Atlantic snapper-grouper, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing, or gross sales of fish harvested from the owner's, operator's, corporation's, or partnership's vessels must have been greater than $20,000, during one of the 3 calendar years preceding the application.

* * * * *

(g) *Transfer.* A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, paragraph (n) of this section for a fish trap endorsement, paragraph (p) of this section for a red snapper endorsement, or paragraph (q) of this section for a king mackerel permit. A person who acquires a vessel or dealership who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

* * * * *

(q) *Moratorium on commercial vessel permits for king mackerel.* This paragraph (q) is effective through October 15, 2000.

(1) Effective March 4, 1998, an initial commercial vessel permit for king mackerel will be issued only if the vessel owner was the owner of a vessel with a commercial vessel permit for king mackerel on or before October 16, 1995. A king mackerel permit for a vessel whose owner does not meet this moratorium criterion may be renewed only through April 30, 1999.

(2) To obtain a commercial vessel permit for king mackerel under the moratorium, an owner or operator of a vessel that does not have a valid king mackerel permit on March 4, 1998, must submit an application to the RD postmarked or hand delivered not later than June 2, 1998. Other than applications for renewals of commercial vessel permits for king mackerel, no applications for commercial vessel permits for king mackerel will be accepted after June 2, 1998. Application forms are available from the RD.

(3) An owner will not be issued initial commercial vessel permits for king mackerel under the moratorium in numbers exceeding the number of vessels permitted in the king mackerel fishery that he/she owned simultaneously on or before October 16, 1995. If a vessel with a commercial vessel permit for king mackerel on or before October 16, 1995, has been sold since that date, the owner on or before that date retains the right to the commercial vessel permit for king mackerel unless there is a written agreement that such right transfers to the new owner.

(4) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this moratorium to another vessel owned by the same entity.

(5) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under the moratorium may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full

calendar year after the permit transfer takes place.

(6) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(7) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RD with an application for the changed permit.

(8) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RD does not receive an application for renewal within 1 year of the permit's expiration date.

5. In § 622.5, paragraph (a)(1)(i) is revised to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(i) *Coastal migratory pelagic fish*. The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv), who is selected to report by the SRD, must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

* * * * *

6. In § 622.6, paragraphs (c) and (d) are removed and paragraph (b) is revised to read as follows:

622.6 Vessel and gear identification.

* * * * *

(b) *Gear identification*—(1) *Traps/pots and associated buoys*—(i) *Traps or pots*—(A) *Caribbean EEZ*. A fish trap or spiny lobster trap used or possessed in the Caribbean EEZ must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified.

(B) *Gulf and South Atlantic EEZ*. A fish trap used or possessed in the Gulf EEZ and a sea bass pot used or possessed in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), or a fish trap or sea bass pot on board a vessel with a commercial permit for Gulf reef fish or South Atlantic snapper-grouper, must have a valid identification tag issued by the RD attached. A golden crab trap used or possessed in the South Atlantic EEZ or on board a vessel with a commercial permit for golden crab must have the commercial vessel permit number permanently affixed so as to be easily distinguished, located, and identified; an identification tag issued by the RD may be used for this purpose but is not required.

(ii) *Associated buoys*. A buoy that is attached to a trap or pot must display the official number and assigned color code so as to be easily distinguished, located, and identified as follows:

(A) *Caribbean EEZ*. Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(B) *Gulf and South Atlantic EEZ*. Each buoy must display the official number and color code assigned by the RD. In the Gulf EEZ, a buoy must be attached to each trap, or each end trap if traps are connected by a line. In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the official number and color code. However, no color code is required on a buoy attached to a golden crab trap.

(iii) *Presumption of ownership*. A Caribbean spiny lobster trap, a fish trap, a golden crab trap, or a sea bass pot in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps and pots that are lost or sold if the owner reports the loss or sale within 15 days to the RD.

(iv) *Unmarked traps, pots, or buoys*. An unmarked Caribbean spiny lobster trap, a fish trap, a golden crab trap, a sea bass pot, or a buoy deployed in the EEZ where such trap, pot, or buoy is required to be marked is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(2) *Gillnet buoys*. On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, the float line of each gillnet possessed, including any net in use, must have a maximum of nine distinctive floats, i.e., different from the usual net buoys, spaced uniformly at a distance of 100 yd (91.4 m) or less. Each such distinctive float must display the official number of the vessel.

§ 622.31 [Amended]

7. In § 622.31, paragraph (d) is removed and paragraphs (e) through (k) are redesignated as paragraphs (d) through (j) respectively.

8. In § 622.32, paragraph (c)(1) is revised to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(c) * * *

(1) *Cobia*. No person may possess more than two cobia per day in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

* * * * *

9. In § 622.35, paragraph (e)(2)(i) is revised to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(e) * * *

(2) * * *

(i) In SMZs specified in paragraphs (e)(1)(i) through (xviii) and (e)(1)(xxii) through (xxix) of this section, the use of a gillnet or a trawl is prohibited, and fishing may be conducted only with handline, rod and reel, and spearfishing gear.

* * * * *

10. In § 622.37, paragraph (c)(1) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(c) * * *

(1) Cobia in the Gulf, Mid-Atlantic, or South Atlantic—33 inches (83.8 cm), fork length.

* * * * *

11. In § 622.38, paragraph (a) is revised and paragraph (h) is added to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: Cobia, king

mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (h) of this section; South Atlantic snapper-grouper in or from the South Atlantic EEZ; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c), (d), and (e) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

(h) A maximum of five cut-off (damaged) king mackerel may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under a trip limit for king mackerel specified in § 622.44(a). Such cut-off (damaged) king mackerel are not counted against the trip limit and may not be sold or purchased.

12. In § 622.40, the first sentence of paragraph (b)(3)(i) introductory text is revised to read as follows:

§ 622.40 Limitation on traps and pots.

* * * * *

(b) * * *

(3) * * *

(i) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). * * *

* * * * *

13. In § 622.41, paragraphs (c), (d)(1), and (d)(3) are revised to read as follows:

§ 622.41 Species-specific limitations.

* * * * *

(c) *Coastal migratory pelagic fish*—(1) *Authorized gear.* Subject to the prohibitions on gear/methods specified in § 622.31, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ in directed fisheries for coastal migratory pelagic fish:

(i) King mackerel, Atlantic migratory group—

(A) North of 34°37.3' N. lat., the latitude of Cape Lookout Light, NC—all gear except drift gillnet and long gillnet.

(B) South of 34°37.3' N. lat.—automatic reel, bandit gear, handline, and rod and reel.

(ii) King mackerel, Gulf migratory group—hook-and-line gear and run-around gillnet.

(iii) Spanish mackerel, Atlantic migratory group—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

(iv) Spanish mackerel, Gulf migratory group—all gear except drift gillnet, long gillnet, and purse seine.

(v) Cobia in the Mid-Atlantic and South Atlantic EEZ, dolphin in the South Atlantic EEZ, and little tunny in the South Atlantic EEZ south of 34°37.3' N. lat.—automatic reel, bandit gear, handline, rod and reel, and pelagic longline.

(vi) Cero in the South Atlantic EEZ and little tunny in the South Atlantic EEZ north of 34°37.3' N. lat.—all gear except drift gillnet and long gillnet.

(vii) Bluefish, cero, cobia, dolphin, and little tunny in the Gulf EEZ—all gear except drift gillnet and long gillnet.

(2) *Unauthorized gear.* Gear types other than those specified in paragraph (c)(1) of this section are unauthorized gear and the following possession limitations apply:

(i) *Long gillnets.* A vessel with a long gillnet on board in, or that has fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ may not have on board on that trip a coastal migratory pelagic fish.

(ii) *Drift gillnets.* A vessel with a drift gillnet on board in, or that has fished on a trip in, the Gulf EEZ may not have on board on that trip a coastal migratory pelagic fish.

(iii) *Other unauthorized gear.* Except as specified in paragraph (c)(2)(iv) of this section, a person aboard a vessel with unauthorized gear other than a drift gillnet in the Gulf EEZ or a long gillnet on board in, or that has fished in, the EEZ where such gear is not authorized in paragraph (c)(1) of this section, is subject to the bag limit for king and Spanish mackerel specified in § 622.39(c)(1)(ii) and to the limit on cobia specified in § 622.32(c)(1).

(iv) *Exception for king mackerel in the Gulf EEZ.* The provisions of this paragraph (c)(2)(iv) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (c)(2)(iii) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ or a long gillnet. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(A) Such vessel may use in the Gulf EEZ no unauthorized gear in a directed fishery for king mackerel.

(B) If such a vessel has a drift gillnet or a long gillnet on board, no king mackerel may be possessed.

(C) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ or a long gillnet, the possession of king mackerel taken incidentally is restricted only by the closure provisions of § 622.43(a)(3) and the trip limits specified in § 622.44(a). See also paragraph (c)(4) of this section regarding the purse seine incidental catch allowance of king mackerel.

(3) *Gillnets*—(i) *King mackerel.* The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for king mackerel is 4.75 inches (12.1 cm), stretched mesh. A vessel in such EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 4.75 (12.1 cm) inches, stretched mesh, may not possess on that trip an incidental catch of king mackerel that exceeds 10 percent, by number, of the total lawfully possessed Spanish mackerel on board.

(ii) *Spanish mackerel.* (A) The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for Spanish mackerel is 3.5 inches (8.9 cm), stretched mesh. A vessel in such EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(B) On board a vessel with a valid Spanish mackerel permit that is fishing for Spanish mackerel in, or that possesses Spanish mackerel in or from, the South Atlantic EEZ off Florida north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary—

(*1*) No person may fish with, set, place in the water, or have on board a gillnet with a float line longer than 800 yd (732 m).

(*2*) No person may fish with, set, or place in the water more than one gillnet at any one time.

(*3*) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm).

(*4*) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing

that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water.

(5) The float line of each gillnet possessed, including any net in use, must have the distinctive floats specified in § 622.6(b)(2).

(4) *Purse seine incidental catch allowance.* A vessel in the EEZ, or having fished in the EEZ, with a purse seine on board will not be considered as fishing, or having fished, for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (c)(2) of this section, in violation of the possession limits under paragraph (c)(2)(iii) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 622.43(a), provided the king mackerel on board does not exceed 1 percent, or the Spanish mackerel on board does not exceed 10 percent, of all fish on board the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.42(c) and are subject to the prohibition of sale under § 622.43(a)(3)(iii).

(d) * * *

(1) *Authorized gear.* Subject to the gear restrictions specified in § 622.31, the following are the only gear types authorized in a directed fishery for snapper-grouper in the South Atlantic EEZ: Bandit gear, bottom longline, buoy gear, handline, rod and reel, sea bass pot, and spearfishing gear.

* * * * *

(3) *Use of sink nets off North Carolina.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina on a trip with a sink net on board, may retain otherwise legal South Atlantic snapper-grouper taken on that trip with bandit gear, buoy gear, handline, rod and reel, or sea bass pot. For the purpose of this paragraph (d)(3), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

* * * * *

14. In § 622.42, the first sentence of paragraph (c) introductory text is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * * King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.4(a)(2)(iii) or (iv). * * *

* * * * *

15. In § 622.43, paragraph (a)(3)(i) and (ii) are revised and paragraph (c) is added to read as follows:

§ 622.43 Closures.

(a) * * *

(3) * * *

(i) A person aboard a vessel for which a commercial permit for king or Spanish mackerel has been issued, as required under § 622.4(a)(2)(iii) or (iv), may not fish for king or Spanish mackerel in the EEZ or retain king or Spanish mackerel in or from the EEZ under a bag or possession limit specified in § 622.39(c) for the closed species, migratory group, zone, subzone, or gear, except as provided for under paragraph (a)(3)(ii) of this section.

(ii) A person aboard a vessel for which the permit indicates both charter vessel/headboat for coastal migratory pelagic fish and commercial king or Spanish mackerel may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

* * * * *

(c) *Reopening.* When a fishery has been closed based on a projection of the quota specified in § 622.42 being reached and subsequent data indicate that the quota was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the fishery to provide an opportunity for the quota to be reached.

16. In § 622.44, paragraph (a)(2)(ii)(B) introductory text is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.4(a)(2)(iii), and operating under the hook-and-line gear quota in § 622.42(c)(1)(i)(A)(*2*)(*i*):

* * * * *

17. In § 622.45, in paragraph (d)(2), the reference ''§ 622.4(a)(2)(iv)'' is revised to read ''§ 622.4(a)(2)(vi)'' and paragraph (h) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(h) *Cut-off (damaged) king mackerel.* A cut-off (damaged) king mackerel lawfully possessed or offloaded ashore, as specified in § 622.38(h), may not be sold or purchased.

18. In § 622.48, in paragraph (d)(1), the phrase ''reopening of a fishery prematurely closed'' is removed, and paragraph (c) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(c) *Coastal migratory pelagic fish.* For cobia or for a migratory group of king or Spanish mackerel: MSY, overfishing level, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), minimum size limit, vessel trip limits, closed seasons or areas, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, and permit requirements.

* * * * *

§§ 622.4 and 622.44 [Amended]

19. The words ''and Spanish'' are removed in the following places:

a. In § 622.4, in the first sentence of paragraph (a)(2)(ii), in the heading of paragraph (o), in the first sentence of paragraph (o)(1), and in the second and third sentences of paragraph (o)(2).

b. In § 622.44, in paragraph (a)(2)(ii)(A)(*2*)(*i*).

§ 622.44 [Amended]

20. The words ''king and'' are removed in § 622.44(b)(1)(i) and (b)(1)(ii) introductory text.

[FR Doc. 98–5476 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208296–7296–01; I.D. 022598C]

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore Component Pollock in the Bering Sea Subarea

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching

pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the pollock total allowable catch (TAC) apportioned to vessels harvesting pollock for processing by the inshore component in the BS of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 1998, until 1200 hrs, A.l.t., April 15, 1998.

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

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

In accordance with § 679.20(c)(2)(ii), the first seasonal allowance of the pollock TAC apportioned to vessels harvesting pollock for processing by the inshore component in the BS of the BSAI was established as 151,279 metric tons (mt) by the by the Interim 1998 Harvest Specifications of Groundfish for the BSAI (62 FR 65626, December 15, 1998).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of the pollock TAC apportioned to vessels harvesting pollock for processing by the inshore component in the BS of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 146,279 mt, and is setting aside the remaining 5,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the BS of the BSAI.

This closure is effective from February 26, 1998, through 1200 hrs, A.l.t., April 15, 1998. Under § 679.20(a)(5)(i), the second seasonal allowance of pollock TAC will become available for directed fishing at 1200 hrs, A.l.t., September 1, 1998. Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the first seasonal allowance of the pollock TAC apportioned to vessels harvesting pollock for processing by the inshore component in the BS of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the first seasonal allowance of the pollock TAC apportioned to vessels harvesting pollock for processing by the inshore component in the BS of the BSAI. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient pollock as bycatch to support other anticipated groundfish fisheries. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

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

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

Dated: February 26, 1998.

Gary C. Matlock,

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

[FR Doc. 98–5508 Filed 2–26–98; 4:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 42
Wednesday, March 4, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Notice of Public Workshop on Clothes Washers Energy Efficiency Standards Rulemaking

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Public Workshop.

SUMMARY: The Department will convene a public workshop to discuss revised analytical tools (e.g., life cycle cost, national energy forecasting, and shipment spreadsheets) and the assumptions to be used for the life-cycle-cost (LCC) analysis including some sample LCC results if available. The Department also will present a document stating the methodology and assumptions used for the reverse engineering analysis for the typical vertical-axis clothes washers. Additionally, the Department will report a tabulation of existing consumer research which it plans to use to address consumer issues.

DATES: The public workshop will be held on Wednesday, March 11, 1998, from 9:00 a.m. to 4:00 p.m., and Thursday, March 12, 1998, from 9:00 a.m. to noon. Written comments (3 copies) must be received on or before April 15, 1998.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Room 1E–245, on March 11, 1998, and in Room 6E–069 on March 12, 1998, 1000 Independence Avenue, SW, Washington, DC 20585. Comments should be addressed to Bryan Berringer at the address indicated below under Further Information.

Copies of the transcript of the public workshop, public comments received, and this notice may be read or purchased at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@HQ.DOE.GOV

Eugene Margolis, Esq., U. S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–3410, (202) 586–9507, E-mail: Eugene.Margolis@HQ.DOE.GOV

Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–2945, E-mail: Brenda.Edwards-Jones@HQ. DOE.GOV

SUPPLEMENTARY INFORMATION:

The following topics will be discussed at this workshop:

1. Overview of the current clothes washers rulemaking schedule and process.

2. Discussion of Revised Analytical Tools, Data and Assumptions: The Department seeks input on the revised analytical tools, data, and assumptions to be used for the life-cycle-cost analysis.

A. *Life-Cycle-Cost:* The Department will present a revised life-cycle-cost spreadsheet model that has been developed which will account for variability of key criteria, such as, energy prices and water heater fuel type. The spreadsheet includes the cost and energy efficiency level data obtained.

B. *Price:* To obtain prices as an input to the LCC spreadsheet, the Department will present a draft discussion paper on the assumptions for mark-ups for clothes washer rulemaking analysis.

C. *National Energy Savings Forecasts:* The Department will review the spreadsheet discussed at the previous workshop.

D. *Shipment Forecasts:* The Department will present alternative approaches to obtain shipment data for the National Energy Savings spreadsheet.

3. *Reverse Engineering Approach:* The Department will present a document stating the methodology and assumptions used for the reverse engineering analysis for the typical vertical-axis clothes washers.

4. *Consumer Issues:* The Department will report a tabulation of existing consumer research which it plans to use to address consumer issues.

Previously released and distributed information pertaining to this rulemaking include the following: An Advance Notice of Proposed Rulemaking to Amend the Energy Conservation Standards for Three Cleaning Products, published on November 14, 1994 (59 FR 56423), and comments thereon; Draft Report on the Preliminary Engineering Analysis for Clothes Washers (October, 1996); Draft Report on Design Options for Clothes Washers (October, 1996); Draft Clothes Washers Rulemaking Framework (July 8, 1997); and the transcript from the November 15, 1996, and July 23, 1997, Workshops and comments relating to the workshops. Copies of these materials may be read or purchased at the DOE Freedom of Information Reading Room. You can contact the Freedom of Information Reading Room at the above address and phone number for further information.

The Department also welcomes written comments on the items to be presented at the workshop until April 15, 1998. Written comments or recommendations (3 copies) should be submitted to Bryan Berringer at the above listed address.

Copies of the preliminary material for the workshop, including spreadsheets, will be available beginning the week of February 16, 1998, on the Office of Codes and Standards web site which is as follows: http://www.eren.doe.gov/buildings/codes__standards/index.htm. If you have any questions, or plan to attend the workshop, or if you are unable to access the web site and wish to obtain material for the workshop, please contact Ms. Brenda Edwards-Jones at (202) 586–2945 or Mr. Bryan Berringer at (202) 586–0371, or (202) 586–4617 by fax.

Issued in Washington, DC, on February 26, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–5544 Filed 3–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require installation of a rubber strip, and replacement of connection sheets and the seal retainer on the avionics compartment access door with new parts; and installation of drip pans and additional drain gutters on the avionics racks. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the trickling of water into the avionics compartment, which could result in avionics computer and equipment malfunctions.

DATES: Comments must be received by April 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–103–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received several reports of reduced operation of the avionics compartment computers due to water spillage in the galley and the trickling of water into the electrical connectors located below the floor panels of the galley. This condition, if not corrected, could result in avionics computer and equipment malfunctions.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1070, Revision 6, dated July 18, 1995, which describes procedures for installation of a rubber strip, and replacement of connection sheets and the seal retainer on the avionics compartment access door with new parts.

In addition, Airbus has issued Service Bulletin A320–24–1054, Revision 2, dated September 22, 1993, which describes procedures for installation of drip pans and additional drain gutters on the avionics racks.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 96–011–075(B), dated January 3, 1996, and 96–040–076(B), dated February 14, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 118 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the actions specified in Airbus Service Bulletin A320–53–1070, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,273 per airplane.

Based on these figures, the cost impact of this action on U.S. operators is estimated to be $171,454, or $1,453 per airplane.

It would take approximately 41 work hours to accomplish the actions specified in Airbus Service Bulletin A320–24–1054, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,340 per airplane. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $802,400, or $6,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 96–NM–103–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 22119 or 21999 has not been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the trickling of water into the avionics compartment, which could result in avionics computer and equipment malfunctions, accomplish the following:

(a) Except for airplanes on which the access door has been removed, sealed, or blocked in accordance with Airbus Service Information Letter 53–052, dated August 30, 1991; or in accordance with a method approved by the FAA: Within 18 months after the effective date of this AD, install a rubber strip, and replace the connection sheets and the seal retainer on the avionics compartment access door with new parts, in accordance with Airbus Service Bulletin A320–53–1070, Revision 6, dated July 18, 1995.

(b) Within 3 years after the effective date of this AD, install drip pans and additional drain gutters on the avionics racks in accordance with Service Bulletin A320–24–1054, Revision 2, dated September 22, 1993.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directives 96–011–075(B), dated January 3, 1996, and 96–040–076(B), dated February 14, 1996.

Issued in Renton, Washington, on February 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5480 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–92–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 100, 200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Raytheon Aircraft Company (Raytheon) 90, 100, 200, and 300 series airplanes (formerly known as Beech Aircraft Corporation 90, 100, 200, and 300 series airplanes). The proposed action would require: checking the airplane maintenance records from January 1, 1994, up to and including the effective date of the proposed AD, for any MIL–H–6000B fuel hose replacements on the affected airplanes; inspecting any replaced rubber fuel hose for a spiral or diagonal external wrap with a red stripe the length of the hose with 94519 printed along the stripe; and, replacing any MIL–H–6000B rubber fuel hose matching this description with an FAA-approved hose having a criss-cross or braided external wrap. This proposed AD is the result of a report of a product defect by the manufacturer that could cause fuel system blockage and engine stoppage. The actions specified by the proposed AD are intended to prevent fuel flow interruption, which if not corrected, could lead to uncommanded loss of engine power and loss of control of the airplane.

DATES: Comments must be received on or before May 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–92–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209; telephone: (316) 946–4145; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–92–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–92–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Buckeye Rubber Products, Inc. (Buckeye) discovered and notified the FAA and Raytheon that some of its MIL–H–6000B ½-inch to 3-inch rubber hoses were manufactured with defects. This type of hose is used in the fuel systems of certain Raytheon 90, 100, 200, and 300 series airplanes. Raytheon also notified the FAA that it installed some of these hoses in the fuel systems of Raytheon Models C90A and B200, and B300 series airplanes as original equipment manufactured from January 1, 1994, and beyond. For airplanes manufactured prior to January 1, 1994, this rubber hose may have been installed as a replacement hose.

Raytheon and Buckeye removed some of the hoses from the airplanes that have reported fuel system problems, and determined after testing that a particular batch of this rubber hose is susceptible to collapse when exposed to airplane fuel.

The tests performed on the rubber hose showed a weak butt joint bond and joint separation of an internal seam. Fuel flowing through this batch of hose separates the joints and causes delamination of the inner tube, collapse of the hose, and fuel flow obstruction.

These hoses are identified by a 3/8-inch-wide red or orange-red, length-wise stripe, with the manufacturer's code, 94519, printed periodically along the line in red letters on one side. The hoses have a spiral or diagonal outer wrap with a fabric-type texture on the rubber surface.

Relevant Service Information

Raytheon has issued Mandatory Service Bulletin No. 2718, Rev. 1, Issued January, 1997; Revised: June, 1997, which specifies procedures for replacing all MIL–H–6000B rubber fuel hoses on the affected airplanes that were manufactured from January 1, 1994, and after; inspecting the affected airplanes that were manufactured prior to January 1, 1994, for any MIL–H–6000B rubber fuel hoses that have been replaced; and, removing the MIL–H–6000B replacement hoses that have a spiral or diagonal exterior wrap and a red or red-orange stripe with the manufacturer code, 94519. The Raytheon service bulletin also specifies discarding any hose found with this description, and replacing the hose with a hose that has a criss-cross or braided type of external wrap for all affected airplanes.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the above service information, the FAA has determined that AD action should be taken to prevent fuel flow interruption, which if not corrected, could lead to uncommanded loss of engine power and loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop other Raytheon 90, 100, 200, and 300 series airplanes of the same type design, the proposed AD would require: replacing all of the MIL–H–6000B rubber fuel hose in the affected airplanes that were manufactured from January 1, 1994, and after, with an FAA-approved rubber fuel hose that has a criss-cross or braided pattern on the external wrap. For airplanes manufactured prior to January 1, 1994, the proposed AD would require checking the airplane maintenance records from January 1, 1994 up to and including the effective date of the proposed AD, for any MIL-H–6000B rubber fuel hose replacements; and, if a replacement has been made, checking the replacement hose for diagonal or spiral wrap that has a 3/8-inch-wide red or orange-red, length-wise stripe, with the manufacturer's code, 94519, printed periodically along the line in red letters on one side. In the case of the Raytheon Models C90A, B200, and B300 series airplanes with this fuel hose installed at the factory, the proposed AD would require replacing the fuel hoses with FAA-approved MIL-H–6000B fuel hoses that have a criss-cross or braided external wrap. Accomplishment of replacement would be in accordance with Raytheon Aircraft Mandatory Service Bulletin No. 2718, Rev. I, Issued: January, 1997, Revised: June, 1997.

Cost Impact

The FAA estimates that 4,868 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour to per airplane to accomplish the proposed initial check, and that the average labor rate is approximately $60 an hour. Parts and labor cost will be covered under the manufacturer's warranty program if the hose is returned to the manufacturer. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $292,080 or $60 per airplane. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish the

initial check of the airplane maintenance records, the only cost impact upon the public is the time it will take the affected airplane owners/operators of airplanes to check the records. The FAA has not taken into account the cost of replacing the hose, since the manufacturer is offering warranty credit for the hose replacement.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 97–CE–92–AD.

Applicability: The following model and serial numbered airplanes, certificated in any category.

Note 1: The Models and serial numbers listed in this AD take precedence over those listed in Raytheon Aircraft Service Bulletin No. 2718, Rev. 1, Issued: January, 1997; Revised: June, 1997.

Models	Serial numbers
65–90	LJ–1 through LJ–75, and LJ–77 through LJ–113.
65–A90	LJ–76, LJ–114 through LJ–317, and LJ–178A.
B90	LJ–318 through LJ–501.
C90	LJ–502 through LJ–1062.
C90A	LJ–1063 through LJ–1287, LJ–1289 through LJ–1294, and LJ–1296 through LJ–1299.
C90B	LJ–1288, LJ–1295, and LJ–1300 through LJ–1445.
E90	LW–1 through LW–347.
F90	LA–2 through LA–236.
H90	LL–1 through LL–61.
100	B–2 through B–89, and B–93.
A100	B–1, B–90 through B–92, B–94 through B–204, and B–206 through B–247.
A100–1 (RU–21J)	BB–3 through BB–5.
B100	BE–1 through BE–137.
200	BB–2, BB–6 through BB–185, BB–187 through BB–202, BB–204 through BB–269, BB–271 through BB–407, BB–409 through BB–468, BB–470 through BB–488, BB–490 through BB–509, BB–511 through BB–529, BB–531 through BB–550, BB–552 through BB–562, BB–564 through BB–572, BB–574 through BB–590, BB–592 through BB–608, BB–610 through BB–626, BB–628 through BB–646, BB–648 through BB–664, BB–735 through BB–792, BB–794 through BB–797, BB–799 through BB–822, BB–824 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912.
200C	BL–1 through BL–23, and BL–25 through BL–36.
200CT	BN–1.
200T	BT–1 through BT–22, and BT–28.
A200	BC–1 through BC–75, and BD–1 through BD–30.
A200C	BJ–1 through BJ–66.
A200CT	BP–1, BP–7 through BP–11, BP–22, BP–24 through BP–63, FC–1 through FC–3, FE–1 through FE–36, and GR–1 through GR–19.
B200	BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, BB–913 through BB–990, BB–992 through BB–1051, BB–1053 through BB–1092, BB–1094, BB–1095, BB–1099 through BB–1104, BB–1106 through BB–1116, BB–1118 through BB–1184, BB–1186 through BB–1263, BB–1265 through BB–1288, BB–1290 through BB–1300, BB–1302 through BB–1425, BB–1427 through BB–1447, BB–1449, BB–1450, BB–1452, BB–1453, BB–1455, BB–1456, and BB–1458 through BB–1536.
B200C	BL–37 through BL–57, BL–61 through BL–140, BU–1 through BU–10, BV–1 through BV–12, and BW–1 through BW–21.
B200CT	BN–2 through BN–4, BU–11, BU–12, FG–1, and FG–2.
B200T	BT–23 through BT–27, and BT–29 through BT–38.
300	FA–1 through FA–230, and FF–1 through FF–19.
B300	FL–1 through FL–141.
B300C	FM–1 through FM–9, and FN–1.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent fuel flow interruption, which if not corrected, would lead to uncommanded loss of engine power and loss of control of the airplane, accomplish the following:

(a) For airplanes manufactured prior to January 1, 1994, accomplish the following in accordance with Part II of the Accomplishment Instructions section in Raytheon Aircraft Mandatory Service Bulletin (SB) No. 2718, Rev. I, Issued: January, 1997; Revised: June, 1997:

(1) Check the airplane maintenance records for any MIL–H–6000B fuel hose replacement from January 1, 1994 up to and including the effective date of this AD.

(2) If the airplane records show that an MIL–H–6000B fuel hose has been replaced, prior to further flight, inspect the airplane fuel hoses for the 3/8-inch-wide red or orange-red, length-wise stripe, with the manufacturer's code, 94519, printed periodically along the line in red letters on one side.

The hoses have a spiral or diagonal outer wrap with a fabric-type texture on the rubber surface.

(3) Prior to further flight, replace any fuel hose that matches the description in paragraph (a)(2) of this AD with an FAA-approved MIL–H–6000B fuel hoses that have a criss-cross or braided external wrap.

(b) An owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9) can accomplish paragraph (a)(1) required by this AD.

(c) For Raytheon Model C90A and B200, and B300 series airplanes that were manufactured on January 1, 1994 and after, replace the MIL–H–6000B fuel hoses in accordance with Part I of the Accomplishment Instructions section of Raytheon SB No. 2718, Rev. 1, Issued: January 1997, Revised: June, 1997.

(d) As of the effective date of this AD, no person shall install a rubber fuel hose having spiral or diagonal external wrap with a 3/8-inch-wide red or orange-red, length-wise stripe running down the side of the hose, with the manufacturer's code, 94519, printed periodically along the line in red letters on any of the affected airplanes.

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

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 26, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5594 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes. This proposal would require repetitive inspections to detect cracks in the angle fitting at frame 40 of the center wing box, and corrective actions, if necessary; and eventual modification of that angle fitting, which would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by April 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket Number 97-NM–153-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 series airplanes. The DGAC advises that, during inspections of the lower outboard radius of frame 40 on Model A300 series airplanes, operators have found 30 cases of cracking in this area. The cracking originated in a fastener hole. Based on design similarity, analysis has shown that cracking also could occur in this area on Model A300–600 series airplanes. This condition, if not detected and corrected in a timely manner, could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996, which describes procedures for repetitive inspections to detect cracks in the angle fitting at frame 40 of the center wing box, and follow-on corrective actions, if necessary. The follow-on corrective actions include repetitive eddy current inspections, and temporary repair of the area prior to accomplishment of a permanent modification.

Airbus also has issued Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995, which describes procedures for a modification to the angle fitting at frame 40, which would eliminate the need for the repetitive inspections. The modification involves the installation of new angle fittings and taper-lok fasteners. Accomplishment of the actions specified in this service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996, as mandatory and issued French airworthiness directive (CN) 95–111–181(B)R1, dated October 23, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed Rule and the Related Service Bulletin

The proposed rule would differ from Airbus Service Bulletin A300–57–6052 in that, unlike the compliance time thresholds and intervals provided in the service bulletin, this proposed AD would require accomplishment of the actions at compliance time thresholds and intervals based on the Average Flight Time (AFT) of the airplane, as specified in Table 1 of this AD. The threshold and intervals defined in the service bulletin are based on an AFT of 125 minutes. For airplanes that are operated with different flight durations, adjustments must be made to the thresholds and intervals. To provide clarification of the appropriate thresholds and intervals, Table 1 has been included in this proposed AD. The thresholds and intervals provided in Table 1 have been adjusted for various AFT's.

The proposed rule also would differ from the service bulletin in that the service bulletin recommends the visual inspection be accomplished with or without the nut removed, while this proposed AD requires that any inspection, whether visual, eddy current, or liquid penetrant, be performed with the nut removed. The FAA has determined that, without removal of the nut, a visual inspection technique is not an appropriate method of compliance with the proposed AD, due to the time required to gain access to the area to be inspected and the necessity to perform frequent subsequent inspections if the inspection is done without removal of the nut.

Operators should also note that, unlike the procedures described in the service bulletin, this proposed AD would not permit further flight with cracking detected in the forward angle fitting of frame 40. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all fittings that are found to be cracked must be replaced prior to further flight.

Further, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Additionally, operators should note that this AD proposes to mandate, within 4 years after the effective date of this AD, the modification described in Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995, as terminating action for the repetitive inspections. (Incorporation of the terminating action specified in this service bulletin is optional in French airworthiness directive 95–111–181(B) R1, dated October 23, 1996.) The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these conditions.

Cost Impact

The FAA estimates that 54 Model A300–600 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 36 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $116,640, or $2,160 per airplane, per inspection cycle.

It would take approximately 754 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost

approximately $11,605 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,069,630, or $56,845 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 97–NM–153–AD.

Applicability: Model A300–600 series airplanes on which Airbus Modification 10453 has not been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of the threshold specified in Table 1 of this AD, as applicable, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed visual, eddy current, or liquid penetrant inspection to detect cracking in the angle fitting of frame 40 (both left and right), with the nut removed, in accordance with Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996. Thereafter, repeat the inspections at the interval specified in Table 1 of this AD, as applicable, until the actions required by paragraph (c) of this AD have been accomplished.

TABLE 1

Average flight time (AFT): Flight hours/flight cycles	Threshold (flight cycles)	Visual inspection interval (flight cycles)	Eddy current/liquid penetrant inspection interval (flight cycles)
2.10–2.49	5,900	4,700	6,300
2.50–2.99	5,600	4,400	4,900
3.00–3.49	5,200	4,100	4,600
3.50–3.99	4,800	3,800	4,200
4.00–4.49	4,400	3,500	3,900
4.50–4.99	4,000	3,200	3,500
5.00–5.49	3,600	2,800	3,200
5.50–5.99	2,300	2,500	2,800
6.00–6.50	2,800	2,200	2,500

(b) Except as provided by paragraph (d) of this AD, if any crack is found during an inspection required by paragraph (a) of this AD, prior to further flight, accomplish follow-on corrective actions in accordance with the procedures specified in Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996.

(c) Within 4 years after the effective date of this AD, modify the angle fitting at frame 40 (both left and right) in accordance with Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(d) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 95–111–181(B) R1, dated October 23, 1996.

Issued in Renton, Washington, on February 26, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5605 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–53–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Operations) Limited HP.137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have superseded Airworthiness Directive (AD) 82–20–04 R1, which currently requires repetitively inspecting the main landing gear (MLG) hinge fitting, support angles, and attachment bolts on British Aerospace (Operations) Limited HP.137 Mk1 and Jetstream series 200 airplanes, and repairing or replacing any part that is cracked beyond certain limits. The proposed AD would have required installing improved design MLG fittings, as terminating action for the repetitive inspections that are currently required by AD 82–20–04 R1, and would have incorporated the Jetstream Model 3101 airplanes into the Applicability of the AD. The actions specified in the proposed AD are intended to prevent structural failure of the MLG caused by fatigue cracking, which could result in loss of control of the airplane during landing operations. The Federal Aviation Administration (FAA) inadvertently proposed eliminating repetitive inspections of both the MLG fitting and MLG support angles in the proposal. Only the inspections of the MLG fitting should be eliminated; the inspections of the MLG support angle are still valid. Since adding these inspections goes beyond the scope of what was originally proposed, the FAA has determined that the comment period for the proposal should be reopened and the public should have additional time to comment.

DATES: Comments must be received on or before May 8, 1998.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to this proposed AD may be obtained from British Aerospace (Operations) Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (44–292) 79888; facsimile: (44–292) 79703; or AI(R) Ltd., 13850 McLearen Road, Herndon, Virginia 22071; telephone: (703) 736–4325; facsimile: (703) 736–4399. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this supplemental notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–53–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to This Supplemental NPRM

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to British Aerospace (Operations) Limited HP.137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 18, 1997 (62 FR 12771). The NPRM proposed to supersede AD 82–20–04 R1 with a new AD that would (1) initially retain the requirement of repetitively inspecting the MLG hinge fitting, support angles, and attachment bolts, and repairing or replacing any part that is cracked; (2) incorporate the Jetstream Model 3101 airplanes into the Applicability of the AD; and (3) eventually require the installation of improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as terminating action for the repetitive inspections. Accomplishment of the proposed action would in accordance with the following service information:

—British Aerospace Jetstream Mandatory Service Bulletin (MSB) No. 7/5, which includes procedures for inspecting the left and right main landing gear hinge attachment nuts to the auxiliary and aft spars for signs of relevant movement between the nuts and hinge fitting on HP.137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2 and 4	Original Issue	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

—British Aerospace MSB No. 7/8, which includes procedures for inspecting the MLG hinge fitting for cracks, and repairing cracked hinge fittings on HP.137 MK1 and Jetstream series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

—Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which includes procedures for inspecting the MLG hinge fitting and support angle for cracks on Jetstream Model 3101 airplanes. This ASB incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue	April 17, 1985.
1 through 4	Revision 2	November 11, 1994.

—Jetstream Service Bulletin (SB) 57–JM 5218, which includes procedures for installing improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), on HP.137 Mk1, Jetstream series 200, and certain Jetstream Model 3101 airplanes. This SB incorporates the following effective pages:

Pages	Revision Level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16	Revision 4	October 31, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA inadvertently proposed eliminating repetitive inspections of both the MLG fitting and MLG support angles in the NPRM. Only the inspections of the MLG fitting should be eliminated; the inspections of the MLG support angles are still valid.

The Supplemental NPRM

Because the inspections of the MLG support angles go beyond the scope of what was originally proposed in the NPRM, the FAA has determined that the comment period for the NPRM should be reopened and the public should have additional time to comment.

Differences Between the Proposed AD, the British AD, and Existing AD 82–20–04 R1

AD 82–20–04 R1 allows continued flight if cracks are found in the MLG hinge fitting support angles that propagate no further than the tooling holes. The applicable service bulletin specifies replacement of the support angles only if cracks are found exceeding this limit, as does British AD 015–05–85. The proposed AD, if adopted, would not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The main landing gear is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

Cost Impact

The FAA estimates that 71 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 271 workhours (inspections: 61 workhours; installation: 210 workhours) per airplane to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. Parts to accomplish the proposed AD are provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,154,460, or $16,260 per airplane. This figure only takes into account the cost of the initial inspections and inspection-terminating modification and does not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each HP.137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplane owner/operator would incur.

This figure is also based on the presumption that no affected airplane operator has accomplished the proposed installation. This action would eliminate the repetitive inspections required by AD 82–20–04 R1. The FAA has no way of determining the operation levels of each individual owner/operator of the affected airplanes, and cannot determine the repetitive inspection costs that would be eliminated by the proposed action. The FAA estimates these costs to be substantial over the long term.

In addition, British Aerospace (Operations) Limited has informed the FAA that parts have been distributed to owners/operators that would equip approximately 39 of the affected

airplanes. Presuming that each set of parts has been installed on an affected airplane, the cost impact of the proposed modification upon the public would be reduced $634,140 from $1,154,460 to $520,320.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a ''significant economic impact on a substantial number of small entities,'' and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A ''substantial number'' is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A ''significant economic impact'' is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, defines a small entity as ''a small business or small not-for-profit organization which is independently-owned and operated and has no more than a specified number of employees or aircraft.'' For operators of aircraft for hire (those entities that are affected by parts 121, 127, and 135 of the Federal Aviation Regulations (14 CFR parts 121, 127, and 135)), the size threshold specified in FAA Order 2100.14A is nine aircraft.

There are only nine different operators of British Aerospace (Operations) Limited HP.137 MK1, Jetstream series 200, and Jetstream Model 3101 airplanes. Of these nine, only four operate less than nine airplanes. Because 4 is a number that is less than 11 and the rulemaking official has not determined this number to be substantial, the proposed AD would not significantly affect a number of small entities.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for the proposed action may be examined at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 82–20–04 R1, Amendment 39–4468, and adding a new AD to read as follows:

British Aerospace (Operations) Limited (Type Certificate No. A21EU formerly held by Jetstream Aircraft Limited): Docket No. 95–CE–53–AD. Supersedes 82–20–04 R1, Amendment 39–4468.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have improved design main landing gear (MLG) fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), installed in accordance with Jetstream Service Bulletin (SB) 57–JM 5218:

Model	Serial Nos.
HP.137 MK1	All serial numbers.
Jetstream Series 200	All serial numbers.
Jetstream Model 3101.	601 through 695.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent structural failure of the MLG caused by fatigue cracking, which could result in loss of control of the airplane during landing operations, accomplish the following:

Note 2: The compliance times of this AD are presented in landings. If the total number of airplane landings is not kept or is unknown, hours time-in-service (TIS) may be used by multiplying the total number of airplane hours TIS by 0.75.

(a) For the HP.137 MK1 and Jetstream series 200 airplanes, within the next 50 landings after the effective date of this AD or within 200 landings after the last inspection required by AD 82–20–04 R1 (superseded by this AD), whichever occurs first, and thereafter at intervals not to exceed 200 landings, accomplish the following in accordance with British Aerospace Mandatory Service Bulletin (MSB) No. 7/5, which incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue	March 31, 1982.
1 and 3	Revision 1	May 23, 1988.

(1) Inspect the MLG hinge attachment nuts to auxiliary and aft spars on both the left and right MLG for signs of fuel leakage or signs of relative movement between the nuts and hinge fitting.

(2) If any signs of fuel leakage or relative movement between the nuts and hinge fitting are found, prior to further flight, resecure the MLG hinge fitting to auxiliary spar in accordance with actions 3.8 through 3.15 of British Aerospace MSB No. 7/5.

(b) Upon accumulating 4,000 landings on the left and right MLG fittings or within the next 50 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 400 landings, inspect the MLG hinge support angles for cracks in accordance with the following, as applicable:

(1) For the HP.137 MK1 and Jetstream series 200 airplanes: British Aerospace MSB 7/8, which incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8.	Revision 2	January 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988 .

(2) For the Jetstream Model 3101 airplanes: Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue	April 17, 1985.
1 through 4 ...	Revision 2	November 11, 1994.

(c) Install improved design MLG fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218). Perform this installation at the applicable compliance time presented below (paragraphs (c)(1) and (c)(2) of this AD). Accomplish this installation in accordance with Jetstream Service Bulletin (SB) 57–JM 5218, which incorporates the following effective pages:

Pages	Revision level	Date
3, 5, 6, 7, 8, 9, 11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31.	Revision 1	September 29, 1987.
25 and 26	Revision 2	August 24, 1988.
10 and 20	Revision 3	January 29, 1990.
1, 2, 4, 13, 14, 15, and 16.	Revision 4	October 31, 1990.

(1) Prior to further flight after finding any crack during an inspection required by paragraph (b) of this AD; or

(2) Upon accumulating 20,000 landings on the left and right MLG fittings or within the next 50 landings after the effective date of this AD (whichever occurs later).

(d) Incorporating Modification 5218 as required by paragraph (c) of this AD terminates the repetitive inspection requirement of paragraph (a) of this AD. The repetitive inspections of the MLG support angles required by paragraph (b) of this AD are still required.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 82–20–04 R1 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

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

(g) Questions or technical information related to the service information referenced in this AD should be directed to British Aerospace (Operations) Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (44–292) 79888; facsimile: (44–292) 79703; or AI(R) Ltd., 13850 McLearen Road, Herndon, Virginia 22071; telephone: (703) 736–4325; facsimile: (703) 736–4399. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas.

(h) This amendment supersedes AD 82–20–04 R1, Amendment 39–4468.

Issued in Kansas City, Missouri, on February 26, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5518 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5973–7]

Extension of Comment Period for the GE-Housatonic Site Included in National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 23

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period for GE-Housatonic site.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the GE-Housatonic site in Pittsfield, Massachusetts which was proposed to be added to the National Priorities List (NPL) on September 25, 1997 (62 FR 50450). The comment period was scheduled to end on November 24, 1997. However, due to the unique circumstances surrounding the GE-Housatonic site, the comment period was extended until March 1, 1998 (62 FR 60199, November 7, 1997). This new document further extends the comment period until May 1, 1998.

The Environmental Protection Agency (EPA) has formed a partnership with several state and federal agencies (intergovernmental team) in order to achieve a comprehensive solution to the environmental problems at the GE/Housatonic River Site in Pittsfield, MA. The Intergovernmental Team is comprised of representatives from EPA, the Massachusetts Department of Environmental Protection, the Massachusetts Executive Office of Environmental Affairs, the Massachusetts Attorney General's Office, the Connecticut Department of Environmental Protection, the Connecticut Attorney General's Office, the US Department of Interior, the US Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the United States Department of Justice. The Intergovernmental Team is attempting to negotiate, with General Electric, a comprehensive solution in lieu of final listing of the General Electric/Housatonic River Site on the National Priorities list. March 30, 1998, has now been set as the appropriate deadline for concluding negotiations. In order to facilitate this intensive and comprehensive negotiation, the EPA has decided to extend the public comment period until May 1, 1998.

Numerous parties, including the public, are directly or indirectly participating in these negotiations. These parties include the City of Pittsfield and other cities and towns downstream of the GE facility, environmental and business groups. It is EPA's view that the added time for comments will improve the quality of comments eventually submitted.

DATES: Comments regarding the GE-Housatonic site must be submitted (postmarked) on or before May 1, 1998.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Overnight Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis

Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND.DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460; telephone (703) 603–8852.

Dated: February 24, 1998.

Larry G. Reed,

Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 98–5555 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980212037–8037–01; I.D. 012798A]

RIN 0648-AJ87

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Donation Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 50 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 50 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) that have been submitted by the North Pacific Fishery Management Council (Council) for Secretarial review. This rule would authorize the limited retention of Pacific halibut taken as bycatch in the groundfish trawl fisheries off Alaska for distribution to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. This action would support industry initiatives to reduce regulatory discards in the groundfish fisheries by processing halibut bycatch for human consumption. This action is necessary to promote the goals and objectives of the FMPs that govern the commercial groundfish fisheries off Alaska.

DATES: Comments on the proposed rule must be received by April 20, 1998.

ADDRESSES: Comments should be submitted to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK, Attn: Lori Gravel. Copies of the proposed Amendments to the FMP and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and related economic analysis prepared for the proposed action are available from NMFS at the above address or by calling the Alaska Region, NMFS, at 907–586–7228. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing burdens to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

The domestic groundfish fisheries in the exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679.

The Council has submitted Amendments 50/50 to the FMPs for Secretarial review and a Notice of Availability of the FMP amendments was published on February 4, 1998 (63 FR 5777) with comments on the FMP amendments invited through April 6, 1998. All written comments received by April 6, 1998, whether specifically directed to the FMP amendments, the proposed rule, or both, will be considered in the approval/disapproval decision on the FMP amendments.

Pacific halibut are taken incidentally to the Alaska groundfish fisheries. Vessels participating in these fisheries typically use trawl, hook-and-line, or pot gear. Trawl gear accounts for most of the groundfish catch, and for about 84 percent of the halibut bycatch mortality. A portion of this bycatch is landed dead at shoreside processing facilities because sorting of catch at sea is not always feasible. Such bycatch must then be returned to Federal waters for disposal as a prohibited species. Total halibut bycatch mortality in the Alaska groundfish fisheries was estimated to be 6,757 metric tons during 1996.

In general, no information exists to indicate that the current level of halibut bycatch landed at shoreside processing sites in the Alaska trawl fisheries presents critical conservation issues. The International Pacific Halibut Commission (IPHC) has recommended enhanced data collection at shoreside processing plants to assess the levels of shoreside landings of trawl halibut bycatch.

At its January 1996 Annual Meeting, the IPHC endorsed a pilot program allowing limited retention of halibut bycatch for donation to the needy through food bank organizations. The pilot program was intended to explore ways to reduce discard of dead halibut and to improve bycatch records. However, NMFS was not able to identify an acceptable administrative procedure for transferring halibut bycatch from shoreside processing plants to the government for distribution to foodbank organizations. At its 1997 Annual Meeting, the IPHC requested that its staff work with NMFS to develop an acceptable administrative procedure for limited retention of halibut bycatch landed at shoreside processing plants. NMFS recommended that amendments to the FMPs be prepared to allow a NMFS authorized distributor(s) to receive and distribute halibut bycatch. The program would be similar to the current salmon donation program authorized at 50 CFR 679.26. The IPHC staff further recommended that regulations implementing the FMP amendments be effective only for a 3-year period so that management agencies may assess the halibut donation program prior to determining whether to continue it under a future regulatory amendment.

At its April 1997 meeting, the Council adopted Amendments 50/50 and recommended that they be implemented on a temporary basis, to assess the feasibility of a donation program for halibut bycatch landed dead at shoreside processors. The Council's recommendation endorses the policy of reducing unnecessary discard of dead, but wholesome, fish, thereby benefitting the public by allowing fish that would otherwise be discarded to be retained for processing and delivery to food bank organizations. The Council's intent in making its recommendation was to

reduce regulatory discard and protein waste in the groundfish trawl fisheries and provide additional opportunity to collect biological samples and scientific data. Any costs associated with this recommended action would be borne by voluntarily participating shoreside processors and the NMFS authorized distributors.

Amendments 50/50 would expand the existing Salmon Donation Program (SDP) to create a Prohibited Species Donation (PSD) program that includes Pacific halibut as well as salmon. These amendments and this proposed rule to implement them would authorize the distribution of halibut taken as bycatch in the groundfish trawl fishery to economically disadvantaged individuals by tax-exempt organizations through a NMFS authorized distributor. These amendments and this proposed rule would support industry initiatives to reduce regulatory discards and help improve the diets of people who often have access only to meager and inadequate food.

The Council further adopted the IPHC's recommendation to limit the effective period of the regulations implementing Amendments 50/50. This would allow the Council, in consultation with the IPHC and NMFS, to assess the effectiveness of the halibut donation program relative to the program's objectives before the Council took an action to extend the program by regulatory amendment. Accordingly, the rule would expire December 31, 2000.

Selection Process for Authorized Distributors

The Administrator, Alaska Region, NMFS, (Regional Administrator) would select an authorized distributor(s) from qualified applicants, announce the NMFS-authorized distributor(s) in the **Federal Register**, and issue a PSD permit to each selected applicant. A PSD permit would be effective until December 31, 2000.

Factors that would be considered by the Regional Administrator when selecting an authorized distributor are listed at proposed § 679.26(b)(1). The number of authorized distributors selected by the Regional Administrator would be based on the criteria listed at proposed § 679.26(b)(2).

Responsibilities of an Authorized Distributor

An authorized distributor would be responsible for monitoring the retention and processing of halibut donated by shoreside processors. An authorized distributor also would coordinate the processing, storage, transportation, and distribution of halibut to hunger relief agencies, food bank networks, and food bank distributors.

Prior to retaining any halibut under the PSD program, the authorized distributor would provide the Regional Administrator with a list of all participants in the halibut PSD program, including a list of all shoreside processors and a list of hunger relief agencies, food bank networks, and food distributors participating in the PSD program. The list of processors would include the following information: (1) A Federal processor permit number, (2) the name of the owner or responsible manager, and (3) a telephone number or fax number. If an authorized distributor modifies the list of participants in the PSD program or changes delivery locations, the authorized distributor would be required to submit a revised list of participants to the Regional Administrator before halibut bycatch could be retained by any new participant.

Reporting Requirements—Documentation and Labeling

Participants in the halibut PSD program would have to comply with new documentation and labeling requirements. All packages would be required to be labeled with the date of processing, the name of the processing facility, the contents, and the weight of the halibut contained in the package, and the words, ''NMFS PROHIBITED SPECIES DONATION PROGRAM - NOT FOR SALE - PERISHABLE PRODUCT - KEEP FROZEN''.

A processor or authorized distributor retaining or receiving halibut under the PSD program would keep on file and make available for inspection by an authorized officer all documentation including receipt and cargo manifests setting forth the origin, weight, and destination of all halibut. Such documentation would be retained until 1 year after the effective period of the PSD permit (December 31, 2001).

Responsibilities of Participating Shoreside Processors

All donated halibut would be required to be processed so that it is fit for human consumption. Participation in the PSD program would not relieve any processor from any existing reporting requirements.

Classification

At this time, NMFS has not determined that Amendments 50/50 are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

NMFS prepared a regulatory impact review (RIR) that describes the impact this proposed rule, if adopted, would have on small entities. The RIR examined the economic effects of the proposed rule and concluded that it would not have a significant impact on a substantial number of small entities.

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $3,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit-enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a ''substantial number'' of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a ''significant economic impact'' on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities by at least 10 percent compared with compliance costs as a percent of sales for large entities, or resulted in 2 percent or more of the affected small entities being forced to cease operations.

The Assistant General Council for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows.

There are 56 shoreside processors in the State of Alaska, most have fewer than 500 employees and would be considered small entities. NMFS anticipates that 5 of these processors, or 6 percent, will choose to participate in the program. NMFS does not anticipate that any processor that qualifies as a small entity would elect to participate in the voluntary program if the cost of doing so would reduce gross annual receipts by 5 percent or more, would result in compliance costs at least 10 percent higher than such costs as a percent of sales for large entities, or would cause the entity to go out of business. Thus, this rule is not expected to have a significant economic impact on a substantial number of small entities.

As a result, a regulatory flexibility analysis was not prepared.

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

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB approval for the collection-of-information requirement under the salmon donation program was obtained under OMB control number 0648–0316. The collection of information requirements contained in the proposed rule would revise OMB number 0648–0316 to include information submitted on an application to participate as an authorized distributor in the halibut donation program, documentation requirements for the authorized distributor(s) and processors participating in the PSD program, and packaging requirements for processors. Public reporting burden for these collections of information are estimated to average: 40 hours per response for a distributor to complete an application; 40 hours per year per distributor to comply with documentation requirements; 0.1 hours per response for processors to properly label processed halibut; and 0.25 hours per response for the vessels/processors to list vessels/processors.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of NMFS, including whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 20, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of ''*SDP*'' and ''*SDP permit*'' are removed, the definitions of ''*PSD program*'' and ''*PSD permit*'' are added, and paragraph (1) of the definition of *Catcher vessel* is revised, in alphabetical order as follows:

§ 679.2 Definitions.

* * * * *

Catcher vessel means:

(1) With respect to groundfish recordkeeping and reporting, the PSD program and subpart E of this part, a vessel that is used for catching fish and that does not process fish on board.

* * * * *

PSD Permit means a permit issued by NMFS to an applicant who qualifies as an authorized distributor for purposes of the PSD.

PSD Program means the Prohibited Species Donation Program established under § 679.26.

* * * * *

3. In § 679.7, paragraph (a)(12) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(12) *Prohibited species donation program*. Retain or possess prohibited species, defined at § 679.21(b)(1), except as permitted to do so under the PSD program as provided by § 679.26 of this part, or as authorized by other applicable law.

* * * * *

4. Section 679.21 paragraph (c)(1) is amended by changing the word ''SDP'' to the phrase ''PSD program''.

5. In § 679.26, the section heading is revised, paragraphs (a) through (c) are redesignated as paragraphs (b) through (d), redesignated paragraphs (b)(1)(xii), (b)(2) introductory text, (b)(2)(iii), (b)(3)(ii), (b)(3)(iv), (b)(3)(v), (c)(1), (c)(2), (c)(3) and (d)(4) are revised, and new paragraphs (a) and (b)(1)(xiv) are added to read as follows:

§ 679.26 Prohibited Species Donation Program.

(a) *Authorized species*. The PSD program applies only to the following species:

(1) Salmon.

(2) Halibut delivered by catcher vessels using trawl gear to shoreside processors (Applicable through December 31, 2000).

(b) * * *

(1) * * *

(xii) A signed statement from the applicant and all persons listed under paragraph (b)(1)(xi) of this section who would conduct activities pursuant to the PSD permit waiving any and all claims against the United States and its agents and employees for any liability for personal injury, death, sickness, damage to property directly or indirectly due to activities conducted under the PSD program.

* * * * *

(xiv) A separate application must be submitted for each species listed under paragraph (a) of this section that the applicant seeks to distribute.

(2) *Selection*. The Regional Administrator may select one or more tax-exempt organizations to be authorized distributors under the PSD program based on the information submitted by applicants under paragraph (b)(1) of this section. The number of authorized distributors selected by the Regional Administrator will be based on the following criteria:

* * * * *

(iii) The anticipated level of bycatch of prohibited species listed under paragraph (a) of this section.

* * * * *

(3) PSD Permit.

* * * * *

(ii) The Regional Administrator may impose additional terms and conditions on a PSD permit consistent with the objectives of the PSD program.

* * * * *

(iv) Effective period. (1) Salmon. A PSD permit for salmon remains in effect for a 3-year period after the selection is published in the **Federal Register** unless suspended or revoked. A PSD permit issued to an authorized distributor may be renewed following the application procedures in this section.

(2) A PSD permit issued for halibut will expire December 31, 2000.

(v) If the authorized distributor modifies any information on the PSD permit application submitted under (b)(1)(xi) or (b)(1)(xiii) of this section, the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

(c) * * *

(1) A vessel or processor retaining fish under the PSD program must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the PSD program must comply with applicable regulations at § 679.7(c)(1), and § 679.21(c) that allow for the collection of data and biological sampling by a NMFS-certified observer prior to processing any salmon under the PSD program.

(2) Prohibited species retained under the PSD program must be packaged, and all packages must be labeled with the date of processing, the name of the processing facility, the contents and the weight of the fish contained in the package and the words, ''NMFS PROHIBITED SPECIES DONATION PROGRAM-NOT FOR SALE-PERISHABLE PRODUCT-KEEP FROZEN''.

(3) A processor retaining or receiving fish under the PSD program and an authorized distributor must keep on file and make available for inspection by an authorized officer all documentation including receipt and cargo manifests setting forth the origin, weight, and destination of all prohibited species bycatch. Such documentation must be retained until 1 year after the effective period of the PSD permit.

* * * * *

(d) * * *

(4) No prohibited species that has been sorted from a vessel's catch or landing may be retained by a vessel or processor, or delivered to a delivery location under this section, unless the vessel or processor and delivery location is included on the list provided to the Regional Administrator under paragraphs (b)(1)(xi), (b)(1)(xiii) or (b)(3)(v) of this section.

* * * * *

§ 679.26 [Amended]

In addition to the amendments set forth, § 679.26 is amended by making the following nomenclature changes:

a. In paragraphs (b)(1)(vi), (b)(1)(viii), (b)(1)(xi), (d)(1) and (d)(3), the word ''SDP'' is removed and the phrase ''PSD program'' is added in its place.

b. In paragraphs (b)(2)(i), (b)(3)(i) and (b)(3)(iii) the word ''SDP'' is removed and the word ''PSD'' is added in its place.

c. In paragraphs (b)(1)(ii), (b)(1)(v), (b)(i)(vi), (b)(1)(viii), (b)(1)(xiii), (b)(2)(ii), (c)(1), (d)(1) and (d)(2) the word ''salmon'' is removed and the word ''fish'' is added in its place.

d. In paragraph (d)(3) the word ''salmon'' is removed and the phrase ''prohibited species'' is added in its place.

[FR Doc. 98–5185 Filed 3–3–98;8:45am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 42
Wednesday, March 4, 1998

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

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to EnviroLogix Incorporated of Portland, Maine, an exclusive license to U.S. Patent Application Serial No. 08/544,748 filed October 18, 1995, entitled, ''Monoclonal Antibodies to Potato, Tomato, and Eggplant Gylcoalkaloids and Assays for the Same.'' Notice of Availability was published in the **Federal Register** on July 18, 1996.

DATES: Comments must be received on or before May 3, 1998.

ADDRESSES: Send comments to: USDA, ARS, PWA, WRRC, 800 Buchanan Street, Room 2010, Albany, California 94710.

FOR FURTHER INFORMATION CONTACT: Martha Steinbock of the Office of Technology Transfer at the Albany address given above; telephone: 510–559–5641.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as EnviroLogix Incorporated has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–5537 Filed 3–3–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent to Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection on supplemental food security questions for the August 1998 Current Population Survey. These data will be used to develop a scale of household level food security in the United States, to assess changes in food security for population subgroups, to assess performance of domestic food assistance programs, and to provide information to aid in public policy decision making.

DATES: Comments on this notice must be received by May 8, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room 2145, Washington, D.C. 20036–5831, 202–694–5466.

SUPPLEMENTARY INFORMATION:

Title: Application for August Food Security Supplement to the Current Population Survey, 1998.

Type of Request: Approval to collect information on household food insecurity.

Abstract: The U.S. Bureau of the Census will supplement the August 1998 Current Population Survey (CPS) with questions regarding household food shopping, food sufficiency, coping mechanisms and food scarcity, and concern about food sufficiency. A similar supplement was also appended to the CPS in April 1995, September 1996, and April 1997.

ERS is responsible for conducting studies and evaluations of the Nation's food assistance programs that are administered by the Food and Nutrition Service (FNS), U. S. Department of Agriculture. The Department spends about $37 billion each year to ensure access to more nutritious, healthful diets for all Americans. The Food and Nutrition Service administers the 15 food assistance programs of the USDA including the Food Stamp and Child Nutrition Programs, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). These programs, which serve 1 in 6 Americans, represent our nation's commitment to the principle that no one in our country should fear hunger or experience want. They provide a safety net to people in need. The programs' goals are to provide needy persons with access to a more nutritious diet, to improve the eating habits of the nation's children, and to help America's farmers by providing an outlet for the distribution of food purchased under farmer assistance authorities.

These data will be used to develop a scale of food security reflecting a range from food secure households through households experiencing severe food insecurity. Ultimately, this scale will be used to identify the prevalence of poverty-linked food insecurity and hunger experienced in the United States. The purpose of this project is to provide a consistent measure of the extent and severity of food insecurity that will aid in policy decision making. The supplemental survey instrument has been used in the prior collections. This supplemental information will be collected by both personal visit and telephone interviews in conjunction with the regular monthly CPS interviewing. All interviews, whether by personal visit or by telephone, are conducted using computers.

Estimates of Burden: Public reporting burden for this data collection is estimated to average 8 minutes.

Respondents: Individuals or households.

Estimated number of Respondents: 50,000.

Estimated Total Annual Burden on respondents: 6,667 hours.

Copies of the information to be collected can be obtained from David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room 2145, Washington, D.C. 20036–5831, 202–694–5466.

Comments: Comments are invited on : (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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 David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room 2145, Washington, D.C. 20036–5831, 202–694–5466. 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: February 20, 1998.

Betsey Kuhn,

Director, Food and Rural Economy Division.

[FR Doc. 98–5495 Filed 3–3–98; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Salmon Timber Sale and Other Resource Projects, Siskiyou National Forest, Coos and Curry Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On March 5, 1992, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the North Salmon Timber Sale and Other Resource Projects on the Powers Ranger District of the Siskiyou National Forest was published in the **Federal Register** (57 FR 7908). Forest Service has decided to cancel the environmental analysis process. There will be no EIS for this project at this time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Carl Linderman, Title: District Ranger, Address: Powers Ranger District, Powers, OR 97466, Telephone 541–439–3011.

Dated: February 23, 1998.

J. Michael Lunn,

Forest Supervisor.

[FR Doc. 98–5517 Filed 3–3–98; 8:45 am]

BILLING CODE 3410–11–M

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Wednesday, March 18, 1998.

PLACE: U.S. Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: .

1. Review and approval of the minutes of the October 29, 1997 Board of Trustees meeting.
2. Report on financial status of the Foundation fund.
   A. Review of investment policy and current portfolio.
3. Report on results of Scholarship Review Panel.
   A. Discussion and consideration of scholarship candidates.
   B. Selection of Goldwater Scholars.
4. Other Business brought before the Board of Trustees.

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, President, Telephone: (703) 756–6012.

Gerald J. Smith,

President.

[FR Doc. 98–5703 Filed 3–2–98; 11:59 am]

BILLING CODE 4738–91–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–98]

Foreign-Trade Zone 151—Findlay, Ohio, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Community Development Foundation (CDF), grantee of FTZ 151, Findlay, Ohio, requesting authority to expand its zone in Findlay, Ohio, within the Toledo-Sandusky Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 20, 1998.

FTZ 151 was approved on July 6, 1988 (Board Order 389, 53 F.R. 27058, 7/18/88). The general-purpose zone currently consists of 160 acres at the Tall Timbers Industrial Center, intersection of State Route 12 and County Road 95, Findlay. In a separate pending application (FTZ Doc. 85–97), the CDF has requested that the FTZ Board reissue the grant of authority for FTZ 151 to the Findlay/Hancock County Chamber of Commerce.

The applicant is now requesting authority to expand the existing FTZ site and to add a new general-purpose site to its FTZ project as follows: *Site 1*—add 660 acres to the existing 160 acre zone site at the Tall Timbers Industrial Center; and, *Proposed Site 2* (53 acres)—Ball Metal Container Group general-purpose warehouse facility, 12340 Township Road 99 East, Findlay. Proposed Site 2 would be used for warehousing/distribution activities related to Ball Metal's business as well as for multi-tenant public warehousing activities. The proposed change would increase Site 1 to 820 acres and the zone overall to 873 acres. FTZ status will make the sites eligible for special Customs procedures and may also make the sites eligible for benefits provided under state/local programs. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 4, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 18, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Findlay/Hancock County Chamber of Commerce, Room No. 1,

123 E. Main Cross Street, Findlay, Ohio 45840

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: February 24, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–5592 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 9–98]

Foreign-Trade Zone 38; Spartanburg County, South Carolina—Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, requesting authority to expand its zone in Spartanburg County, South Carolina, within the Greenville/Spartanburg Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 25, 1998.

FTZ 38 was approved on May 4, 1978 (Board Order 131, 43 FR 20526, 5/12/78) and expanded on November 9, 1994 (Board Order 715, 59 FR 59992, 11/21/94) and July 23, 1997 (Board Order 910, 62 FR 40797, 7/30/97). The zone project currently consists of four sites in Spartanburg County: *Site 1* (20 acres)—U.S. Highway 29 Industrial Park, Wellford; *Site 2* (111 acres—International Transport Center, Greer; *Site 3* (111 acres)—Highway 290 Commerce Park, Duncan; and, *Site 4* (473 acres) Wingo Corporate Park, Spartanburg.

The applicant is now requesting authority to expand one of its existing sites (Site 2) as follows: *Site 2*—add 3 parcels (688 acres) located at the newly formed Gateway International Business Center, Brookshire Road, off U.S. Highway 101, Greer (increasing the overall area for Site 2 from 111 acres to 799 acres). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 4, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 18, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 150–A West Phillips Road, Greer, SC 29650.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 25, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–5593 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–812]

Calcium Aluminate Flux From France; Antidumping Duty Administrative Review; Time Limits

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 calcium aluminate flux from France. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1996 through May 31, 1997.

EFFECTIVE DATE: April 4, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0193.

SUPPLEMENTARY INFORMATION: It is not practicable to complete this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until June 30, 1998, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675(a)(3)(A)). See Memorandum to Robert S. LaRussa from Joseph A. Spetrini, which is on file in Room B–099 at the Department's headquarters.

Dated: February 28, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 98–5590 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–805]

Certain Cut-to-Length Carbon Steel Plate From Belgium; Notice of Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Recission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: March 4, 1998.

SUMMARY: On September 25, 1997, the Department of Commerce (''the Department'') published in the **Federal Register** (62 FR 50292) a notice announcing the initiation of an administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate (Carbon Steel Plate) from Belgium. This review covered the period August 1, 1996 through July 31, 1997. This review has now been rescinded as a result of the absence of shipments and entries into the United States of subject merchandise during the period of review.

FOR FURTHER INFORMATION CONTACT: Stephanie Tolson or Linda Ludwig, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–2312 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1997, Dewey Ballantine, on behalf of petitioners in this proceeding, requested a review of sales made by Fabrique de Fer de Charleroi SA (FAFER). On September

12, 1997 and February 19, 1997, FAFER and its U.S. affiliate filed letters certifying to the Department that there had been no sales entries or withdrawals from warehouse of subject merchandise during the period of review (POR). The Department sent a no-shipment inquiry regarding FAFER to U.S. Customs on October 20, 1997. Customs did not indicate that there were any such entries.

Because FAFER made no entries into the customs territory of the United States during the POR, the Department is therefore rescinding this review.

This administrative review is being rescinded in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 351.213(d)(3).

Dated: February 25, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–5591 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, C–475–819]

Certain Pasta from Italy: Initiation of New Shipper Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce has received a request for new shipper reviews of the antidumping and countervailing duty orders on certain pasta from Italy issued July 24, 1996. In accordance with our regulations, we are initiating these administration reviews.

EFFECTIVE DATE: March 4, 1998.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Edward Easton (antidumping duty), at (202) 482–5288 or 482–1777, respectively; Vince Kane or Todd Hansen (countervailing duty), at (202) 482–2815 or 482–1276, respectively. Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (''the Department'') are to the regulations as codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request from CO.R.EX. S.r.L. (''CO.R.EX.'') to conduct new shipper administrative reviews of the antidumping and countervailing duty orders on certain pasta from Italy, which have a January semi-annual anniversary date. This request was made pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b) of the Department's regulations.

Initiation of Review

Pursuant to the Department's regulations at 19 CFR 351.214(b), in its request of January 16, 1998, CO.R.EX. certified that it did not export the subject merchandise to the United States during the period of investigation (''POI'') (May 1, 1994 through April 30, 1995) and that it was not affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. CO.R.EX. submitted documentation establishing the date on which the merchandise was first entered for consumption in the United States. CO.R.EX. also certified that it has a tolling arrangement in which it purchases all inputs and pays a processing fee to a company that produces pasta for CO.R.EX. This toller provided a certification stating that it did not export to the United States and has not been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI.

In accordance with section 751(a)(2)(B) of the Act and section 351.214(d) of the Department's regulations, we are initiating new shipper reviews of the antidumping and countervailing duty orders on certain pasta from Italy. We intend to issue the final results of these reviews not later than 270 days from the date of publication of this notice.

Antidumping and Countervailing Duty Proceedings	Period to be Reviewed
Italy: Certain Pasta, A–475–818:	
CO.R.EX. S.r.L	07/01/97–12/31/97
Italy: Certain Pasta, C–475–819:	
CO.R.EX. S.r.L	01/01/97–12/31/97

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, in accordance with 19 CFR 351.214(e).

Interested parties may submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and section 351.214 of the Department's regulations (19 CFR 351.214).

Dated: February 25, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–5504 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate from Sweden; Antidumping Duty Administrative Review; Extension of Time Limit

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

ACTION: Notice of extension of time limit for preliminary determination in antidumping duty administrative review of stainless steel plate form Sweden.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of Stainless Steel Plate from Sweden. This review covers the period June 1, 1996 through May 31, 1997.

EFFECTIVE DATE: March 4, 1998.

FOR FURTHER INFORMATION CONTACT: Heather Osborne or John Kugelman, 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) 482–3019 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: 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 June 30, 1998, 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 (19 U.S.C. 1675(a)(3)(A)). See memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of case deadline, dated February 20, 1998.

Dated: February 24, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–5505 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 971222307–7307–01]

RIN: 0693–ZA20

Continuation of Fire Research Grants Program—Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the Fire Research Program, National Institute of Standards and Technology, is continuing its Fire Research Grants Program. The Fire Research Program is limited to innovative ideas generated by the proposal writer, who chooses the topic and approach. The issuance of awards is contingent upon the availability of funding.

DATES: Proposals must be received no later than the close of business September 30, 1998.

ADDRESSES: Applicants must submit one signed original and two (2) copies of the proposal along with the Application for Federal Assistance, Standard Form 424, (Rev. 7–97), as referenced under the provisions of OMB Circular A–110 to: Building and Fire Research Laboratory (BFRL), Attention: Sonya Parham, Building 226, Room B206, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001.

FOR FURTHER INFORMATION CONTACT: Technical questions concerning the NIST Fire Research Grants Program should be directed to Sonya Parham, (301) 975–6854. Administrative questions concerning the NIST Fire Research Grants Program may be directed to the NIST Grants Office at (301) 975–6329. Additional information can be found in the Extramural Fire Research Program: Program Announcement and Preparation Guide. Copies may be downloaded from the BFRL web site (http://www.bfrl.nist.gov) or obtained from Sonya Parham at the above address.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number Measurement and Engineering Research and Standards—11.609

Authority

As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program. The annual budget for the Fire Research Grants Program is $1.36 million. Because of commitments for the support of multi-year programs, only a portion of the budget is available to initiate new programs in any one year. Most grants and cooperative agreements are in the $10,000 to $100,000 per year range.

All proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

A. Fire Modeling and Applications

To perform research, develop and demonstrate the application of analytical models for the quantitative prediction of the consequences of fires and the means to assess the accuracy of those models. This includes: Developing methods to assess fire hazard and risk; creating advanced, usable modelling for the calculation of the effluent from building fires; modelling the ignition and burning of furniture, contents, and building elements such as walls; developing methods of evaluating and predicting the performance of building safety design features; developing a protocol for determining the accuracy of algorithms and comprehensive models; developing data bases to facilitate use of fire models; and developing methodologies to acquire, model, and display fire information.

B. Large Fire Research

To perform research and develop techniques to measure, predict the behavior and mitigate large fire events. This includes: Understanding the mechanisms of large fires that control gas phase combustion, burning rate, thermal and chemical emissions, and transport processes; developing field measurement techniques to assess the near- and far-field impact of large fires and their plumes; performing research on the use of combustion for environmental cleanup; predicting the performance and environmental impact of fire protection measures and fire fighting systems and techniques; and developing and operating the Fire Research Program large-scale experimental facility.

C. Advanced Fire Measurements

To produce the scientific basis and robust measurement methods for characterizing fires and their effluents at full- and reduced-scales. This includes discrete point, volume-integrated, and time- and space-resolved measurements for such properties as temperature, smoke density, chemical species, and flow velocity. Laboratory and computational research are also performed to understand the underpinning fire phenomena to ensure the soundness of the developed measurement techniques.

D. Materials Fire Research

To perform research enabling the confident development by industry of new, less-flammable materials and products. This capability is based on understanding fundamentally the mechanisms that control the ignition, flame spread and burning rate of materials, as well as and the chemical and physical characteristics that affect these aspects of flammability. This includes: Developing methods of measuring the response of a material to fire conditions that enable assured prediction of the full-scale performance of the final product; developing computational molecular dynamics and other mechanistic approaches to understand flame retardant mechanisms and the effects of polymer chemical structure on flammability; characterizing the burning rates of charring and non-charring polymers and composites; and delineating and modeling the enthalpy and mass transfer mechanisms of materials combustion.

E. Fire Sensing and Extinguishment

To develop understanding, metrology and predictive methods to enable high-performance fire sensing and extinguishment systems; and devising new approaches to minimize the impact of unwanted fires and the suppression process. This includes: performing research for the identification and *in-situ* measurement of the symptoms of pending and nascent fires and the consequences of suppression; devising or adapting monitors for these variables and the intelligence for timely

interpretation of the data; developing methods to characterize the performance of new approaches to fire detection and suppression; determining mechanisms for deflagration and detonation suppression by advanced agents and principles for their optimal use; and modeling the extinguishment process.

Award Period

Proposals will be considered for research projects from one to three years. When a proposal for a multi-year is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC. Funding for each subsequent year of a multi-year proposal will be contingent on satisfactory progress, fit to the NIST Fire Research Program and the availability of funds.

Matching Requirements

The Fire Research Grants Program does not involve the payment of any matching funds and does not directly affect any state or local government.

Eligibility

Academic institutions, non-Federal agencies, independent and industrial laboratories, and research organizations.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the five programs listed above. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Division Chief. Applicants should allow up to 90 days processing time. Proposals are evaluated for technical merit by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies and experts from the fire research community at large.

Evaluation Criteria

a. Technical quality of the research: 0–35
b. Potential impact of the results: 0–25
c. Staff and institution capability to do the work: 0–20
d. Match of budget to proposed work: 0–20

Selection Procedures

The results of these technical evaluations are transmitted to the Group Leader of the appropriate unit in the Building and Fire Research Laboratory. He/She combines the above results with consideration of (a) Fit to the program objectives listed above and (b) program balance, and then prepares a Recommendation for Funding Memo. This is then approved or disapproved by the Division Chief and Deputy Director.

Paperwork Reduction Act

The Standard Forms 424, 424A, 424B, and LLL mentioned in this notice are subject to the requirements of the Paperwork Reduction Act and have been approved by the Office of Management and Budget, (OMB), under Control Numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Application Kit

An application kit, containing all required application forms and certifications is available by calling Sonya Parham, NIST Fire Research Grants Program (301) 975–6854. An application kit includes the following:

SF–424 (Rev. 7/97)—APPLICATION FOR FEDERAL ASSISTANCE
SF–424A (Rev. 7/97)—BUDGET INFORMATION—Non-Construction Programs
SF–424B (Rev. 7/97)—ASSURANCES—Non-Construction Programs
CD–511 (7/91)—CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS AND LOBBYING
CD–512 (7/91)—CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS AND LOBBYING
SF–LLL—DISCLOSURE OF LOBBYING ACTIVITIES

Additional Requirements

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

Applicants who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover preaward costs.

Primary Application Certifications

All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F., ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F., ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater, and;

4. *Anti-Lobbying Disclosure.* Any applicant that has been paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

5. *Lower-Tier Certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with

the instructions contained in the award document.

Name Check Reviews

All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

False Statements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DoC are made.

No Obligation for Future Funding

If an application is accepted for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Federal Policies and Procedures

Recipients and subrecipients under the Fire Research Grants Program are subject to all applicable Federal laws and Federal and Departmental policies, regulations and procedures applicable to Federal financial assistance awards. The Fire Research Grant Program does not directly affect any state or local government. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

Executive Order Statement

This funding notice was determined to be ''not significant'' for purposes of E.O. 12866.

Dated: February 26, 1998.

Robert E. Hebner,

Acting Deputy Director, National Institute of Standards and Technology.

[FR Doc. 98–5531 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTAL INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 96–050US.

Title: Implementation of Role-Based Access Control in Multi-Level Secure Systems.

Abstract: Role-based access control (RBAC) is implemented on a multi-level secure (MLS) system by establishing a relationship between privileges within the RBAC system and paris of levels and compartments within the MLS system. The advantages provided by RBAC, that is, reducing the overall number of connections that must be maintained, and, for example, greatly simplifying the process required in response to a change of job status of individuals within an organization, are then realized without loss of the security provided by MLS. A trusted interface function has been developed to ensure that the RBAC rules permitting individuals access to objects are followed rigorously, and provides a proper mapping of the roles to corresponding pairs of levels and compartments.

NIST Docket Number: 96–052US.

Title: Process for the Enactment of Workflow Using Role-Based Access Control.

Abstract: A workflow sequence specified by a process definition is managed by a workflow management system which enacts each segment in the order specified by that process definition. Role-based access control (RBAC) is used to define membership of individuals in groups, i.e., to assign individuals to roles, and to then activate the roles with respect to the process at appropriate points in the sequence. Any individual belonging to the active role can perform the next step in the business process. Changes in the duties and responsibilities of individuals as they change job assignments are greatly simplified, as their role memberships are simply reassigned; the workflow process is unaffected.

NIST Docket Number: 97–017US.

Title: Domain Engineered Ferroelectric Optical Radiation Detector.

Abstract: The invention uses electric field poling at room temperature to selectively reverse the direction of the spontaneous polarization in a z-cut LiNb03 electret to produce a bicell pyroelectric detector. Microphonic noise that is typical of monocell pyroelectric detectors is reduced in the present device. Investigation of the pyroelectric electret geometry and the vibration modes of the detector assembly may lead to designs with even greater microphonic suppression. More complicated domain reversal patterns may accommodate refined detector designs and could be used to create multi-element sensors.

NIST Docket Number: 97–021US.

Title: Temperature Calibration Wafer for Rapid Thermal Processing Using Thin-Film Thermocouples.

Abstract: This invention enables the measurement of temperature and the calibration of temperature measurements in rapid thermal processing tools for silicon wafer processing to a greater accuracy than previously possible. The invention is a device which is a calibration wafer of novel construction and capabilities. The calibration wafer is comprised of an array of junctions of thin film thermocouples which traverse the silicon wafer (typically 200 mm in diameter) and are welded to thermocouple wires of the same composition as the thin films. The advantages of very low mass thin-film thermocouples in making these measurements are greatest under the extremely high heat flux conditions present in rapid thermal processing tools (100 w/cm^2). In order to achieve these measurements with thin-film thermocouples at temperatures ranging up to 900 degrees celcius a novel approach was taken in the design and fabrication of the wafer including the incorporation of an adhesion film for the thermoelements, diffusion barriers, and high temperature dielectric insulators.

Dated: February 26, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–5330 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022498B]

Fisheries of the Exclusive Economic Zone Off Alaska; Public Workshop; Localized Depletions of Atka Mackerel in the Bering Sea and Aleutian Islands

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

ACTION: Notice of workshop.

SUMMARY: NMFS announces a workshop to review evidence for fishery-induced localized depletions of Atka mackerel in the Bering Sea/Aleutian Island region and to consider fishery management alternatives to prevent such depletions and their potential impact on foraging by the endangered western population of Steller sea lions.

DATES: The workshop is scheduled as follows:

March 10, 1998, 9:00 a.m. to 5:00 p.m., Seattle, WA.

ADDRESSES: The workshop will be held at the Alaska Fisheries Science Center, (Room 2143, Building 4), 7600 Sand Point Way, NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Tim Ragen, 907–586–7248.

SUPPLEMENTARY INFORMATION: Fishing for Atka mackerel in the Bering Sea/Aleutian Islands region may result in the localized depletion of this species. Atka mackerel is a prey species of the endangered western population of Steller sea lions, and such depletions may impede sea lion recovery if they affect the foraging success of young sea lions, in particular.

Dated: February 25, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–5509 Filed 2–27–98; 12:14 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC); Notice of Public Meeting

Action: Notice of Public Meeting.

Time and Date: March 18, 1998 beginning at 8:00 a.m.

Place: This meeting will take place at the Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland.

Status: The meeting will be open to the public. The time between 10:30 a.m. and noon will be set aside for oral comments or questions from the public and approximately 50 seats will be available on a first-come first-served basis.

Matters To Be Considered: This meeting will cover: Consultation on Astoria, Oregon and Lexington, Kentucky Automation and Closure Certifications; NWS updates on Evansville, Indiana and Victoria, Texas; report by the FAA on ASOS reassessment; and a report on the NWS Modernization status.

Contact Person for More Information: Mr. Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: February 26, 1998.

Nicholas R. Scheller,

Manager, National Implementation Staff.

[FR Doc. 98–5527 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022598A]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Council will hold meetings of its Scientific and Statistical Committee, in Honolulu, HI. DATES: The Scientific and Statistical Committee (SSC) meeting will be held on March 24–26, 1998, from 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The meetings will be held at the Council office conference room, 1164 Bishop Street, Suite 1400, Honolulu, Hawaii; telephone: (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on: a draft amendment for an area closure for large pelagic vessels in the American Samoa exclusive economic zone; a draft comprehensive amendment (covering all fishery management plans (FMP) to implement new Sustainable Fishery Act requirements (bycatch, fishing sectors, fishing communities, overfishing, Essential Fish Habitat (EFH), including research needs and priorities necessary to carry out the Council's EFH management mandate, and updates of National Environmental Policy Act requirements); National Vessel and Fisheries Information Systems; Federal management options to restore overfished Main Hawaiian Islands (MHI) onaga and ehu; draft island-area modules for the 1997 bottomfish annual report, including improvements to the report and reconsideration of geographic reporting of overfishing indicator; the draft 1997 Northwestern Hawaiian Islands (NWHI) lobster annual report; the addition of new areas (Commonwealth of the Northern Mariana Islands (CNMI) and U.S. Possessions) to Permit Area 3 through a possible framework amendment; review of Marine Conservation Plans (by island area) and the Sustainable Fisheries Fund.

Other agenda items that the SSC will discuss and may take action on include:

1. Pelagics protected species interactions and initiative;

2. Possible study on shark finning in Western Pacific Region;

3. Fishery developments at Palmyra and Midway atolls;

4. State and federal research on MHI overfished bottomfish;

5. Possible addition of generic level management unit species to the Bottomfish FMP or include with developing Coral Reef Ecosytem FMP;

6. Update on the status of the draft amendment for the limited access program for the Mau Zone in the NWHI;

7. Update on American Deepwater Engineering precious corals operations;

8. Crustaceans research and data collection plans for 1998;

9. Determination of the 1998 NWHI lobster harvest guideline, including estimation of exploitable population size and establishment of separate bank quotas;

10. Status of Crustaceans FMP framework regulatory changes: Vessel Monitoring System vessel transit of 50 mile closed area, announce harvest guideline February 28, add May to closed season for MHI Federal waters;

11. Draft outline and concept for Coral Reef Ecosystem Fishery Management Plan, with recommendations for membership to form a new Plan Team;

12. Final Environmental Impact Statement (if available) for military use of Farallon de Mendinilla, CNMI; and

13. Other business as required.

Although other issues not contained in this agenda may come before this SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: February 25, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–5510 Filed 3–3–98; 8:45 am]

BILLING CODE 3510–22–F

THE COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 19 March 1998 at 10:00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, February 24, 1998.

Charles H. Atherton,

Secretary.

[FR Doc. 98–5499 Filed 3–3–98; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Notice of Establishment of the Commodity Futures Trading Commission Global Markets Advisory Committee

SUMMARY: The Commodity Futures Trading Commission has determined to establish the ''Commodity Futures Trading Commission Global Markets Advisory Committee.'' As required by Section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, 9(a)(2) and 41 CFR 101–6.1007, the Commission has consulted with the Committee Management Secretariat of the General Services Administration. The Commission certifies that the creation of this advisory committee is necessary and in the public interest in connection with the performance of duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as amended. This notice is published pursuant to Section 9(a)(2) of the Advisory Committee Act, 5 U.S.C. App. 2, 9(a)(2) and 41 CFR 101–6.1015.

FOR FURTHER INFORMATION CONTACT: De'Ana Dow, Legal Counsel to Commissioner Barbara P. Holum (Tel. (202) 418–5070), or Helen G. Blechman, Assistant General Counsel (202) 418–5116, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: The globalization of futures markets has been a principal development of the 1980's and 1990's. Such global expansion is characterized by:

- The increasing number of futures markets being established internationally,
- The increasingly multinational nature of regulated U.S. Firms,
- The international linking of markets,
- Concerns about international market risk, and
- The increased demand for global brokerage services by U.S. market users.

The recent volatility that has shaken world equity and currency markets has demonstrated more vividly than ever before that the markets are inextricably linked through common products and related market participants. Therefore, events that occur in one market can and frequently do cause global regulatory and business concerns. The shocks to the world financial system caused by the collapse of Barings Plc. in 1995 and the significant losses incurred by the Sumitomo Corporation in 1996 also dramatically illustrate that this is true.

Increasingly sophisticated and low-cost communication technology such as the Internet has expanded access to markets and to market users. Currently, the Commission, as well as other U.S. and foreign regulators, are considering appropriate regulation of the use of such electronic cross-border vehicles for trading. Moreover U.S. firms face an array of disparate regulatory policies as they conduct business in numerous countries.

These trends raise complex and novel issues that could profoundly affect the integrity and competitiveness of U.S. markets and U.S. firms engaged in providing financial services globally. The Commission wishes to establish a forum in which it can discuss such issues with U.S. markets and firms to assist it in designing its regulations and updating its procedures in response to these profound changes. These issues would include:

(1) Avoiding unnecessary regulatory or operational impediments faced by those doing global business, such as:

(a) Differing and/or duplicative regulatory frameworks,

(b) Lack of transparency of rules and regulations, and

(c) Barriers to market access,

while preserving core protections for markets and customers.

(2) Setting appropriate international standards for regulation of futures and derivatives markets and intermediaries;

(3) Assessing the impact on U.S. markets and firms of the Commission's

international efforts and the initiatives of foreign regulators and market authorities;

(4) Achieving continued global competitiveness of U.S. markets and firms; and

(5) Identifying methods to improve domestic and international regulatory structures.

The Commission has taken an active role in working with foreign regulators to address global market issues. Recent global initiatives have been designed: (1) to enhance international supervisory cooperation and emergency procedures; (2) to establish concrete standards of best practices that set international benchmarks for regulation of futures and derivatives markets; (3) to encourage improved transparency in those markets; (4) to improve the quality and timeliness of international information sharing; (5) and to encourage jurisdictions around the world to remove legal or practical obstacles to achieving these goals.

The Commission anticipates that the advisory committee will provide an extremely valuable forum for information exchange and advice on these matters. The reports, recommendations and general advice from this committee will enable the Commission to assess more effectively the need for possible statutory, regulatory or policy alternatives to address the challenges posed by the globalization of our markets.

Commissioner Barbara P. Holum will serve as Chairman and Designated Federal Official of this Advisory Committee. The members of the Committee will include those U.S. markets, firms and market users most directly involved in and affected by global operations and will be balanced in terms of points of view represented. Specifically, the Commission is considering for membership a broad cross-section of persons representing U.S. exchanges, regulators and self-regulators, financial intermediaries, end-users, traders and academics.

The Commission has found that the committee would not duplicate the functions of the Commission, another existing advisory committee or other means such as public hearings. It has further found that advice on such specialized matters is best obtained through the advisory committee framework rather than through other more costly, less flexible and less efficient means of assembling persons from all sectors of the financial industry. The Commission, therefore, has concluded that the creation of a Global Markets Advisory Committee is essential to the conduct of the Commission's business and is in the public interest.

Issued in Washington, D.C., on February 25, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 98–5506 Filed 3–3–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange, Inc. Amendment to a Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of amendment to a petition for exemption from the prohibition on dual trading in an affected contract market.

SUMMARY: Coffee, Sugar & Cocoa Exchange, Inc. (''CSCE'' or ''Exchange'') has submitted to the Commodity Futures Trading Commission (''Commission'') an additional update of its October 19, 1993 petition for exemption from the prohibition against dual trading in two contract markets. The amendment requests an exemption for a newly affected contract market. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the CSCE dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, or Adam E. Wernow, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 4j(a)(1) and (3) of the Commodity Exchange Act (''Act'') and Commission Regulation 155.5 thereunder, a board of trade may submit a petition to the Commission to exempt any of its affected contract markets (markets with an average daily trading volume equal to or in excess of 8,000 contracts for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets, or a designee of the Director, to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CSCE originally submitted a petition for a dual trading exemption on October 19, 1993, for its Sugar #11 and Coffee ''C'' futures contracts. On March 21, 1997, CSCE submitted an amended petition that updated the Exchange's original petition and requested a dual trading exemption for four additional affected contract markets: Cocoa futures and option contracts on the Sugar #11, Coffee ''C,'' and Cocoa futures. On July 8, 1997, the Commission issued an Opinion and Order granting a dual trading exemption to CSCE for its Sugar #11 futures contract, the only affected contract market as of that date. This Opinion and Order provided that if other CSCE contracts became affected contract markets after the date of the Order, the Commission may expand the Order in response to an updated petition that includes those contracts. Pursuant to that provision, CSCE submitted an amendment dated February 3, 1998, requesting an exemption from the dual trading prohibition for the Cocoa futures contract market.

Copies of the file containing all these materials and any future submissions, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to CSCE's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (''FOIA'') (5 U.S.C. § 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOIA, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

CSCE timely submitted its amended petition before February 5, 1998, the effective date of the dual trading prohibition in the newly affected contract market. Therefore, application of the prohibition in the contract market

covered by the petition amendment has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on February 26, 1998.

Alan L. Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 98–5595 Filed 3–3–98; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Supplement to Petition for Exemption From the Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of supplement to a petition for exemption from the prohibition on dual trading for a potentially affected screen-based traded contract market.

SUMMARY: Chicago Board of Trade (''CBT'' or ''Exchange'') has submitted to the Commodity Futures Trading Commission (''Commission'') an additional update of its October 25, 1993 petition for exemption from the prohibition against dual trading. The supplement requests an exemption for a screen-based traded contract if the Commission determines that the contract is an affected contract market subject to the dual trading prohibition. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent that the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the CBT dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Rachel Berdansky, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 4j(a)(1) and (3) of the Commodity Exchange Act (''Act'') and Regulation 155.5 thereunder, a board of trade may submit a petition to the Commission to exempt any of its affected contract markets (markets with an average daily trading volume equal to or in excess of 8,000 contracts for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets (''Division''), or a designee of the Director, to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CBT originally submitted a petition for dual trading exemption for ten affected contract markets on October 25, 1993. Subsequently, pursuant to letters dated March 25 and May 14, 1994, CBT supplemented its petition to include three additional affected contract markets. On November 7, 1997, the Commission issued a proposed Order granting CBT conditional dual trading exemptions for 13 affected contract markets.

Through a letter dated December 12, 1997, the Exchange notified the Division that the average daily trading volume for the U.S. Treasury Bond futures contract (''T-Bonds'') traded on the Exchange's screen-based Project A system exceeded 8,000 contracts for each of four quarters during the volume year from December 1996 through November 1997. The Exchange requested the opportunity to submit materials by January 31, 1998, addressing whether a screen-based traded market should be considered an affected contract market subject to the dual trading provisions set forth in Section 4j of the Act and Regulation 155.5. On December 16, 1997, the Division granted that request, and informed CBT that the submission also had to include a complete dual trading exemption petition for the Project A traded T-Bond futures contract. On January 31, 1998, the Exchange submitted a petition supplement requesting an exemption from the dual trading prohibition for the Project A traded T-Bond futures contract if the Commission determines that the contract is an affected contract market. The supplement addressed the applicability of a dual trading prohibition to an electronic market, as well as the elements of the Exchange's trade monitoring system as they apply to Project A.

As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading though a screen-based trading system. The Commission further stated that, while not excluding electronic trading from the dual trading prohibition, the Commission was retaining the flexibility to consider the matter further. *See* FR 40335 (July 28, 1993). The Commission is currently considering whether screen-based trading systems, such as Project A, shall be subject to the dual trading provisions of Section 4j of the Act and Regulation 155.5.

Copies of the file containing all these materials and any future submissions, except to the extent that the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to CBT's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act (''FOIA'') (5 U.S.C. § 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOIA, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

If the Commission determines that the Project A traded T-Bond futures contract is subject to Section 4j of the Act and Regulation 155.5, CBT is deemed to have timely submitted its petition supplement for the purpose of Regulation 155.5(d)(5). Therefore, application of the dual trading prohibition against Project A trading of the T-Bond futures contract would be suspended until the petition is acted upon.

Issued in Washington, DC, on February 26, 1998.

Alan L. Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 98–5596 Filed 3–3–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment and Finding of No Significant Impact for the BRAC 95 Realignment of Detroit Arsenal, Warren, MI

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces today the availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the realignment of Detroit Arsenal, Warren, Michigan, in accordance with the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended. The 1995 Defense Base Closure and Realignment Commission (BRAC) recommended the realignment of missions/functions from Detroit Army Tank Plant (DATP) on the east side of Detroit Arsenal to the west side of Detroit Arsenal.

The EA evaluates the environmental and socioeconomic effects associated with the proposed action and the alternatives. The proposed action is the relocation of personnel and functions from DATP on the east of Detroit Arsenal to the west side of Detroit Arsenal. Functions planned for the relocation within Detroit Arsenal would be combined with similar functions already present to achieve maximum efficiency. Due to a shortage of storage facilities to accommodate relocating and continuing functions the Army proposes to construct a 50,000-square-foot high-bay general-purpose warehouse on the west side of Detroit Arsenal. Upon disposal of DATP, Detroit Arsenal will consist of the western portion of the installation, plus Building 7 (research facility) and Building 8 (warehouse) located on the eastern portion.

Alternatives examined in the Final EA include renovation of existing facilities, construction of new facilities and the no action alternative. The Army's preferred alternative is implementation of the proposed action.

The EA, which is incorporated into the FNSI, examines potential impacts of the proposed action and alternatives on 15 resource areas and areas of environmental concern: land use, climate, air quality, water resources, geology, infrastructure, hazardous and toxic materials, permits and regulatory authorizations, biological resources, ecosystems, cultural resources, the sociological environment, economic development, quality of life and installation agreements.

The EA concludes that the implementation of the proposed action will not have a significant impact on the human environment. Issuance of a FNSI would be appropriate. An Environmental Impact Statement is not required prior to implementation of the proposed actions.

DATES: Comments must be submitted on or before April 3, 1998.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. Joe Hand, U.S. Army Corps of Engineers, Mobile District, P.O. Box 2288, Mobile, Alabama 36628–0001, or by calling (334) 694–3881, facsimile at (334) 690–2721.

Dated: February 27, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 98–5589 Filed 3–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1773–000]

Northern States Power Company (Minnesota Company), Northern States Power Company (Wisconsin Company); Notice of Filing

February 24, 1998.

Take notice that on February 9, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing an Electric Service Agreement between NSP and NP Energy Inc., (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff Original Volume No. 4. NSP requests that the Electric Service Agreement be made effective on January 12, 1998.

NSP is in response to the Commission's deficiency letter dated January 9, 1998. NSP is requesting that the filed Firm Point-to-Point Transmission Service Agreement, as corrected by this filing, be accepted for filing effective January 1, 1998. NSP requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

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 March 9, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5511 Filed 3–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–9–001]

PacifiCorp; Notice of Filing

February 24, 1998.

Take notice that on August 15, 1997, PacifiCorp tendered for filling its compliance filing in the above-referenced docket.

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 March 9, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5512 Filed 3–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–237–000]

Texas Eastern Transmission Corporation; Notice of Application

February 26, 1998.

Take notice that on February 17, 1998, Texas Eastern Transmission Corporation (TETCO), 5400 Westheimer Court, Houston, Texas, 77251–1642, filed in Docket No. CP98–237–000 an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy

Regulatory Commission's (Commission) regulations thereunder, for permission and approval to replace certain facilities located in Hidalgo County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TETCO proposes to replace approximately 2,891 feet of thirty-inch pipeline, abandon the existing pipeline being replaced, acquire new permanent right-of-way, and utilize temporary work space during the construction of such facilities. TETCO asserts that the replacement pipeline will also be thirty-inches in diameter and will therefore have the same design delivery capacity as the thirty-inch pipeline being replaced. TETCO further asserts that the replacement proposed herein will not change TETCO's maximum daily design capacity. It is indicated that the total capital cost of the proposed facilities is approximately $1,620,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition 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 the proceeding or to participate as a party in any hearing therein must file a petition 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 on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for TETCO to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5513 Filed 3–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1892–000, et al.]

Citizens Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

February 26, 1998.

Take notice that the following filings have been made with the Commission:

1. Citizens Utilities Company

[Docket No. ER98–1892–000]

Take notice that on February 17, 1998, Citizens Utilities Company, tendered for filing on behalf of itself and Central Vermont Public Service Corporation a Service Agreement for Non-Firm Point-to-Point Transmission Service under Citizens' Open Access Transmission Tariff.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98–1890–000]

Take notice that on February 17, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (jointly NSP), filed proposed revisions to the NSP Open Access Transmission Tariff, Fourth Revised Volume No. 1, to revise the rates and terms and conditions of service for Firm and Non-Firm Point-to-Point Transmission Service and certain ancillary services on the integrated NSP electric transmission system. The filing also proposes changes in the rates of certain long-term non-Tariff transmission service customers.

The changes would increase revenues from third party firm point-to-point transmission service by approximately $3.4 million, based on the 12 month test period ending December 31, 1998. NSP requests an effective date of May 1, 1998, seventy-two (72) days after filing. NSP states that it served a copy of Volume 1 of the filing on affected transmission service customers and the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. ER98–1893–000]

Take notice that on February 17, 1998, Central Illinois Public Service Company (CIPS), tendered for filing a letter agreement between CIPS and Norris Electric Cooperative (Norris), amending CIPS' Rate Schedule W–1 for service to Norris and the Power Purchase Agreement between CIPS and Norris to provide for a rate decrease, a fixed fuel charge, a minimum monthly billing demand and a fixed due date for payment of the monthly bill.

CIPS seeks an effective date of March 1, 1998 and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on Norris and the Illinois Commerce Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER98–1894–000]

Take notice that on February 17, 1998, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Allegheny Power Service Corporation (APSC), and North Carolina Municipal Power Agency #1, as customers 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 agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon APSC, NCMPA and the South Carolina Public Service Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Houston Lighting & Power Company

[Docket No. ER98–1896–000]

Take notice that on February 17, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with Entergy Power, Inc. (Entergy), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 17, 1998.

Copies of the filing were served on Entergy and the Public Utility Commission of Texas.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1897–000]

Take notice that on February 12, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Baltimore Gas & Electric Company to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Baltimore Gas & Electric Company.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1898–000]

Take notice that on February 12, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Plum Street Energy Marketing, Inc., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon Plum Street Energy Marketing, Inc.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER98–1899–000]

Take notice that on February 17, 1998, Commonwealth Edison Company (ComEd), submitted for filing one Service Agreements, establishing one Service Agreement, establishing ProLiance Energy, LLC (PLE), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of January 20, 1998, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon PLE, and the Illinois Commerce Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER98–1900–000]

Take notice that on February 17, 1998, Commonwealth Edison Company (ComEd), submitted for filing one Service Agreement establishing Commonwealth Edison Company, in its wholesale merchant function (ComEd WMD), as a firm transmission customer under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of March 1, 1998, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon ComEd WMD, and the Illinois Commerce Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–1901–000]

Take notice that on February 17, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with SCANA Energy Marketing, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–1902–000]

Take notice that on February 17, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with South Carolina Electric & Gas Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to § 205 of the Federal Power Act.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. American Home Energy Corp.

[Docket No. ER98–1903–000]

Take notice that on February 17, 1998, American Home Energy Corp. (AHEC), petitioned the Commission for acceptance of AHEC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

AHEC intends to engage in wholesale electric power and energy purchases and sales as a marketer. AHEC is not in the business of generating or transmitting electric power. AHEC is a wholly-owned subsidiary of Energy Conservation Group, LLC, which, through its affiliates, owns and operates a retail heating oil and service company, a fuel oil buying group, and a licensed real estate brokerage.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER98–1904–000]

Take notice that on February 17, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and New Energy Ventures, L.L.C. This Transmission Service Agreement specifies that New Energy Ventures, L.L.C., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and New Energy Ventures, L.L.C., to enter into separately scheduled transactions under which NMPC will provide transmission service for New Energy Ventures, L.L.C., as the parties may mutually agree.

NMPC requests an effective date of February 6, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and New Energy Ventures, L.L.C.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Interstate Power Company

[Docket No. ER98–1905–000]

Take notice that on February 17, 1998, Interstate Power Company (IPW), tendered for filing a Termination of Shared Transmission Agreement between IPW and Southern Minnesota Municipal Power Agency (SMMPA). Service previously obtained under the terminated agreement will now be provided under a Network Transmission and Operating Agreement.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Utilities Company

[Docket No. ER98–1906–000]

Take notice that on February 17, 1998, Kentucky Utilities Company (KU), tendered for filing addenda to existing

contracts between KU and its wholesale requirements customers. KU requests an effective date of January 1, 1998, for these contracts.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER98–1907–000]

Take notice that on February 17, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), submitted for filing the First Amendment to the Power Coordination, Interchange and Transmission Agreement (PCITA), between Entergy Arkansas, Inc., and the City of West Memphis, Arkansas (West Memphis), dated March 1, 1998, and the Third Amendment to the Electric Peaking Power Service Agreement (PPA), between West Memphis and Entergy Arkansas, dated March 1, 1998. Entergy Services states that the amendment add terms and conditions governing the service provided under the PCITA and the PPA.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. ANP Energy Direct Company

[Docket No. ER98–1908–000]

Take notice that on February 18, 1998, ANP Energy Direct Company (ANP), tendered for filing a notice of cancellation of Rate Schedule FERC No. 1, effective date May 1, 1996.

Notice of the proposed cancellation has not been served on any party because ANP states that it has engaged in no jurisdictional sales under Rate Schedule FERC No. 1.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER98–1909–000]

Take notice that on February 18, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Metered Entities between the ISO and Western Area Power Administration for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER98–1910–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and Mountain Vista Power Generation, L.L.C., for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. California Independent System Operator Corporation

[Docket No. ER98–1911–000]

Take notice that on February 18, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Metered Entities between the ISO and Long Beach Generating LLC, for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER98–1912–000]

Take notice that on February 18, 1998, the California Independent System Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and City of Anaheim Public Utilities Department for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. California Independent System Operator Corporation

[Docket No. ER98–1913–000]

Take notice that on February 18, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Metered Entities between the ISO and El Segundo Power, LLC, for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. California Independent System Operator Corporation

[Docket No. ER98–1914–000]

Take notice that on February 18, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Metered Entities between the ISO and City of Anaheim Public Utilities Department for acceptance by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Nine Energy Services, LLC

[Docket No. ER98–1915–000]

Take notice that on February 18, 1998, Nine Energy Services, LLC (NES), petitioned the Commission for acceptance of NES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

NES intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Citizens Utilities Company

[Docket Nos. OA97–520–001 and OA97–610–001]

Take notice that on February 23, 1998, Citizens Utilities Company (Citizens) filed a Notice of Withdrawal of Requests for Waiver and Submission of Revised Standards of Conduct for its Vermont Electric Division under Order Nos. 889 *et seq.*[1] In its filing, Citizens states that it does not conduct wholesale merchant

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing,* 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997) (Order No. 889–A); Order No. 889–B, *rehearing denied,* 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

functions as defined in Order No. 889–A.[2]

Citizens states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Androscoggin Energy LLC

[Docket No. QF96–114–001]

On February 18, 1998, Androscoggin Energy LLC (Applicant), tendered for filing a supplement to its filing of October 27, 1997, in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership and electric power production capacity of the cogeneration facility.

Comment date: March 31, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5543 Filed 3–3–98; 8:45 am]

BILLING CODE 6717–01–P

[2] Order No. 889–A, III FERC Stats. & Regs. at 30,552.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–150–000 and CP98–151–000]

Millennium Pipeline Company, L.P. Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Millennium Pipeline Project and Request for Comments on Environmental Issues

February 27, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction, acquisition, and operation of a 442.5-mile-long natural gas pipeline system in Pennsylvania and New York which is called the Millennium Pipeline Project.[1] This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

We are asking a number of Federal and state agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated each proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Millennium Pipeline Company, L.P. (Millennium) wants to construct, acquire, own, and operate a natural gas pipeline system to transport up to 700,000 dekatherms per day and provide firm transportation services for nine shippers. Millennium does not presently own any pipeline facilities but proposes to construct certain pipeline facilities and acquire others from Columbia Gas Transmission Corporation (Columbia).

In Docket No. CP98–150–000, Millennium requests authorization to:

- Construct and operate 376.4 miles of 36-inch-diameter pipeline extending from an interconnection at the United States/Canadian border across Lake Erie through Erie County, Pennsylvania, and Chautauqua, Cattaraugus, Allegany, Steuben, Chemung, Tioga, Broome, Delaware, Sullivan, Orange, and Rockland Counties, New York to an interconnection with Columbia's existing 24-inch-diameter pipeline (Columbia's Line 10338) in Ramapo, Rockland County, New York;
- Acquire and operate 6.7 miles of Columbia's Line 10338 in Rockland County, New York;
- Construct and operate 39.3 miles of 24-inch-diameter pipeline extending from the end of Columbia's Line 10338 through Rockland and Westchester Counties to a point near the Westchester/Bronx County line in Mount Vernon, New York;
- Acquire and rebuild Columbia's Ramapo Measurement and Regulation Facility near Ramapo, Rockland, County, New York;
- Construct and operate the Wagoner Measurement Facility near Milford, Pike County, Pennsylvania and the Mount Vernon Regulation and Measurement Facility in Mount Vernon, Westchester County, New York;
- Acquire and operate an additional 9.6 miles of short pipeline segments (Columbia's Lines A–1, A–2, A–3, A–4, A–5, AD–31, N, U, and 1842) and 28 of Columbia's associated metering and regulating stations in various counties in New York and Pennsylvania;
- Acquire and operate 10.5 miles of 10- and 14-inch-diameter pipeline (Columbia's Line K and Line 1278) extending from Deerpark, Orange County, New York to Milford, Pike County, Pennsylvania; and
- Acquire and operate Columbia's Milford Compressor Station in Pike County, Pennsylvania.

In addition, in Docket No. CP98–156–000, Millennium requests a Presidential Permit authorizing construction, operation and maintenance of facilities at the International Border in Lake Erie for the importation of natural gas. These facilities would consist only of the portion of the mainline extending across the border in Lake Erie and will be evaluated in the EIS as part of the facilities described above.

In Docket No. CP98–151–000, Columbia proposes to abandon certain pipeline facilities, and to abandon and convey others to Millennium in New York and Pennsylvania. Specifically, Columbia requests authority to:

- Abandon in place 129.8 miles of 10- to 12-inch-diameter pipeline in Steuben, Chemung, Tioga, Broome and Delaware Counties, New York (Line A–5);
- Abandon and remove about 92.2 miles of 8- to 24-inch-diameter pipeline

[1] Millennium Pipeline Company, L.P. and Columbia Gas Transmission Corporation filed their applications with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

(Line A–5) in Delaware, Sullivan, Orange, and Rockland Counties, New York (the Millennium pipeline generally would be installed in approximately the same location as these sections of abandoned pipelines);

• Abandon and convey to Millennium in New York:

—4.0 miles of 6- and 12-inch-diameter pipeline in Steuben County (Line A–1, A–2, A–3, and A–4);
—1.9 miles of 12-inch-diameter pipeline in Chemung County (Line A–5)
—2.6 miles of 6-inch-diameter pipeline in Tioga County (Line AD–31);
—0.1 mile of 12-inch-diameter pipeline in Broome County (Line N);
—0.7 mile of 6-inch-diameter pipeline in Delaware County (Line A–2);
—0.1 mile of 4-inch-diameter pipeline in Orange County (Line U);
—4.9 miles of 10- and 14-inch-diameter pipeline in Orange County (Line K);
—6.7 miles of 24-inch-diameter pipeline in Rockland County (Line 10338); and
—28 measuring stations (5 in Steuben County, 1 in Chemung County, 3 in Tioga County, 6 in Broome County, 2 in Delaware County, 1 in Sullivan County, 7 in Orange County, and 3 in Rockland County).

• Abandon and convey to Millennium in Pennsylvania:

—0.2 mile of 8- to 14-inch-diameter pipeline in Pike County (Line 1842)
—5.6 miles of 10- and 14-inch-diameter pipeline in Pike County (Line 1278); and
—1 compressor station with 3 units totaling 1,050 horsepower (Milford Compressor Station).

• Install overpressure protection equipment at a number of measuring and regulating stations that would be conveyed to Millennium because of the higher maximum allowable operating pressure of the Millennium pipeline.

The general location of the major project facilities is shown in appendix 2. If you are interested in obtaining detailed maps of a specific portion of the project, please use the request form provided in appendix 4.

Land Requirements for Construction

Millennium would typically use a 75-foot-wide construction right-of-way to install the pipeline. Extra work areas beyond the 75-foot-wide construction right-of-way would be required at stream, wetland, road, and railroad crossings; for topsoil segregation in agricultural land; and for sidehill construction. The removal of Columbia's Line A–5 would be within the construction work areas identified for the proposed Millennium pipeline. Modifications to existing measuring facilities would occur within the existing facilities. Other temporary land requirements would include those for pipeyards, contractor yards, and new access roads.

Millennium estimates that a total of about 10,497 acres of land would be disturbed by construction of the pipeline, the three measuring facilities, and other associated pipeline facilities such as launchers/receivers and block valves. About 86 percent of the on-land pipeline (382.8 miles) would be constructed adjacent to existing pipeline and powerline rights-of-way. The remaining 87.4 miles of pipeline (including the Lake Erie and Hudson River crossings) would be constructed on new right-of-way. Following construction, about 2,513 acres of land would be retained for operation of the pipeline facilities, of which about 943 acres would be new permanent right-of-way. All land used for temporary construction right-of-way and extra work areas would revert to previous uses entirely. Land uses such as agriculture, pasture, and lawns on the permanent right-of-way would be allowed to continue following construction.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. We encourage state and local government representatives to notify their constituents of this proposed action so that they may comment on their areas of concern.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, interventions received, and the environmental information provided by Millennium and Columbia. These issues are listed below. Keep in mind that this is a preliminary list of issues and may be added to, subtracted from, or changed based on your comments and our analysis.

• Geology and soils:

—Crossing of one active and one reclaimed gravel pit and one quarry;
—Crossing of limestone deposits in Orange County;
—Crossing of the Ramapo fault in the vicinity of the pipeline to be acquired from Columbia;
—Temporary and permanent impact on soils, including soils with a seasonable high water table, and soils with less then 6 feet to bedrock.
—Mixing of topsoil and subsoil during construction in agricultural areas.
—Compaction of soil by heavy equipment, and
—Erosion control and restoration of the right-of-way.

• Water Resources:

—Crossing of 317 perennial and 206 intermittent waterbodies;
—30.5 miles of pipeline construction within Lake Erie;
—2.4-mile-long crossing of the Hudson River;
—Crossing of 30 perennial waterbodies over 100 feet wide, including Olean Creek, Genesee River, Cayuto Creek, Chenango River, Susquehanna River, West Branch Delaware River, Smith Mill Brook, Halfway Brook, Mongaup River (Rio Reservoir), Steeny Kill, Tributary Shingle Kill, Furnace Brook Lake, Teatown Lake, and 7 ponds;
—400 private wells and 1 public well within 150 feet of the construction work area;
—Crossing of six designated sole source aquifers;
—Crossing of the Belson and Chautauqua Creek protected public watersheds; and
—Potentially contaminated sediments at waterbody crossing locations.

• Vegetation and Wildlife:

—Crossing of 754 wetlands (totaling 48.0 miles and affecting about 442 acres), including 41 regulated by the New York State Department of Environmental Conservation;
—Clearing about 1,127 acres of upland forest during construction;
—Effect of construction on wildlife and fisheries habitat including a 6.2-mile-long crossing of the Mongaup Wildlife Management Area and a 2.4-mile-long crossing of Haverstraw Bay;
—Crossing of unique vegetative communities; and
—Effect on federally listed endangered and threatened species (bald eagle, dwarf wedge mussel, and bog turtle).

• Cultural Resources:

—Impact on historic and prehistoric and archaeological sites;
—Impact on historic structures and landscapes; and
—Native American and tribal concerns.

• Land Use:

—Effect on 22.5 acres of vineyards, 2.0 acres of orchards, 5.0 acres of plant nurseries, and 18.9 acres of sod farm;
—Effect on 175 business or commercial structures and 363 residences within 50 feet of the construction work area;
—Effect of in-street construction within more densely populated areas;
—Effect on rivers listed on either the national or state scenic river inventories (Chautauqua Creek, and Genesee, Cohocton, West Branch and East Branch Delaware, and Wallkill Rivers);
—Crossing of bicycle and hiking trails, including the Finger Lakes/North Country and Appalachian National Scenic Trails; and
—Crossing of conservation/recreation areas, including Sterling Forest, Palisades Interstate Park, Kakiat Park, Teatown Lake Reservation, and New York State Scenic Byway.

• Socioeconomics:

—Impact on property; and
—Effect of construction workforce on demands for services in surrounding areas.

• Reliability and Safety

• Cumulative Impact:

—Assessment of the combined effect of the proposed project with other projects which have been or may be proposed in the same region with a similar time frame.

Docket No. CP98–150–000

• Alternatives:

—Assessment of alternative systems and other routes to reduce or avoid impact on various resource areas;
—Assessment of alternative landfalls for the Lake Erie crossing; and
—Assessment of alternative routes using existing highway rights-of-way such as Route 17.

Our independent analysis of the issues will be presented in a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service lists for these proceedings. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to all comments received.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

• Reference Docket No. CP98–150–000 and CP98–151–000

• Send two copies of your comments to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Label *one* copy for the attention of the Environmental Review and Compliance Branch, PR–11.2; and

• Please mail your comments so that they will be received in Washington, DC on or before March 30, 1998.

In addition to or in lieu of sending written comments, you are invited to attend one of the five public scoping meetings that will be held in the project area at the following times and locations:

Docket No. CP98–150–000

Date	Time	Location
Monday, March 16, 1998	7:00 p.m	Northeast High School Cafeteria, 1901 Freeport Road, North East, Pennsylvania, (814) 725–8671.
Tuesday, March 17, 1998	7:00 p.m	Wellsville Elementary School, Multilearning Center, 50/98 School Street, Wellsville, New York, (716) 593–6700.
Wednesday, March 18, 1998	7:00 p.m	Binghamton High School Auditorium, 31 Main Street, Binghamton, New York, (607) 762–8200.
Tuesday, March 24, 1998	7:00 p.m	Mount Vernon High School Auditorium, 100 California Road, Mount Vernon, New York, (914) 665–5000.
Wednesday, March 25, 1998	7:00 p.m	Port Jervis High School Cafeteria, Rural Route 209, Port Jervis, New York, (914) 858–3110.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process as cooperating agencies (including separate meetings, where appropriate). Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose. Local agencies are requested to provide information on other plans and projects which might conflict with, or have cumulative effects, when considered in combination with the Millennium Pipeline Project.

Millennium and Columbia will be present at the scoping meetings to describe their proposals. Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. A list will be available at the public meetings to allow speakers to sign up. A transcript will be made of the meetings and the comments will be made part of the Commission's record in these proceedings.

On the above dates, we will also be conducting limited site visits in the project area in the vicinity of each scoping meeting location. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs (identified at the end of this notice) for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding, known as an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties on the Commission's service lists for these proceedings. If you want to become an intervenor you must file a Motion to

Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing timely motions to intervene in these proceedings has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors to solicit focused comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives of Millennium will directly contact landowners, communities, and public agencies concerning any other matters, including acquisition of permits and rights-of-way.

Anyone offering scoping comments will be automatically kept on our environmental mailing list for this project. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

For procedural information, please write to the Secretary of the Commission. Additional procedural or other information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5532 Filed 3–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File an Application for a New License

February 26, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 271.

c. *Date filed:* February 4, 1998.

d. *Submitted By:* Entergy Arkansas, Inc., current licensee.

e. *Name of Project:* Carpenter-Remmel Hydroelectric Project.

f. *Location:* On the Ouachita River, in Garland and Hot Spring Counties, Arkansas.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* July 1, 1980.

i. *Expiration date of current license:* February 28, 2003.

j. The project consists of the:

Carpenter Development comprising: (1) a 115-foot-high, 1,160-foot-long concrete gravity-type dam including a 439-foot-long spillway controlled by ten 26-foot-high by 34-foot-wide Taintor gates; (2) a 18.5-mile-long, 7,200-acre reservoir at elevation 400 feet USGS datum; (3) an integral intake and powerhouse containing two generating units with a total capacity of 56,000 kW; (4) two 115–kV transmission lines; and (5) appurtenant facilities.

Remmel Development comprising: (1) a 75-foot-high, 900-foot-long concrete Ambursen-type dam including a 258-foot-long spillway controlled by twelve 15-foot-high by 27-foot-wide Taintor gates; (2) a 11.3-mile-long, 1,940-acre reservoir at elevation 305 feet msl datum; (3) an integral intake and powerhouse containing three generating units with a total capacity of 9,300 kW; (4) two 565-foot-long, 34.5 kV transmission lines, one 72-foot-long, 115 kV transmission line; and (5) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Lake Catherine Plant, P.O. Box 218, Hwy. 270 West, Jones Mill, AR 72105, (501) 844–2148.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2001.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5514 Filed 3–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting; Denver, CO

February 26, 1998.

The Office of Hydropower Licensing will hold a public Outreach Meeting in Denver, Colorado, on Thursday, March 26, 1998. The Outreach Meeting is scheduled to start at 9:00 a.m. and finish at 5:00 p.m.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in Colorado whose licenses expire between calender years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: Sheraton Denver West Hotel & Conference Center, 360 Union Boulevard, Lakewood, CO 80228, (303) 987–2000.

If you plan to attend, please notify John Blair, Western Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2845.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5502 Filed 3–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting; Park City, UT

February 26, 1998.

The Office of Hydropower Licensing will hold a public Outreach Meeting in Park City, Utah, on Tuesday, March 24, 1998. The Outreach Meeting is scheduled to start at 9:00 A.M. and finish at 5:00 P.M.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in Utah whose

licenses expire between calendar years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: Olympia Park Hotel & Conference Center, 1895 Sidewinder Drive, Park City, UT 84060, (801) 649–2900.

If you plan to attend, notify John Blair, Western Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2845.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5503 Filed 3–3–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00519; FRL–5762–6]

Renewal of Pesticide Information Collection Activities; Application and Summary Report for an Emergency Exemption for Pesticides; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the following Information Collection Request (ICR) is coming up for renewal. This ICR, entitled ''Application and Summary Report for an Emergency Exemption for Pesticides,'' EPA ICR No. 0596.05, OMB No. 2070–0032, will expire on May 31, 1998. Before submitting the renewal package to the Office of Management and Budget, EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before May 4, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

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

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7506C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305–5454, e-mail: smoot.cameo@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6052 for a copy of the ICR.

I. Information Collection Request

EPA is seeking comments on the following Information Collection Request:

Title: Application and Summary Report for an Emergency Exemption for Pesticides.

ICR numbers: EPA No. 0596.05 and OMB No. 2070-0032.

Expiration date: Current OMB approval expires on May 31, 1998.

Affected entities: Parties affected by this information collection are states, territories and Federal agencies.

Abstract: Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, EPA may temporarily authorize states, territories, and Federal agencies to ship and use unregistered pesticides in emergency situations. To ensure that an emergency situation actually exists, and that use of the pesticide will not pose an unreasonable risk to human health or the environment, EPA requires exemption applicants to explain the circumstances necessitating the emergency use and to provide details on the pesticide and its proposed application. Following the application of the pesticide, applicants must submit a report to EPA describing the pesticide treatment, and its effectiveness as well as any adverse effects.

Burden statement: The information covered by this request is collected when an emergency situation becomes apparent and only upon reciept of an emergency exemption application. Small businesses are not eligible to apply to this program. The public burden for this collection of information is estimated to average 103 hours per response for reporting and 2 hours per recordkeeper annually. This estimate includes the initial request for an emergency exemption and the time needed to complete and submit the summary report after the pesticide application. Included in this estimate is also the time needed to review instructions, search existing data sources, gather and maintain data needed, and review the collection of information.

II. Request for Comments

The Agency would appreciate any comments or information that could be used to:

1. Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses. The Agency is particularly interested in comments and information about the burden estimates, including examples that could be used to reflect the burdens imposed.

Send comments regarding these matters, or any other aspect of these information collections, including suggestions for reducing the burdens, to the docket under ADDRESSES listed above.

III. Public Record and Electronic Submissions

The official record for this document, as well as the public version, has been established for this document under docket control number ''OPP–00519'' (including comments and data submitted electronically as described below). A public version of this record,

including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–00519.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Information collection requests.

Dated: February 19, 1998.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–5256 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5973–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Superfund Site Evaluation and Hazard Ranking System

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 proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget OMB): Site Evaluation and Hazard Ranking System, ICR #1488.04, OMB #2050–0005, expiration date 7/31/98. Before submitting the ICR to OMB for approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 4, 1998.

ADDRESSES: To obtain a copy of this ICR, please contact Mary Ann Rich, Office of Emergency and Remedial Response, (703) 603–8825 or by email: rich.maryann@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For further information contact Mary Ann Rich at (703) 603–8825, please refer to ICR #1488.04.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Superfund Site Evaluation and Hazard Ranking System, EPA ICR #1488.04. This ICR requests renewal of a currently approved collection (OMB #2050–0005).

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous Substances Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative threats to human health and the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

Under this ICR the States will apply the HRS by identifying and classifying those releases that warrant further investigation. The HRS score is crucial since it is the primary mechanism used to determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions.

HRS scores are derived from the sources described in this information collection, including field reconnaissance, taking samples at the site, and reviewing available reports and documents. States record the collected information on HRS documentation worksheets and include this in the supporting reference package. States then send the package to the EPA region for a completeness and accuracy review, and the Region then sends it to EPA Headquarters for a final quality assurance review. If the site scores above the NPL designated cutoff value, and if it meets the other criteria for listing, it is then eligible to be proposed on the NPL.

Burden Statement: Depending on the number and type of activities performed, burden for the collection of site assessment information is estimated to range from 15 to 3,325 hours per site. The number of hours required to assess a particular site depends on how far a site progresses through the site assessment process. Sites where only a pre-CERCLIS screening action is performed will typically require approximately 15 hours, while sites that progress to NPL listing based on an integrated assessment approach may require up to 3,325 hours. The burden estimates include reporting activities and minimal recordkeeping activities. The States are reimbursed 100% of their costs, except for record maintenance. The ICR does not impose burden for HRS activities on local governments or private businesses.

Respondents: State agencies performing Superfund site evaluation activities.

Estimated Number of Respondents: 50 States.

Estimated Total Annual Burden on Respondents: 226,000 hours.

Frequency of Collection: One time; section 116(b) requires an HRS evaluation within four years of the site's entry into the EPA CERCLIS database.

Dated: February 24, 1998.

Larry G. Reed,

Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 98–5556 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5973–2]

Continuing Planning Process for the State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public review and comment of the continuing planning process (CPP) for the State of Delaware.

SUMMARY: The Clean Water Act (the Act) at section 303(e), and EPA's implementing regulation at 40 CFR 130.5, requires that each State shall establish and maintain a continuing planning process (CPP) consistent with the Act. Each State is responsible for managing its water quality program to

implement the processes specified in the CPP, and EPA is responsible for periodically reviewing the adequacy of the State's CPP. This document is being published in accordance with Paragraph 9 of the consent decree in the matter of American Littoral Society and Sierra Club v. EPA, Civil Docket No. 96–591. Consistent with the consent decree, EPA is publishing this notice of availability of the CPP to interested parties. By August 15, 1998, EPA will prepare a preliminary written summary of its review of the CPP and will make that summary available to interested parties for their review and comment. Copies of the CPP will be available beginning February 28, 1998 by contacting the person listed in the following **FOR FURTHER INFORMATION CONTACT** section. Once available, copies of EPA's preliminary written summary may also be requested.

FOR FURTHER INFORMATION CONTACT: Matthew T. Murawski, Office of Watersheds, at (215) 566–5748, or by email at murawski.matthew@epamail.epa.gov.

Robert J. Mitkus,

Deputy Director, Water Protection Division, EPA Region III.

[FR Doc. 98–5554 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5973–5]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notification of Public Advisory CSI Printing Sector and Metal Finishing Sector Subcommittee Meetings; Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Printing Sector and the Metal Finishing Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at both meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the two announcements below.

(1) Printing Sector Subcommittee—March 20, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Printing Sector Subcommittee on Friday, March 20, 1998, from approximately 8:30 a.m. EST until 12:00 p.m EST. The meeting will be held at Resolve, located at 1255—23rd Street, NW, Suite 275 in Washington, DC.

The purpose of the meeting will be to review the progress in implementing the New York City Education Project and to discuss the plans to implement pilot projects of the PrintSTEP program. A formal agenda will be available at the meeting.

For further information concerning meeting times and agenda of this Printing Sector Subcommittee meeting, please contact Gina Bushong, Designated Federal Officer (DFO), at EPA by telephone on (202) 564–5081 in Washington, DC, by fax on (202) 564–0009, or by e-mail at bushong.gina@epamail.epa.gov.

(2) Metal Finishing Sector Subcommittee—March 12 and 13, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Metal Finishing Sector Subcommittee on Thursday, March 12 and Friday, March 13, 1998, at the Fairfield Inn, Scottsdale Downtown, 5101 North Scottsdale Road, Scottsdale, AZ 85250. The telephone number is 602–945–4392. The Subcommittee will meet both days from approximately 9:00 a.m. MST to approximately 4:00 p.m. MST.

The Subcommittee meeting will focus on the Metal Finishing Sector's Strategic Goals Program, future roles of the Metal Finishing Subcommittee and other stakeholder oversight groups, and the activities of several workgroups and project teams (including the research and technology workgroup and the RCRA project team). A formal agenda will be available at the meeting.

For further information concerning meeting times and agenda of the Metal Finishing Sector Subcommittee meeting, please contact Bob Benson, DFO, at EPA by telephone on (202) 260–8668 in Washington, DC, by fax on (202) 260–8662, or by e-mail at benson.robert@epamail.epa.gov

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee announcements will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http://www.epa.gov/commonsense.

Dated: February 26, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–5553 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5973–8]

Announcement of Stakeholder Meeting To Address Environmental Justice in Minority Populations and Low-Income Populations in Regard To Implementing the Safe Drinking Water Act Amendments of 1996

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be holding a simultaneous, one day public meeting via videoconference call in eleven cities on March 12, 1998. The purposes of this meeting are to identify issues and solicit input from stakeholders and the public at large on environmental justice related considerations of several proposed drinking water regulations. This meeting is being held as part of the Agency's effort to comply with Executive Order 12898. President Clinton signed Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, on February 11, 1994. The Executive Order increased Agency responsibilities such that, to the greatest extent practicable and permitted by law, each Federal Agency must make achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories. In order to fulfill its responsibilities to Executive Order 12898, EPA would like to have a dialogue with stakeholders and the public on the various components of pending drinking water regulations, including treatment; costs; benefits; data quality; health effects; the regulatory process; and impacts to sensitive subpopulations, minority populations, and low-income populations. EPA is seeking input from national, state, Tribal, municipal, and individual stakeholders. This meeting is a

continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Program. These meetings were initiated as part of the Drinking Water Program Redirection efforts to help refocus EPA's drinking water priorities and to support strong, flexible partnerships among EPA, States, Tribes, local governments, and the public. At the upcoming meeting, EPA is specifically seeking input from stakeholders focused on issues related to environmental justice. EPA encourages the full participation of all stakeholders throughout this process.

DATES: This stakeholder meeting will be held on Thursday, March 12, 1998 from 10:00 a.m. to 5:00 p.m. EST. It will be held simultaneously in eleven cities across the United States via videoconference call.

Registration: To register for the meeting, please contact the name next to the city in which you plan to attend the meeting. Those registered for the meeting by Wednesday, March 4, 1998 will receive an agenda, logistics sheet, and background materials for the different regulations prior to the meeting. The following information contains the meeting location and contact name and phone number for registration in each city.

EPA Region 1, One Congress St., 10th Floor, Boston, MA 02203–0001: Rhona Julien, 617/565–9454.

EPA Region 2, 290 Broadway, 26th Floor, New York, NY, 10007: Wanda Ayala, 212/637–3660.

OSWERNJ, Edison Division of Science and Assessment, 2890 Woodbridge Ave., Edison, NJ 08837: Wanda Ayala, 212/637–3660.

EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107: Reggie Harris, 215/566–2988. (Philadelphia will be on conference call only)

EPA Region 4, 100 Alabama St., SW, Atlanta, GA 30303: Natalie Ellington, 404/562–9453.

EPA Region 5, 77 West Jackson, Blvd., Chicago, IL 60604–3507: Karla Johnson, 312/886–5993.

EPA Region 6, First Interstate Bank at Fountain Place, 1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202–2733: Shirley Augurson, 214/665–7401.

EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101: Althea Moses, 913/551–7649.

EPA Region 8, 999 18th St., Suite 500, Denver, CO 80202–2405: Nancy Reish, 303/312–6040.

EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105: Loretta Vanegas, 415/744–1946.

EPA Headquarters, Auditorium, 401 M St., SW, Washington, DC 20460: Safe Drinking Water Hotline, 1–800–426–4791.

SUPPLEMENTARY INFORMATION:

A. Background

Under the Safe Drinking Water Act (SDWA) Amendments of 1996, EPA must develop regulations for several contaminants and develop regulatory tools for more thorough analyses. The 1996 SDWA amendments require that new regulations be developed so as to ensure that they represent a meaningful opportunity for health risk reduction. Also required is a detailed analysis of the relationship to: health impacts, including those to sensitive subgroups; impacts of other contaminants; treatment objectives; incremental impacts above a baseline that considers current regulations; uncertainty; and affordability. EPA must also consider the impact on the technical, financial, and managerial capacity of water systems. In so doing, EPA must also use the best available, peer reviewed science and methods. After first defining a maximum contaminant level (MCL), or treatment technique standard based on affordable technology, EPA must determine whether the costs of that standard would be justified by the benefits. If not, EPA may adjust an MCL to a level that maximizes health risk reduction benefits at a cost that is justified by the benefits. The authority to adjust the MCL has limits that also require evaluation. The SDWA also requires that comprehensive, informative, and understandable information be provided to the public.

The upcoming meeting deals specifically with EPA's efforts to develop new regulations for specific drinking water contaminants and the processes involved in developing them. EPA is to propose a Maximum Contaminant Level Goal (MCLG) and National Primary Drinking Water Standards (NPDWSs) for radon by August 1999, and propose a NPDWS for arsenic by January 2000. EPA will revise and strengthen the 1989 Surface Water Treatment Rule and is required to have the Interim Enhanced Surface Water Treatment and Stage 1 Disinfection Byproducts Rules (DBPR) finalized by November 1998, and the Ground Water Disinfection Rule (GWDR) proposed by March 1999. EPA must also issue regulations to address filter backwash recycling and a Long Term Enhanced Surface Water Treatment Rule. These rules are to control microbial pathogens, disinfectants and disinfection byproducts (DBPs) in drinking water. Regulatory impact analysis (cost-benefit analysis) is also addressed in SDWA and will be discussed at the meeting.

B. Request for Stakeholder Involvement

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for proposed regulations for radon, ground water disinfection, surface water treatment, arsenic, and approaches for enacting regulatory cost and benefit analysis.

Dated: February 20, 1998.

Elizabeth R. Fellows,

Acting Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 98–5557 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–794; FRL–5774–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–794, must be received on or before April 3, 1998.

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

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public

record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Beth Edwards	Rm. 206, CM #2, 703–305–5400, e-mail: edwards.beth@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Sidney Jackson	Rm. 233, CM #2, 703–305–7610, e-mail: jackson.sidney@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–794] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–794] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco

PP 8F4942

EPA has received a pesticide petition (PP 8F4942) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46254 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide spinosad in or on the raw agricultural commodity cotton gin byproducts at 1.5 parts per million (ppm). Because of the amount of spinosad residue found in cotton gin byproducts as well as wet apple pomace (pending tolerance under PP 6F4761) and almond hulls and citrus dried pulp (pending tolerances under PP 7F4871) and the amount of cotton gin byproducts, almond hulls, citrus dried pulp, and apple pomace potentially included in livestock rations, a livestock, fat residue tolerance of 0.8 ppm, a milk residue tolerance of 0.05 ppm, and a milk fat residue tolerance of 0.7 ppm are also being proposed. The following meat and milk tolerances for residues of spinosad are presently pending under PP 6F4761 and PP 7F4871: meat at 0.04 ppm, kidney and liver at 0.2 ppm, fat at 0.7 ppm, milk at 0.04 ppm, and milk fat at 0.5 ppm. An adequate analytical method is available for enforcement purposes. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of spinosad in plants (apples, cabbage, cotton, tomato, and turnip) and animals (goats and poultry) is adequately understood for the purposes of these tolerances. A rotational crop study showed no carryover of measurable spinosad related residues in representative test crops.

2. *Analytical method*. There is a practical method (HPLC with UV detection) for detecting (0.004 ppm) and measuring (0.01 ppm) levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for these tolerances. The method has had a successful method tryout in the EPA's laboratories.

3. *Magnitude of residues*. Magnitude of residue studies were conducted for cotton gin byproducts at seven sites. Residues found in these studies ranged from less than the limit of quantitation of the analytical method to 0.9 ppm on cotton gin byproducts.

B. Toxicological Profile

1. *Acute toxicity*. Spinosad has low acute toxicity. The rat oral LD_{50} is 3,738 mg/kg for males and >5,000 milligrams/kilograms (mg/kg) for females, whereas the mouse oral LD_{50} is >5,000 mg/kg. The rabbit dermal LD_{50} is >2,000 mg/kg and the rat inhalation LC_{50} is >5.18 mg/l air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicity*. Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an

in vitro assay for cytogenetic damage using the Chinese hamster ovary cells, an in vitro mammalian gene mutation assay using mouse lymphoma cells, an in vitro assay for DNA damage and repair in rat hepatocytes, and an in vivo cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Spinosad caused decreased body weights in maternal rats given 200 milligrams/kilograms/day (mg/kg/day) by gavage (highest dose tested). This was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The NOELs for maternal and fetal effects in rats were 50 and 200 mg/kg/day, respectively. A teratology study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day (highest dose tested). Maternal toxicity was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The NOELs for maternal and fetal effects in rabbits were 10 and 50 mg/kg/day, respectively. The NOEL found for maternal and pup effects in a rat reproduction study was 10 mg/kg/day. Neonatal effects at 100 mg/kg/day (highest dose tested in the rat reproduction study) were attributed to maternal toxicity.

4. *Subchronic toxicity*. Spinosad was evaluated in 13-week dietary studies and showed NOELs of 4.9 mg/kg/day in dogs, 6 mg/kg/day in mice, and 8.6 mg/kg/day in rats. No dermal irritation or systemic toxicity occurred in a 21-day repeated dose dermal toxicity study in rabbits given 1,000 mg/kg/day.

5. *Chronic toxicity*. Based on chronic testing with spinosad in the dog and the rat, the EPA has set a reference dose (RfD) of 0.0268 mg/kg/day for spinosad. The RfD has incorporated a 100-fold safety factor to the NOELs found in the chronic dog study. The NOELs shown in the dog chronic study were 2.68 and 2.72 mg/kg/day, respectively for male and female dogs. The NOELs shown in the rat chronic study were 2.4 and 3.0 mg/kg/day, respectively for male and female rats. Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOELs shown in the mouse oncogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. The NOELs shown in the rat chronic/oncogenicity study were 2.4 and 3.0 mg/kg/day, respectively for male and female rats. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment is not needed.

6. *Animal metabolism*. There were no major differences in the bioavailability, routes or rates of excretion, or metabolism of spinosyn A and spinosyn D following oral administration in rats. Urine and fecal excretions were almost completed in 48-hours post-dosing. In addition, the routes and rates of excretion were not affected by repeated administration.

7. *Metabolite toxicology*. The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, there is no need to address metabolite toxicity.

8. *Neurotoxicity*. Spinosad did not cause neurotoxicity in rats in acute, subchronic, or chronic toxicity studies.

9. *Endocrine effects*. There is no evidence to suggest that spinosad has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure from use of spinosad on cotton gin byproducts as well as from other existing or pending uses, a conservative estimate of aggregate exposure is determined by basing the TMRC on the proposed tolerance levels for spinosad and assuming that 100% of the cotton gin byproducts and other existing and pending crop uses grown in the U.S. were treated with spinosad. The TMRC is obtained by multiplying the tolerance residue levels by the consumption data which estimates the amount of crops and related foodstuffs consumed by various population subgroups. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for the use of spinosad on crops cited in this summary that is based on a conservative exposure assessment.

2. *Drinking water*. Another potential source of dietary exposure are residues in drinking water. Based on the available environmental studies conducted with spinosad wherein it's properties show little or no mobility in soil, there is no anticipated exposure to residues of spinosad in drinking water. In addition, there is no established Maximum Concentration Level for residues of spinosad in drinking water.

3. *Non-dietary exposure*. Spinosad is currently registered for use on cotton with several crop registrations pending all of which involve applications of spinosad in the agriculture environment. Spinosad is also currently registered for use on turf and ornamentals at low rates of application (0.04 to 0.54 lb a.i. per acre). Thus, the potential for non-dietary exposure to the general population is not expected to be significant.

D. Cumulative Effects

The potential for cumulative effects of spinosad and other substances that have a common mechanism of toxicity is also considered. In terms of insect control, spinosad causes excitation of the insect nervous system, leading to involuntary muscle contractions, prostration with tremors, and finally paralysis. These effects are consistent with the activation of nicotinic acetylcholine receptors by a mechanism that is clearly novel and unique among known insecticidal compounds. Spinosad also has effects on the GABA receptor function that may contribute further to its insecticidal activity. Based on results found in tests with various mammalian species, spinosad appears to have a mechanism of toxicity like that of many amphiphilic cationic compounds. There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions and the proposed RfD described above, the aggregate exposure to spinosad use on cotton gin byproducts and other existing or pending crop uses will utilize 20.6% of the RfD for the U.S. population. A more realistic estimate of dietary exposure and risk relative to a chronic toxicity endpoint is obtained if average (anticipated) residue values from field trials are used. Inserting the average residue values in place of tolerance residue levels produces a more realistic, but still conservative risk assessment. Based on average or anticipated residues in a dietary risk analysis, the use of spinosad on cotton gin byproducts and other existing or pending crop uses will utilize 4.5% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Thus, it is clear that there is reasonable certainty that no harm will result from aggregate exposure to spinosad residues on cotton gin products and other existing or pending crop uses.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of spinosad, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

Section 408 of the FFDCA provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database for spinosad relative to pre- and post-natal effects for children is complete. Further, for spinosad, the NOELs in the dog chronic feeding study which was used to calculate the RfD (0.0268 mg/kg/day) are already lower than the NOELs from the developmental studies in rats and rabbits by a factor of more than 10-fold.

Concerning the reproduction study in rats, the pup effects shown at the highest dose tested were attributed to maternal toxicity. Therefore, it is concluded that an additional uncertainty factor is not needed and that the RfD at 0.0268 mg/kg/day is appropriate for assessing risk to infants and children.

Using the conservative exposure assumptions previously described (tolerance level residues), the percent RfD utilized by the aggregate exposure to residues of spinosad on cotton gin byproducts and other existing or pending crop uses is 38.1% for children 1 to 6 years old, the most sensitive population subgroup. If average or anticipated residues are used in the dietary risk analysis, the use of spinosad on these crops will utilize 11.1% of the RfD for children 1 to 6 years old. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues on cotton gin byproducts and other existing or pending crop uses.

F. International Tolerances

There are no Codex maximum residue levels established for residues of spinosad on cotton gin byproducts or any other food or feed crop. (Beth Edwards)

2. Interregional Research Project

PP 4E4420 and 6E4638

EPA has received pesticide petitions (PP 4E4420 and 6E4638) from the Interregional Research Project Number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for combined residues (free and bound) of the herbicide metolachlor and its metabolites, CGA- 37913 and CGA- 49751, expressed as the parent compound, in or on the raw agricultural commodities (RACs) peppers at 0.5 ppm, forage of the grass forage, fodder and hay group (excluding Bermudagrass), forage at 12 ppm and hay of the grass forage, fodder and hay group (excluding Bermudagrass) at 0.3 ppm. Time-limited tolerances are being proposed for peppers and grass grown for seed to allow time to developed magnitude of residue data from an additional three field trials for bell pepper and five additional field trials for grass forage and hay. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice contains a summary of the petitions submitted by Novartis Crop Protection, Inc. (Novartis), the registrant.

A. Residue Chemistry

1. *Plant and animal metabolism*. The qualitative nature of the metabolism of metolachlor in plants and animals is well understood. Metabolism in plants involves conjugation of the chloroacetyl side chain with glutathione, with subsequent conversion to the cysteine and thiolactic acid conjugates. Oxidation to the corresponding sulfoxide derivatives occurs and cleavage of the side chain ether group, followed by conjugation with glucose. In animals, metolachlor is rapidly metabolized and almost totally eliminated in the excreta of rats, goats, and poultry. Metabolism in plants and animals proceeds through common Phase 1 intermediates and glutathione conjugation.

2. *Analytical method*. IR-4 has submitted a practical analytical method involving extraction by acid reflux, filtration, partition and cleanup with analysis by gas chromatography using nitrogen specific detection. The methodology accounts for residues of CGA-37913 and CGA-49751 which are formed from metolachlor and its metabolites under acid hydrolysis. The limit of quantitation (LOQ) for the method is 0.03 ppm for CGA-37913 and 0.05 ppm for CGA-49751. Residues of CGA-37913 and CGA-49751 are reported as metolachlor equivalents.

3. *Magnitude of residues*. For peppers - This petition for the establishment of a 0.5 ppm tolerance for metolachlor on peppers is supported by the individual tolerances already established in a number of pepper varieties: bell (0.1 ppm), chili (0.5 ppm), Cubanelle (0.1 ppm), and tabasco (0.5 ppm).

In four field trials, 1.5 to 3.5 lbs. metolachlor per acre, was applied 48 hours after transplanting of bell peppers. Residues from these samples were less than 0.1 ppm. Metolachlor was also applied at 2.0 to 4.0 lbs active per acre to Cubanelle peppers shortly after transplanting. Residues recovered from these samples were also below the 0.1 ppm level. In tabasco peppers, 4 lbs metolachlor per acre was applied as a directed spray to the pepper plants and peppers were harvested either 7 or 14 days after treatment. Residues of nearly 0.5 ppm were recovered 7 days after treatment, however, the residue levels dropped to approximately 0.25 ppm when harvested 14 days after treatment. For chili peppers, metolachlor was applied post-emergence as a foliar application at 2.0 lbs active per acre. Samples harvested at approximately 40 days after treatment had residues of 0.36 ppm (as CGA-49751), however, samples taken later than this date had residues below 0.03 ppm. In one additional chili pepper trial, metolachlor was applied at rates of 1 to 4 lbs active ingredient per acre to direct seeded peppers. No residues were recovered from the peppers harvested 204 days after the application. The proposed label would allow one surface broadcast application of metolachlor at 1.25 to 2.0 pints (1.25 to 2.0 lbs. active) per acre within 48 hours after transplanting peppers and with a pre-harvest interval of 63 days.

For Grass Grown for Seed - This petition is supported by six field residue tests conducted on grasses grown for seed. Quantitative measurements of the metolachlor hydrolysates, CGA-37913 and CGA-49751, were made for all

samples and reported as metolachlor equivalents. In all residue tests, metolachlor (Dual 8E®) was applied post-emergence at a maximum of 2.0 lbs. a.i./A at the early regrowth stage prior to weed emergence. The maximum residue in forage was 27 ppm (60-day PHI). Residues in forage declined with increasing PHI. Maximum residues in straw, screenings, and seed were 0.11 ppm, 0.04 ppm, and <0.08 ppm, respectively.

B. Toxicological Profile

1. *Acute toxicity*. Metolachlor has a low order of acute toxicity. The combined rat oral lethal dose $(LD)_{50}$ is 2,877 milligrams(mg)/kilogram(kg). The acute rabbit dermal LD_{50} is >2,000 mg/kg and the rat inhalation lethal concentration $(LC)_{50}$ is >4.33 mg/liter (L). Metolachlor was not irritating to the skin and eye. It was shown to be positive in guinea pigs for skin sensitization. End use formulations of metolachlor also have a low order of acute toxicity and cause slight skin and eye irritation.

2. *Genotoxicity*. Assays for genotoxicity were comprised of tests evaluating metolachlor's potential to induce point mutations (*Salmonella* assay and an L5178/TK+/- mouse lymphoma assay), chromosome aberrations (mouse micronucleus and a dominant lethal assay) and the ability to induce either unscheduled or scheduled deoxyribonucleic acid (DNA) synthesis in rat hepatocytes or DNA damage or repair in human fibroblasts. The results indicate that metolachlor is not mutagenic or clastogenic and does not provoke unscheduled DNA synthesis.

3. *Reproductive and developmental toxicity*. Adverse developmental and reproductive potential of metolachlor was investigated in rats and rabbits. The results indicate that metolachlor is not embyrotoxic or reproductive toxic in either species at maternally toxic doses. The no-observed-effect level (NOEL) for developmental toxicity for metolachlor was 360 mg/kg/day for both the rat and rabbit while the NOEL for maternal toxicity was established at 120 mg/kg/day in the rabbit and 360 mg/kg/day in the rat.

A 2-generation reproduction study was conducted with metolachlor in rats at feeding levels of 0, 30, 300 and 1,000 ppm. The reproductive NOEL of 300 ppm (equivalent to 23.5 to 26 mg/kg/day) was based upon reduced pup weights in the F1a and F2a litters at the 1,000 ppm dose level (equivalent to 75.8 to 85.7 mg/kg/day). The NOEL for parental toxicity was equal to or greater than the 1,000 ppm dose level.

4. *Subchronic toxicity*. Metolachlor was evaluated in a 21-day dermal toxicity study in the rabbit and a 6-month dietary study in dogs; NOELs of 100 mg/kg/day and 7.5 mg/kg/day were established in the rabbit and dog, respectively. The liver was identified as the main target organ.

5. *Chronic toxicity*. A 1-year dog study was conducted at dose levels of 0, 3.3, 9.7, or 32.7 mg/kg/day. The Agency-determined reference dose(RfD) for metolachlor is based on the one year dog study with a NOEL of 9.7 mg/kg/day. The RfD for metolachlor is established at 0.1 mg/kg/day using a 100-fold uncertainty factor. A combined chronic toxicity/carcinogenicity study was also conducted in rats at dose levels of 0. 1.5, 15 or 150 mg/kg/day. The NOEL for systemic toxicity was 15 mg/kg/day.

6. *Carcinogenicity*. An evaluation of the carcinogenic potential of metolachlor was made from two sets of carcinogenicity studies conducted with metolachlor in rats and mice. EPA has classified metolachlor as a Group C (possible human) carcinogen and uses a Margin of Exposure (MOE) approach to quantify risk. This classification is based upon the marginal tumor response observed in livers of female rats treated with a high (cytotoxic) dose of metolachlor (3,000 ppm). The two studies conducted in mice were negative for carcinogenicity.

A NOEL of 15 mg/kg/day from the 2 year rat feeding study was determined to be appropriate for use in the MOE carcinogenic risk assessment. However, because the chronic reference dose is lower (9.7 mg/kg/day) than the carcinogenic NOEL (15 mg/kg/day), the EPA is using the Reference Dose for quantification of human risk.

7. *Estrogenic potential/endocrine disruption*. Metolachlor does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that metolachlor has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in the chronic dog, rat and mouse studies conducted with metolachlor did not indicate that the endocrine system is targeted by metolachlor, even at maximally tolerated doses administered for a lifetime. Although residues of metolachlor have been found in raw agricultural commodities, there is no evidence that metolachlor bioaccumulates in the environment.

C. Aggregate Exposure

1. *Dietary (food) exposure*. For purposes of assessing the potential dietary exposure to metolachlor, aggregate exposure has been estimated based on the Theoretical Maximum Residue Contribution (TMRC) from the use of metolachlor in or on raw agricultural commodities for which tolerances have been previously established (40 CFR 180.368). The incremental effect on dietary risk resulting from the addition of peppers to the label was assessed by assuming that exposure would occur at the proposed tolerance level of 0.5 ppm with 100% of the crop treated. The potential human dietary exposure from grasses grown for seed comes from the consumption of grass forage and hay by animals. Based on the tolerances proposed in forage (12 ppm) and hay (0.3 ppm), it has been determined that tolerances previously established for metolachlor in animal commodities of milk and meat, fat, kidney, liver and meat byproducts are adequate to cover secondary residues resulting from animal consumption of grass forage and hay.

The TMRC is obtained by multiplying the tolerance level residue for all these raw agricultural commodities by the consumption data which estimates the amount of these products consumed by various population subgroups. Some of these raw agricultural commodities (e.g. corn forage and fodder, peanut hay) are fed to animals; thus exposure of humans to residues in these fed commodities might result if such residues are transferred to meat, milk, poultry, or eggs. Therefore, tolerances of 0.02 ppm for milk, meat and eggs and 0.2 ppm for kidney and 0.05 ppm for liver have been established for metolachlor.

In conducting this exposure assessment, it has been conservatively assumed that 100% of all raw agricultural commodities for which tolerances have been established for metolachlor will contain metolachlor residues and those residues would be at the level of the tolerance--which results in an overestimation of human exposure.

2. *Drinking water*. Another potential source of exposure of the general population to residues of pesticides are residues in drinking water. Based on the available studies used by EPA to assess environmental exposure, Novartis anticipates that exposure to residues of metolachlor in drinking water will not exceed 20% of the RfD (0.02 mg/kg/day), a value upon which the Health Advisory Level of 70 parts per billion (ppb) for metolachlor is based. In fact, based on experience with metolachlor,

it is believed that metolachlor will be infrequently found in groundwater (less than 5% of the samples analyzed), and when found, it will be in the low ppb range.

3. *Non-dietary exposure*. Although metolachlor may be used on turf and ornamentals in a residential setting, that use represents less than 0.1 percent of the total herbicide market for residential turf and landscape uses. Currently, there are no acceptable, reliable exposure data available to assess any potential risks from non-dietary exposure. However, given the small amount of material that is used, Novartis believes that the potential for non-occupational exposure to the general population is unlikely.

D. Cumulative Effects

The potential for cumulative effects of metolachlor and other substances that have a common mechanism of toxicity has also been considered. Novartis believes that consideration of a common mechanism of toxicity with other registered pesticides in this chemical class (chloroacetamides) is not appropriate. EPA concluded that the carcinogenic potential of metolachlor is not the same as other registered chloroacetamide herbicides, based on differences in rodent metabolism (EPA Peer Review of metolachlor, 1994). Novartis maintains that only metolachlor should be considered in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the exposure assumptions described above, based on the completeness and reliability of the toxicity data, Novartis has concluded that aggregate exposure to metolachlor including the proposed new uses on peppers and grasses grown for seed will utilize approximately 3.0% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, Novartis believes that there is a reasonable certainty that no harm will result from aggregate exposure to metolachlor or metolachlor residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of metolachlor, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from chemical exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to a chemical on the reproductive capability of mating animals and data on systemic toxicity.

Developmental toxicity (reduced mean fetal body weight, reduced number of implantations/dam with resulting decreased litter size, and a slight increase in resorptions/dam with a resulting increase in post-implantation loss) were observed in studies on metolachlor in rats and rabbits. The NOEL's for developmental effects in both rats and rabbits were established at 360 mg/kg/day. The developmental effect observed in the metolachlor rat study is believed to be a secondary effect resulting from maternal stress (lacrimation, salivation, decreased body weight gain and food consumption and death) observed at the limit dose of 1,000 mg/kg/day.

A 2-generation reproduction study was conducted with metolachlor at feeding levels of 0, 30, 300 and 1,000 ppm. The reproductive NOEL of 300 ppm (equivalent to 23.5 to 26 mg/kg/day) was based upon reduced pup weights in the F1a and F2a litters at the 1,000 ppm dose level (equivalent to 75.8 to 85.7 mg/kg/day). The NOEL for parental toxicity was equal to or greater than the 1,000 ppm dose level.

Section 408 of the FFDCA provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. Further, for the chemical metolachlor, the NOEL of 9.7 mg/kg/day from the metolachlor chronic dog study, which was used to calculate the RfD (discussed above), is already lower than the developmental NOEL's of 360 mg/kg/day from the metolachlor developmental toxicity studies in rats and rabbits. In the metolachlor reproduction study, the lack of severity of the pup effects observed (decreased body weight) at the systemic lowest-observed-effect level (LOEL) (equivalent to 75.8 to 85.7 mg/kg/day) and the fact that the effects were observed at a dose that is nearly 10 times greater than the NOEL in the chronic dog study (9.7 mg/kg/day) suggest there is no additional sensitivity for infants and children. Therefore, Novartis concludes that an additional uncertainty factor is not warranted to protect the health of infants and children and that the RfD at 0.1 mg/kg/day based on the chronic dog study is appropriate for assessing aggregate risk to infants and children from use of metolachlor.

Using the exposure assumptions described above, Novartis concludes that the approximate percentages of the RfD that will be utilized by aggregate exposure to residues of metolachlor including published and pending tolerances is 1% for U. S. population, for nursing infants less than 1%, 3% for non-nursing infants, 3% for children 1 to 6 years old and 2% for children 7 to 12 years old.

Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to metolachlor residues.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRL's) established for residues of metolachlor in or on raw agricultural commodities. (Sidney Jackson)

[FR Doc. 98–5563 Filed 3–3–98:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–792; FRL–5772–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–792, must be received on or before April 3, 1998.

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

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Jim Tompkins (PM 25) ..	Rm. 239, CM #2, 703–305–5697, e-mail:tompkins.jim@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–792] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control [PF–792] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 1998.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1 Zeneca Ag Products

PP OF3860

EPA has received a pesticide petition (PP 0F3860) from Zeneca Ag Products, 1800 Concord Pike, P. O. Box 15458, Wilmington, DE 19850–5458, requesting pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.489 by removing the expiration date of April 10, 1998 for residues of sulfosate (glyphosate-trimesium; sulfonium, trimethyl salt with *N*-(phosphonomethyl)glycine (1:1)) in or on the raw agricultural commodities (RACs) for soybean forage (2.00 ppm, of which no more than 1 ppm is trimethylsulfonium (TMS)), soybean aspirated grain fractions (210.00 ppm, of which no more than 60 ppm is TMS), soybean hay (5.00 ppm, of which no more than 2 ppm is TMS), and soybean seed (3.00 ppm, of which no more than 1 ppm is TMS). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of sulfosate has been studied in corn, grapes, and soybeans. EPA has concluded that the nature of the residue is adequately understood and that the residues of concern are the parent ions only *N*-(phosphonomethyl)-glycine anion (PMG) and trimethylsulfonium cation (TMS).

2. *Analytical method*. Gas chromatography/mass selective detector methods have been developed for PMG analysis in crops, animal tissues, milk, and eggs. Gas chromatography detection methods have been developed for TMS in crops, animal tissues, milk, and eggs.

3. *Magnitude of residues— magnitude of residues in crops*—i. *Soybeans*. A total of 20 field residue trials were conducted in Regions 2 (3 trials), 4 (4 trials), and 5 (13 trials). The first application was a preplant or preemergence broadcast application at a rate of 8.0 lbs ai/A. A spot treatment was made to a 10% area of each plot 43 – 99 days after the initial treatment. The spot application rate was 2–20 lbs ai/A on a treated basis. Forage samples were harvested at the R3 (early pod) stage of soybean development from each treated plot 7–14 days after the spot application in 6 trials and prior to the spot application in 12 trials. A wiper application was made in all trials approximately 1 week prior to harvest of mature seed. Hay was collected at normal harvest, 7–8 weeks following the spot application in most trials. Seed were collected at normal harvest approximately 1 week after the wiper application. Analysis of the treated samples showed maximum residues were < 0.78 ppm in forage, 1.19 ppm in hay and 0.73 ppm in seed for TMS; and 0.60 ppm in forage, 2.7 ppm in hay, and 1.7 ppm in seed for PMG. These data

support the following tolerances for residue of sulfosate: soybean forage - 2.0 ppm (of which no more than 1.0 ppm is TMS); soybean hay 5.0 ppm (of which no more than 2.0 ppm is TMS); and soybean seed 3.0 ppm (of which no more than 1.0 ppm is TMS).

Concentration of residues is seen in aspirated grain fractions. The appropriate concentration factors for aspirated grain fractions are 73.8 (PMG) and 57.5 (TMS). The appropriate tolerance for aspirated grain fractions is 210 ppm (of which no more than 60 ppm is TMS).

ii. *Magnitude of residue in animals*—a. *Ruminants.* The maximum practical dietary burden in dairy cows for sulfosate results from a diet of soybean RAC's for a total dietary burden of 54.4 ppm. In a cow feeding study one of the dosing levels was 50 ppm, very close to the estimated ruminant dietary burden. Based on these results, the appropriate tolerance levels are: 0.1 ppm for cattle, goat, hog, horse, and sheep fat; 1 ppm for cattle, goat, hog, horse, and sheep meat by-products; 0.2 ppm for cattle, goat, hog, horse, and sheep meat; and 0.2 ppm in milk.

b. *Poultry.* The maximum poultry dietary burden for sulfosate results from a diet comprised of soybean and corn RACs for a total dietary burden of 2.7 ppm. Comparison to a poultry feeding study at a dosing level of 5 ppm indicates that the appropriate tolerance levels would be 0.05 ppm for poultry liver, fat, and meat; 0.10 ppm for poultry meat by-products; and 0.02 ppm for eggs.

B. Toxicological Profile

1. *Acute toxicity.* Several acute toxicology studies have been conducted placing technical grade sulfosate in Toxicity Category III and Toxicity Category IV. The acute oral LD_{50} in rat for sulfosate technical is 750 mg/kg.

2. *Genotoxicty.* Mutagenicity data includes two Ames tests with *Salmonella typhimurium*; a sex linked recessive lethal test with *Drosophila melanoga*; a forward mutation (mouse lymphoma) test; an *in vivo* bone marrow cytogenetics test in rats; a micronucleus assay in mice; an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (CHO) (no aberrations were observed either with or without S9 activation and there were no increases in sister chromatid exchanges); and a morphological transformation test in mice (all negative). A chronic feeding/carcinogenicity study was conducted in male and female rats fed dose levels of 0, 100, 500 and 1,000 ppm (0, 4.2., 21.2 or 41.8 mg/kg/day in males and 0, 5.4, 27.0 or 55.7 mg/kg day in females). No carcinogenic effects were observed under the conditions of the study. The systemic NOEL of 1,000 ppm (41.1/55.7 mg/kg/day for males and females, respectively) was based on decreased body weight gains (considered secondary to reduced food consumption) and increased incidences of chronic laryngeal and nasopharyngeal inflammation (males). A chronic feeding/carcinogenicity study was conducted in male and female mice fed dosage levels of 0, 100, 1,000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study at dose levels up to and including the 8,000 ppm HDT (highest dose may have been excessive). The systemic NOEL was 1,000 ppm based on decreases in body weight and feed consumption (both sexes), increases in the incidences of white matter degeneration in the lumbar spinal cord (males only), and increased incidences of duodenal epithelial hyperplasia (females only). Sulfosate is classified as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rats was conducted at doses of 0, 30, 100 and 333 mg/kg/day. The maternal (systemic) NOEL was 100 mg/kg/day, based on decreased body weight gain and food consumption, and clinical signs (salivation, chromorhinorrhea, and lethargy) seen at 333 mg/kg/day. The reproductive NOEL was 100 mg/kg/day, based on decreased mean pup weight. The decreased pup weight is a direct result of the maternal toxicity. A developmental toxicity study was conducted in rabbits at doses of 0, 10, 40 and 100 mg/kg/day with developmental and maternal toxicity NOELs of 40 mg/kg/day based on the following:

i. *Maternal effects.* Six of 17 dams died (2 of the 4 non-gravid dams); 4 of 11 dams aborted; clinical signs - higher incidence and earlier onset of diarrhea, anorexia, decreased body weight gain and food consumption.

ii. *Fetal effects.* decreased litter sizes due to increased post-implantation loss, seen at 100 mg/kg/day (HDT). The fetal effects were clearly a result of significant maternal toxicity. A two generation reproduction study in rats fed dosage rates of 0, 150, 800 and 2,000 ppm (equivalent to calculated doses of 0, 7.5, 40, and 100 mg/kg/day for males and females, based on a factor of 20). The maternal (systemic) NOEL was 150 ppm (7.5 mg/kg/day), based on decreases in body weight and body weight gains accompanied by decreased food consumption, and reduced absolute and sometimes relative organ (thymus, heart, kidney & liver) weights seen at 800 and 2,000 ppm (40 and 100 mg/kg/day). The reproductive NOEL was 150 ppm (7.5 mg/kg/day), based on decreased mean pup weights during lactation (after day 7) in the second litters at 800 ppm (40 mg/kg/day) and in all litters at 2,000 ppm (100 mg/kg/day), and decreased litter size in the F0a and F1b litters at 2,000 ppm (100 mg/kg/day). The statistically significant decreases in pup weights at the 800 ppm level were borderline biologically significant because at no time were either the body weights or body weight gains less than 90% of the control values and because the effect was not apparent in all litters. Both the slight reductions in litter size at 2,000 ppm and the reductions in pup weights at 800 and 2,000 ppm appear to be secondary to the health of the dams. There was no evidence of altered intrauterine development, increased stillborns, or pup anomalies. The effects are primarily a result of feed palatability leading to reduced food consumption and decreases in body weight gains in the dams.

4. *Subchronic toxicity.* Two subchronic 90–day feeding studies with dogs and a 1–year feeding study in dogs have been conducted. In the 1–year study dogs were fed 0, 2, 10 or 50 mg/kg/day. The No Observable Effect Level (NOEL) was determined to be 10 mg/kg/day based on decreases in lactate dehydrogenase (LDH) at 50 mg/kg/day. In the first 90–day study, dogs were fed dosage levels of 0, 2, 10 and 50 mg/kg/day. The NOEL in this study was 10 mg/kg/day based on transient salivation, and increased frequency and earlier onset of emesis in both sexes at 50 mg/kg/day. A second 90–day feeding study with dogs dosed at 0, 10, 25 and 50 mg/kg/day was conducted to refine the threshold of effects. There was evidence of toxicity at the top dose of 50 mg/kg/day with a no observed effect level of 25 mg/kg/day. Adverse effects from oral exposure to sulfosate occur at or above 50 mg/kg/day. These effects consist primarily of transient salivation, which is regarded as a pharmacological rather than toxicological effect, emesis and non-biologically significant hematological changes. Exposures at or below 25 mg/kg/day have not resulted in significant biological adverse effects. In addition, a comparison of data from the 90–day and 1–year studies indicates that there is no evidence for increased toxicity with time. The overall NOEL in the dog is 25 mg/kg/day.

5. *Chronic toxicity.* A chronic feeding/carcinogenicity study was conducted in male and female rats fed dose levels of 0, 100, 500 and 1,000 ppm (0, 4.2, 21.2 or 41.8 mg/kg/day in males and 0, 5.4, 27.0 or 55.7 mg/kg day in females). No carcinogenic effects were observed under the conditions of the study. The systemic NOEL of 1,000 ppm (41.1/55.7 mg/kg/day for males and females, respectively) was based on decreased body weight gains (considered secondary to reduced food consumption) and increased incidences of chronic laryngeal and nasopharyngeal inflammation (males). A chronic feeding/carcinogenicity study was conducted in male and female mice fed dosage levels of 0, 100, 1,000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study at dose levels up to and including the 8,000 ppm HDT (highest dose may have been excessive). The systemic NOEL was 1,000 ppm based on decreases in body weight and feed consumption (both sexes), increases in the incidences of white matter degeneration in the lumbar spinal cord (males only), and increased incidences of duodenal epithelial hyperplasia (females only). Sulfosate is classified as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

6. *Animal metabolism.* The metabolism of sulfosate has been studied in animals. The residues of concern for sulfosate in meat, milk, and eggs are the parent ions PMG and TMS only.

7. *Metabolite toxicology.* There are no metabolites of toxicological concern. Only the parent ions, PMG and TMS are of toxicological concern.

C. Aggregate Exposure

1. *Dietary (food) exposure.* For the purposes of assessing the potential dietary exposure, Zeneca has utilized the tolerance level for all existing tolerances and proposed tolerances; and 100% crop treated acreage for all commodities. Assuming that 100% of foods, meat, eggs, and milk products will contain sulfosate residues and those residues will be at the level of the tolerance results in an overestimate of human exposure. This is a very conservative approach to exposure assessment. For all existing tolerances, all proposed tolerances, and the proposed maximum permissible levels proposed in this notice of filing, the potential exposure for the U.S. population is 0.0184 milligrams per kilogram of bodyweight per day (mg/kg bwt/day). Potential exposure for children's population subgroups range from 0.0151 mg/kg bwt/day for nursing infants (< 1 year old) to 0.0763 mg/kg bwt/day for non-nursing infants (< 1 year old).

2. *Drinking water.* Sulfosate adsorbs fairly strongly to soil and would not be expected to move vertically below the 6 inch soil layer. The *N*-phosphonomethyl moiety is readily degraded by soil microbes to AMPA with a half-life of 48 to 72 hours. AMPA is further degraded to CO_2. In addition, the trimethylsulfonium moiety degrades rapidly to CO_2 with a half-life of 72 hours. Therefore, sulfosate would not be a contaminant of groundwater. Additionally, since sulfosate has no aquatic uses, residues are not expected in drinking water.

3. *Non-dietary exposure.* Since sulfosate is not registered for residential or turf uses, and does not represent groundwater contamination concern, exposures from other than dietary or occupational sources are not expected to occur.

D. Cumulative Effects

There is no information to indicate that toxic effects produced by sulfosate are cumulative with those of any other chemical compound.

E. Safety Determination

The appropriate toxicity endpoint for use in determining a Reference Dose (RfD) is the NOEL of 25 mg/kg/day, based on the 90–day dog study. Adverse effects resulting from exposure to sulfosate occur at or above approximately 40 mg/kg/day across all species tested (rat, mouse, rabbit and dog). The RfD based on a 90–day dog feeding study (NOEL of 25 mg/kg/day) using a hundredfold safety factor is calculated to be 0.25 mg/kg/day.

1. *U.S. population.* Using the conservative assumptions of 100% of all crops treated and assuming all residues are at the tolerance level for all established and proposed tolerances, the aggregate exposure to sulfosate will utilize 7.4% of the RfD for the U.S. population. Generally there are no concerns for exposures below 100% of the RfD.

2. *Infants and children.* The database on sulfosate relative to pre- and post-natal toxicity is complete. Because the developmental and reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased pre- or post-natal sensitivity of children and infants to sulfosate exposure. Therefore, Zeneca concludes, upon the basis of reliable data, that a hundredfold uncertainty factor is adequate to protect the safety of infants and children and an additional safety factor is unwarranted.

Using the conservative assumptions of 100% of all crops treated and assuming all residues are at the tolerance level for all established and proposed tolerances described above, we conclude that the percent of the RfD that will be utilized by aggregate exposure to residues of sulfosate ranges from 6.1% for nursing infants up to 30.5% for non-nursing infants (< 1 year old).

F. International Tolerances

There are no Codex Maximum Residue Levels established for sulfosate.

2. Zeneca Ag Products

PP 9F3796

EPA has received a pesticide petition (PP 9F3796) from Zeneca Ag Products, 1800 Concord Pike, P. O. Box 15458, Wilmington, DE 19850–5458, requesting pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.489 by removing the expiration date of March 9, 1998 for residues of sulfosate (glyphosate-trimesium; sulfonium, trimethyl salt with *N*-(phosphonomethyl)glycine (1:1)) in or on the raw agricultural commodities (RACs) for cattle, goat, hog, horse, sheep and poultry fat (0.10 ppm), meat by products (1.00 ppm), and meat (0.20 ppm); poultry liver (0.05 ppm), poultry meat by-products (0.10 ppm), and poultry meat (0.05 ppm); corn fodder (0.30, of which no more than 0.20 is trimethylsulfonium TMS)), corn forage (0.10 ppm), and corn grain (0.20 ppm, of which no more than 0.10 ppm is TMS); milk (0.20 ppm); and eggs (0.02 ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of sulfosate has been studied in corn, grapes, and soybeans. EPA has concluded that the nature of the residue is adequately understood and that the residues of concern are the parent ions only *N*-(phosphonomethyl)-glycine anion (PMG) and trimethylsulfonium cation (TMS).

2. *Analytical method.* Gas chromatography/mass selective detector methods have been developed for PMG

analysis in crops, animal tissues, milk, and eggs. Gas chromatography detection methods have been developed for TMS in crops, animal tissues, milk, and eggs.

3. *Magnitude of residues—crops*— i. *Corn*. A total of 25 field residue trials were conducted in Regions 1 (2 trials), 2 (2 trials), 5 (18 trials), 7 (1 trial), 8 (1 trial), and 10 (1 trial). The first application was a preemergence broadcast application at a rate of 8.0 lbs ai/A. A spot treatment was made to a 10% area of each plot 30–57 days after the initial treatment. The application rate was 2–20 lbs ai/A on a treated basis. Forage samples were harvested from each treated plot 2–8 weeks after the second application. Fodder and grain samples were obtained at maturity. Analysis of the treated samples showed maximum residues were < 6.1 ppm in forage, 0.13 ppm in fodder and 0.06 ppm in grain for TMS; and < 0.1 ppm in forage, < 0.1 ppm in fodder and 0.07 ppm in grain for PMG. These data support the following tolerances for residue of sulfosate: corn forage - 0.10 ppm; corn fodder - 0.30 ppm (of which no more than 0.2 ppm is TMS); and corn grain - 0.20 ppm (of which no more than 0.10 ppm is TMS). There is no concentration of residues in corn processed fractions.

ii. *Animals— ruminants*. The maximum practical dietary burden in dairy cows for sulfosate results from a diet of soybean RAC's for a total dietary burden of 54.4 ppm. In a cow feeding study one of the dosing levels was 50 ppm, very close to the estimated ruminant dietary burden. Based on these results, the appropriate tolerance levels are: 0.1 ppm for cattle, goat, hog, horse, and sheep fat; 1 ppm for cattle, goat, hog, horse, and sheep meat by-products; 0.2 ppm for cattle, goat, hog, horse, and sheep meat; and 0.2 ppm in milk.

iii. *Poultry*. The maximum poultry dietary burden for sulfosate results from a diet comprised of soybean and corn RACs for a total dietary burden of 2.7 ppm. Comparison to a poultry feeding study at a dosing level of 5 ppm indicates that the appropriate tolerance levels would be 0.05 ppm for poultry liver, fat, and meat; 0.10 ppm for poultry meat by-products; and 0.02 ppm for eggs.

B. Toxicological Profile

1. *Acute toxicity*. Several acute toxicology studies have been conducted placing technical grade sulfosate in Toxicity Category III and Toxicity Category IV. The acute oral LD_{50} in rat for sulfosate technical is 750 mg/kg.

2. *Genotoxicty*. Mutagenicity data include two Ames tests with *Salmonella typhimurium*; a sex linked recessive lethal test with *Drosophila melanoga*; a forward mutation (mouse lymphoma) test; an *in vivo* bone marrow cytogenetics test in rats; a micronucleus assay in mice; an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (CHO) (no aberrations were observed either with or without S9 activation and there were no increases in sister chromatid exchanges); and a morphological transformation test in mice (all negative). A chronic feeding/carcinogenicity study was conducted in male and female rats fed dose levels of 0, 100, 500 and 1,000 ppm (0, 4.2., 21.2 or 41.8 mg/kg/day in males and 0, 5.4, 27.0 or 55.7 mg/kg day in females). No carcinogenic effects were observed under the conditions of the study. The systemic NOEL of 1,000 ppm (41.1/55.7 mg/kg/day for males and females, respectively) was based on decreased body weight gains (considered secondary to reduced food consumption) and increased incidences of chronic laryngeal and nasopharyngeal inflammation (males). A chronic feeding/carcinogenicity study was conducted in male and female mice fed dosage levels of 0, 100, 1,000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study at dose levels up to and including the 8,000 ppm HDT (highest dose may have been excessive). The systemic NOEL was 1,000 ppm based on decreases in body weight and feed consumption (both sexes), increases in the incidences of white matter degeneration in the lumbar spinal cord (males only), and increased incidences of duodenal epithelial hyperplasia (females only). Sulfosate is classified as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

3. *Reproductive and developmental toxicity*. A developmental toxicity study in rats was conducted at doses of 0, 30, 100 and 333 mg/kg/day. The maternal (systemic) NOEL was 100 mg/kg/day, based on decreased body weight gain and food consumption, and clinical signs (salivation, chromorhinorrhea, and lethargy) seen at 333 mg/kg/day. The reproductive NOEL was 100 mg/kg/day, based on decreased mean pup weight. The decreased pup weight is a direct result of the maternal toxicity. A developmental toxicity study was conducted in rabbits at doses of 0, 10, 40 and 100 mg/kg/day with developmental and maternal toxicity NOELs of 40 mg/kg/day based on the following:

i. *Maternal effects*. Six of 17 dams died (2 of the 4 non-gravid dams); 4 of 11 dams aborted; clinical signs - higher incidence and earlier onset of diarrhea, anorexia, decreased body weight gain and food consumption.

ii. *Fetal effects*. Decreased litter sizes due to increased post-implantation loss, seen at 100 mg/kg/day (HDT). The fetal effects were clearly a result of significant maternal toxicity. A two generation reproduction study in rats fed dosage rates of 0, 150, 800 and 2,000 ppm (equivalent to calculated doses of 0, 7.5, 40, and 100 mg/kg/day for males and females, based on a factor of 20). The maternal (systemic) NOEL was 150 ppm (7.5 mg/kg/day), based on decreases in body weight and body weight gains accompanied by decreased food consumption, and reduced absolute and sometimes relative organ (thymus, heart, kidney & liver) weights seen at 800 and 2,000 ppm (40 and 100 mg/kg/day). The reproductive NOEL was 150 ppm (7.5 mg/kg/day), based on decreased mean pup weights during lactation (after day 7) in the second litters at 800 ppm (40 mg/kg/day) and in all litters at 2,000 ppm (100 mg/kg/day), and decreased litter size in the F0a and F1b litters at 2,000 ppm (100 mg/kg/day). The statistically significant decreases in pup weights at the 800 ppm level were borderline biologically significant because at no time were either the body weights or body weight gains less than 90% of the control values and because the effect was not apparent in all litters. Both the slight reductions in litter size at 2,000 ppm and the reductions in pup weights at 800 and 2,000 ppm appear to be secondary to the health of the dams. There was no evidence of altered intrauterine development, increased stillborns, or pup anomalies. The effects are primarily a result of feed palatability leading to reduced food consumption and decreases in body weight gains in the dams.

4. *Subchronic toxicity*. Two subchronic 90–day feeding studies with dogs and a 1–year feeding study in dogs have been conducted. In the 1–year study dogs were fed 0, 2, 10 or 50 mg/kg/day. The No Observable Effect Level (NOEL) was determined to be 10 mg/kg/day based on decreases in lactate dehydrogenase (LDH) at 50 mg/kg/day. In the first 90–day study, dogs were fed dosage levels of 0, 2, 10 and 50 mg/kg/day. The NOEL in this study was 10 mg/kg/day based on transient salivation, and increased frequency and earlier onset of emesis in both sexes at 50 mg/kg/day. A second 90–day feeding study with dogs dosed at 0, 10, 25 and 50 mg/kg/day was conducted to refine the

threshold of effects. There was evidence of toxicity at the top dose of 50 mg/kg/day with a no observed effect level of 25 mg/kg/day. Adverse effects from oral exposure to sulfosate occur at or above 50 mg/kg/day. These effects consist primarily of transient salivation, which is regarded as a pharmacological rather than toxicological effect, emesis and non-biologically significant hematological changes. Exposures at or below 25 mg/kg/day have not resulted in significant biological adverse effects. In addition, a comparison of data from the 90 day and 1 year studies indicates that there is no evidence for increased toxicity with time. The overall NOEL in the dog is 25 mg/kg/day.

5. *Chronic toxicity.* A chronic feeding/carcinogenicity study was conducted in male and female rats fed dose levels of 0, 100, 500 and 1,000 ppm (0, 4.2., 21.2 or 41.8 mg/kg/day in males and 0, 5.4, 27.0 or 55.7 mg/kg day in females). No carcinogenic effects were observed under the conditions of the study. The systemic NOEL of 1,000 ppm (41.1/55.7 mg/kg/day for males and females, respectively) was based on decreased body weight gains (considered secondary to reduced food consumption) and increased incidences of chronic laryngeal and nasopharyngeal inflammation (males). A chronic feeding/carcinogenicity study was conducted in male and female mice fed dosage levels of 0, 100, 1,000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females). No carcinogenic effects were observed under the conditions of the study at dose levels up to and including the 8,000 ppm HDT (highest dose may have been excessive). The systemic NOEL was 1,000 ppm based on decreases in body weight and feed consumption (both sexes), increases in the incidences of white matter degeneration in the lumbar spinal cord (males only), and increased incidences of duodenal epithelial hyperplasia (females only). Sulfosate is classified as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

6. *Animal metabolism.* The metabolism of sulfosate has been studied in animals. The residues of concern for sulfosate in meat, milk, and eggs are the parent ions PMG and TMS only.

7. *Metabolite toxicology.* There are no metabolites of toxicological concern. Only the parent ions, PMG and TMS are of toxicological concern.

C. Aggregate Exposure

1. *Dietary (food) exposure.* For the purposes of assessing the potential dietary exposure, Zeneca has utilized the tolerance level for all existing tolerances, and proposed Tolerances; and 100% crop treated acreage for all commodities. Assuming that 100% of foods, meat, eggs, and milk products will contain sulfosate residues and those residues will be at the level of the tolerance results in an overestimate of human exposure. This is a very conservative approach to exposure assessment. For all existing tolerances and the proposed maximum permissible levels proposed in this notice of filing, the potential exposure for the U.S. population is 0.0184 mg/kg bwt/day. Potential exposure for children's population subgroups range from 0.0151 mg/kg bwt/day for nursing infants (< 1 year old) to 0.0763 mg/kg bwt/day for non-nursing infants (> 1 year old).

2. *Drinking water.* Sulfosate adsorbs fairly strongly to soil and would not be expected to move vertically below the 6 inch soil layer. The *N*-phosphonomethyl moiety is readily degraded by soil microbes to AMPA with a half-life of 48 to 72 hours. AMPA is further degraded to CO_2. In addition, the trimethylsulfonium moiety degrades rapidly to CO_2 with a half-life of 72 hours. Therefore, sulfosate would not be a contaminant of groundwater. Additionally, since sulfosate has no aquatic uses, residues are not expected in drinking water.

3. *Non-dietary exposure.* Since sulfosate is not registered for residential or turf uses, and does not represent groundwater contamination concern, exposures from other than dietary or occupational sources are not expected to occur.

D. Cumulative Effects

There is no information to indicate that toxic effects produced by sulfosate are cumulative with those of any other chemical compound.

E. Safety Determination

The appropriate toxicity endpoint for use in determining a Reference Dose (RfD) is the NOEL of 25 mg/kg/day, based on the 90–day dog study. Adverse effects resulting from exposure to sulfosate occur at or above approximately 40 mg/kg/day across all species tested (rat, mouse, rabbit and dog). The RfD based on a 90–day dog feeding study (NOEL of 25 mg/kg/day) using a hundredfold safety factor is calculated to be 0.25 mg/kg/day.

1. *U.S. population.* Using the conservative assumptions of 100% of all crops treated and assuming all residues are at the tolerance level for all established and proposed tolerances, the aggregate exposure to sulfosate will utilize 7.4% of the RfD for the US population. Generally there are no concerns for exposures below 100 percent of the RfD.

2. *Infants and children.* The database on sulfosate relative to pre- and post-natal toxicity is complete. Because the developmental and reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased pre- or post-natal sensitivity of children and infants to sulfosate exposure. Therefore, Zeneca concludes, upon the basis of reliable data, that a hundredfold uncertainty factor is adequate to protect the safety of infants and children and an additional safety factor is unwarranted. Using the conservative assumptions of 100% of all crops treated and assuming all residues are at the tolerance level for all established and proposed tolerances described above, we conclude that the percent of the RfD that will be utilized by aggregate exposure to residues of sulfosate ranges from 6.1% for nursing infants up to 30.5% for non-nursing infants (< 1 year old).

F. International Tolerances.

There are no Codex Maximum Residue Levels established for sulfosate.

[FR Doc. 98–5257 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–59362A; FRL–5775–1]

Certain Chemicals; Extension of Test Marketing Period for Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an extension of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME–97–9. Therefore, this extension is a modification of the previously granted TME. The test marketing conditions are described below.

DATES: This notice becomes effective on February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Shirley D. Howard, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm.

E–435I, 401 M St. SW., Washington, DC 20460, (202) 260–3780. E-mail: Howard.sd@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the increase in the number of customers from two to three. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and restriction specified in the original TME notice, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the amended application. All other conditions and restrictions described in the application and this notice must be met.

TME–97–9

Notice of Approval of Original Application: August 8, 1997, (62 FR 44008).

Extension of the Test Marketing Period: Six months. Commencing on first day of commercial manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 25, 1998.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 98–5561 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44646; FRL–5775–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on phenol (CAS No. 108–95–2). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for phenol were submitted by the Chemical Manufacturers Association pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and were received by EPA on January 16, 1998. The final report was submitted on behalf of the following test sponsors: Allied Signal Inc.; Aristech Chemical Corporation; Dakota Gasification Company; Dow Chemical Company; Georgia Gulf Corporation; General Electric Corporation; GIRSA, Inc.; JLM Industries Inc.; Kalama Chemical, Inc.; Merichem Company; Mitsubishi International Corporation; Mitsui Co. (U.S.A.), Inc.; Shell Chemical Company; and Texaco Refining Marketing. The submission includes a final report entitled ''Two-Week (Ten Day) Inhalation Toxicity and Two-Week Recovery Study of Phenol Vapor in the Rat.'' This chemical is produced in substantial quantities and is used in numerous consumer products.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44646). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center, (also known as the TSCA Public Docket Office), Rm. B-607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: February 24, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–5562 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing An Open Meeting of the Board

TIME AND DATE: 10:00 A.M., Wednesday, March 11, 1998.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Office of Finance Debt Authorization
- Office of Finance Board Compensation Policy Approval
- Office of Finance Board Appointments
- Office of Finance Budget Amendment

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–5648 Filed 2–27–98; 4:29 pm]

BILLING CODE 6725–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 19, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Julie Hamann Bunderson, Omaha, Nebraska; to acquire additional voting shares of Decatur Corporation, Leon, Iowa, and thereby indirectly acquire voting shares of Citizens Bank, Leon, Iowa and Citizens Bank of Princeton, Princeton, Missouri.

2. William A. Krause, West Des Moines, Iowa; to retain voting shares of Northwest Iowa Bancorporation, Le Mars, Iowa, and thereby indirectly retain voting shares of The Lakes National Bank, Arnolds Park, Iowa.

Board of Governors of the Federal Reserve System, February 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–5566 Filed 3–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The 1855 Bancorp, New Bedford, Massachusetts; to acquire 24.9 percent of the voting shares of Sandwich Bancorp, Inc., Sandwich, Massachusetts, and thereby indirectly acquire Sandwich Co-operative Bank, Sandwich, Massachusetts.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. ISB Financial Corp., and Central Iowa Bancorporation, both of Iowa City, Iowa; to acquire up to 100 percent of the voting shares of Conrad Bancorporation, Conrad, Iowa, and thereby indirectly acquire First State Bank, Conrad, Iowa.

In connection with this application, Central Iowa Bancorporation, Iowa City, Iowa; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Conrad Bancorporation, Conrad, Iowa.

2. Founders Financial Corporation, Grand Rapids, Michigan (in formation); to become a bank holding company by acquiring 100 percent of the voting shares of Founders Trust Personal Bank, Grand Rapids, Michigan.

Board of Governors of the Federal Reserve System, February 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–5565 Filed 3–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

[Docket No. R–1000]

Privacy Act of 1974; Notice of Amendment of System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amendment of system of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is amending two systems of records, entitled Individuals Who Extend Margin Credit (BGFRS–16) and Municipal or Government Securities Principals and Representatives (BGFRS–17). These amendments include new routine uses and reflect changes due to revisions in the Board's regulations and relocation of some of the records. We invite public comment on this publication.

DATES: Comment must be received on or before April 3, 1998.

ADDRESSES: Comments, which should refer to Docket No. R–1000, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, (202/452–2418), or Scott Holz, Senior Attorney, (202/452–2966), Legal Division. For the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD)(202/452–3544), Board of Governors of the Federal Reserve System, 20th and Constitution, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. BGFRS–16

The amendments to this system of records, previously entitled FRB-Regulation G Reports, reflects the Board's recent repeal of Regulation G (12 CFR part 207) and the incorporation of its provisions into Regulation U (12 CFR part 221). (*See*, 63 FR 2806, January 16, 1998.) This system of records has also been amended to add new routine uses that would (a) permit release of the name of a registered individual upon

request; (b) permit release of information to the appropriate governmental agency or self-regulatory organization charged with the responsibility of enforcing or investigating the securities laws; and (c) permit release of information in the course of litigation.

II. BGFRS–17

This system of records, previously entitled FRB-Municipal Securities Principal and Municipal Securities Representative Records, has been amended to reflect the Board's practice of including similar records on government securities principals and representatives in this database. The amendments also reflect the fact that the records are now maintained at the Board, not at the NASD. No additions have been made to the routine uses for this system of records.

III. Compatibility of Proposed Routine Uses

The Board is proposing these routine uses in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a ''compatible'' use is a use which is necessary and proper. *See* OMB Guidelines, 51 FR 18982, 18985 (1986). The records in BGFRS–16 are a subset of a larger data base, the purpose of which is to maintain records of the registration status of margin lenders (primarily business entities) to permit the government to monitor their activities and the public to verify their registration status. The proposed routine uses of the data are intended to further these purposes, *e.g.*, to provide borrowers with knowledge of the registered status of those providing margin credit, which can affect the borrowers legal liabilities; and to aid in the enforcement of the securities laws. Accordingly, they are clearly necessary and proper uses, and therefore ''compatible'' uses which meet Privacy Act requirements.

In accordance with 5 U.S.C. 552a(r), a report of these amended systems of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget. These amendments will become effective on April 13, 1998, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

Accordingly, two systems of records entitled FRB-Individuals Who Extend Margin Credit (BGFRS–16) and FRB-Municipal or Government Securities Principals and Representatives (BGFRS-17) are amended as set forth below.

BGFRS—16

SYSTEM NAME:

FRB—Individuals Who Extend Margin Credit.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals other than banks, brokers and dealers who extend credit in specified amounts secured by margin stock.

CATEGORIES OF RECORDS IN THE SYSTEM:

G–1, G–2 and G–4 Reports filed by persons registered pursuant to Regulation U, 12 CFR part 221.

PURPOSE(S):

To maintain a current list of persons registered as margin lenders under the securities laws.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 3, 7, 17, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78c, 78g, 78q, and 78w), and Regulation U (12 CFR part 221).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these records may be used to—

(a) Disclose, upon request, the name of a registered individual who extends credit secured by margin stock;

(b) Provide information or records to any appropriate governmental department or agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, policy, or license;

(c) Disclose information, when appropriate, to foreign governmental authorities in accordance with law, and formal or informal international agreements; and

(d) Disclose information, in the event of litigation or enforcement action, to the appropriate court, magistrate, or administrative tribunal; or to counsel or witnesses for the presentation of evidence in the course of discovery, to the extent permitted by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms and files; electronic data base.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Papers are retained in a secured space. Access to papers and electronic data base by Federal Reserve staff on restricted basis.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551. The request should contain the individual's name, date of birth, and Social Security number.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Reports and forms filed by individuals to whom records pertain.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

BGFRS–17

SYSTEM NAME:

FRB—Municipal or Government Securities Principals and Representatives.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are, or seek to be, municipal or government securities

principals or municipal or government securities representatives associated with a municipal or government securities dealer that is a State member bank of the Federal Reserve System or a U.S. branch of a foreign bank, or a subsidiary or a department or division thereof.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may contain identifying information as well as educational, employment, and disciplinary information; scores on professional qualification examinations; and, where applicable, information regarding termination of employment of individuals covered by the system. Identifying information includes name, address, date and place of birth, and may include social security account number.

PURPOSE:

To permit the Board to perform its responsibilities under the securities laws with regard to the persons described in this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 3, 15B, 15C, 17, and 23 of the Securities Exchange Act of 1934 (15 USC 78c, 78o–4, 78o–5, 78q, and 78w) and section 11 of the Federal Reserve Act (12 USC 248).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these records may be used:

(a) To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to the appropriate governmental authority, whether federal, state, local, or foreign, or self-regulatory organization.

(b) To refer, in the event of litigation, whether civil, criminal, or regulatory in nature, to the appropriate court, magistrate, or administrative law judge.

(c) To assist in any proceeding in which the federal securities or banking laws are in issue or in which the Federal Reserve Board or a past or present member of its staff is a party or otherwise involved in an official capacity.

(d) To disclose to a federal, state, local, or foreign governmental authority or a self-regulatory organization if necessary in order to obtain information relevant to a Federal Reserve Board inquiry concerning a person who is or seeks to be associated with a municipal or government securities dealer.

(e) To respond to a request from a federal, state, local, or foreign governmental authority or a self-regulatory organization for information in connection with the issuance of a license or other benefit to the extent that such information is relevant and necessary.

(f) To disclose to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on computer discs.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

File folders are stored in lockable metal cabinets and computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records may be maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW, Washington, DC 20551. The request should contain the individual's name, date of birth, and Social Security number.

RECORD ACCESS PROCEDURES:

Same as ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained as well as municipal or government securities dealers with whom the individuals are associated, and federal, state, local, and foreign governmental authorities, and self-regulatory organizations, which regulate the securities industry.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 26, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–5492 Filed 3–3–98; 8:45 am]

BILLING CODE 6210–01–P

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: 02/02/98 AND 02/13/98

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
ValueVision International, Inc., National Media Corporation, National Media Corporation	98–1364	02/02/98
National Media Corporation, ValueVision International, Inc., ValueVision International, Inc	98–1365	02/02/98
Triumph Group, Inc., Greg Frisby, Frisby Industries, Inc	98–1418	02/02/98
Triumph Group, Inc., Jeffry Frisby, Frisby Industries, Inc	98–1419	02/02/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 02/02/98 AND 02/13/98—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Physician Sales & Service, Inc., Gulf South Medical Supply, Inc., Gulf South Medical Supply, Inc	98–1421	02/02/98
Thomas G. Hixon, Physician Sales & Service, Inc., Physician Sales & Service, Inc	98–1422	02/02/98
Comfort Systems USA, Inc., Herbert T. Holcombe, Tafco Refrigeration, Inc	98–1433	02/02/98
Comfort Systems USA, Inc., D.W. Moore, Jr., Tafco Refrigeration, Inc	98–1434	02/02/98
Mirage Resorts, Incorporated, Boardwalk Casino, Inc., Boardwalk Casino, Inc	98–1440	02/02/98
Patterson Energy, Inc., Robertson Onshore Drilling Company, Robertson Onshore Drilling Company	98–1458	02/03/98
World Color Press, Inc., Taconic Holdings, Inc., Taconic Holdings, Inc	98–1459	02/03/98
PRIMEDIA, Inc., MNI Newco, Inc., Cowles Enthusiast Media, Inc	98–1461	02/03/98
Metasaliitto Osuuskunta, Lucre Investments (BVI) Limited, a Singapore company, Weary Investment B.V	98–1468	02/03/98
D.R. Horton Inc., Continental Homes Holding Corp., Continental Homes Holding Corp	98–1357	02/04/98
Allianz AG Holding, Life USA Holding, Inc., Life USA Holding, Inc	98–1420	02/04/98
FML Holdings, Inc., Paavo Ensio, Stan Blast Abrasives Co., Inc.; Grangrit, Inc	98–1435	02/04/98
FML Holdings, Inc., Mark Ensio, Stan Blast Abrasives Co., Inc.; Grangrit, Inc	98–1436	02/04/98
Thunor Trust, First National Life Insurance of America, First National Life Insurance of America	98–1438	02/04/98
Jeffrey H. Smulyan, Michael R. Levy, Mediatex Communications Corporation	98–1477	02/04/98
Sybron International Corporation, LRS Acquisition Company, LRS Acquisition Company	98–1487	02/04/98
Jordan Industries, Inc., Anthony Pascoe, K&S Sheet Metal Inc	98–1266	02/05/98
Elan Corporation, plc, Sano Corporation, Sano Corporation	98–1310	02/05/98
Reginald L. Hardy, Elan Corporation, plc, Elan Corporation, plc	98–1311	02/05/98
Charles J. Betlach, Elan Corporation, plc, Elan Corporation, plc	98–1336	02/05/98
Novartis AG, Elan Corporation, plc, (an Irish company), Elan Corporation, plc	98–1413	02/05/98
Frontier Vision Partners, L.P., New England Cablevision of Massachusetts, Inc., New England Cablevision of Massachusetts, Inc	98–1423	02/05/98
Gordon S. Lang, Sonoco Products Company, Sonoco Flexible Packaging, Inc	98–1430	02/05/98
Suiza Foods Corporation, David E. Trauth, Louis Trauth Dairy, Inc.; Osgood Dairy, Inc.; Cardinal	98–1017	02/06/98
Fidelity National Financial, Inc., Granite Financial, Inc., Granite Financial, Inc	98–1326	02/06/98
Union Bank of Switzerland, J.W. Childs Equity Partners, L.P., DESA Holdings Corporation	98–1406	02/06/98
KFI Holding Corporation, AGI Incorporated, AGI Incorporated	98–1412	02/06/98
World Access, Inc., GST Telecommunications, Inc., NACT Telecommunications, Inc	98–1478	02/06/98
Lumbermens Mutual Casualty Company, Markel Corporation, Carlisle Insurance Company	98–1479	02/06/98
General Electric Company, Earl N. Phillips, Jr., First Factors Corporation	98–1485	02/06/98
Jeffrey J. Prosser, The Bank of Nova Scotia (a Canadian corporation), Caribbean Communications Corp	98–1488	02/06/98
Owais A. Dagra, Frank B. Bradley, III, Fas Mart Convenience Stores, Inc	98–1489	02/06/98
Everett R. Dobson Irrevocable Family Trust, Cellular 2000 Telephone Co., Cellular 2000 Telephone Co	98–1492	02/06/98
Applied Power Inc., The Collier Family Trust, AA Manufacturing, Inc	98–1495	02/06/98
Concentra Managed Care, Inc., Preferred Payment Systems, Inc., Preferred Payment Systems, Inc	98–1501	02/06/98
Bunge International Limited (a Bermudian corporation), Blaine Cook, Dansk Specialty Foods, Inc	98–1507	02/06/98
Bunge International Limited (a Bermudian corporation), David Thompson, Dansk Speciality Foods, Inc	99–1508	02/06/98
Windward Capital Associates, L.P., Windward Capital Associates, L.P., French Holdings, Inc	98–1509	02/06/98
Dag Sundby, Christopher Cohan, Sonic Enterprises	98–1511	02/06/98
Centex Corporation, Jacob E. Hannon, AAA Homes, Inc	98–1516	02/06/98
Centex Corporation, Madge T. Hannon, AAA Homes, Inc	98–1517	02/06/98
Robert P. Ingle, Crimson, Associates, L.P., Brunos Inc	98–1316	02/09/98
BTG, Inc., Government Technology Services, Inc., Government Technology Service, Inc	98–1346	02/09/98
Government Technology Services, Inc., BTG, Inc., BTG, Inc.,	98–1347	02/09/98
Texas Instruments Incorporated, Dialogic Corporation, Spectron Microsystems, Incorporated	98–1490	02/09/98
Commonwealth Industries, Inc., Noranda Inc., Norandal USA, Inc	98–1533	02/09/98
Ugland International Holdings plc, Jonathan Detwiler, Auto Port, Inc., Christina Management Inc	98–1536	02/09/98
Quorum Health Group, Inc., Sisters of St. Francis, Denver, Colorado, St. Joseph's Hospital Corporation, Kenmare Community	98–1548	02/09/98
Pacific Electric Wire & Cable Co., Ltd.—a Taiwanese Co., Monaco Finance, Inc., Monaco Finance, Inc	98–1375	02/10/98
Champion Enterprises, Inc., Russell Fox, Accent Mobile Homes, Inc., Accent Manufactured Homes Inc	98–1452	02/10/98
Jordan Industries, Inc., Stephen T. Meyer, Deflecto Corporation	98–1480	02/10/98
Cumulus Media LLC, Robert Lowder, Republic Corporation	98–1500	02/10/98
Bostrom plc, National Seating Company, National Seating Company	98–1520	02/10/98
Platinum Technology, Inc., Learmonth & Burchett Management System, PLC, Learmonth & Burchett Management System, PLC	98–1532	02/10/98
FS Equity Partners, III, Seattle Coffee Company, Seattle Coffee Company	98–1537	02/10/98
Holding di Partecipazioni Industriali S.p.A., Valentino Garavani, Bridge S.r.l., Valentino Couture S.A. et al	98–1539	02/10/98
John V. Holten, Myron C. Warshauer, Standard Parking, LP, Standard Parking Corporation	98–1543	02/10/98
Dean Foods Company, Harlan R. Wengert, Wengert's Dairy, Inc	98–1558	02/10/98
First Data Corporation, NationsBank Corporation, Barnett-First Data Alliance	98–1175	02/11/98
National Service Industries, Inc., John L. Jordan, Allen Envelope Corporation	98–1523	02/11/98
Arthur Liu, TSG Associates, II, Inc., WNJR, Inc., WNJR License, Inc., KOBO Radio, Inc	98–1519	02/12/98
Omnicom Group Inc., The GGT Group PLC, The GGT Group PLC	98–1531	02/12/98
Federal Data Corporation, Ralph O. Williams, R.O.W. Sciences, Inc	98–1651	02/12/98
Roper Industries, Inc., First Scientific Devices Equities Trust, Photometrices, Ltd. Assets	98–3530	02/13/98
Lane Industries Inc., Dr. U. Wolfensberger (a Swiss national), IBICO AG	98–0515	02/13/98
Phycor, Inc., First Physician Care, Inc., First Physician Care, Inc	98–1439	02/13/98
The Viscount Rothermere, Risk Management Solutions, Inc., Risk Management Solutions, Inc	98–1476	02/13/98
CKE Restaurants, Inc., Advantica Restaurant Group, Inc., Flagstar Enterprises, Inc	98–1498	02/13/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 02/02/98 AND 02/13/98—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Interpool, Inc., Mitsui & Co., Ltd. (a Japanese corporation), Container Applications International Inc	98–1503	02/13/98
Mr. Hiromitsu Ogawa, Mitsui & Co., Ltd. (a Japanese corporation), Container Applications International, Inc	98–1504	02/13/98
Wacker Chemie GmbH, J. Marvin Anderson, Kelmar Industries, Inc., Microblen Corporation	98–1540	02/13/98
W.R. Sauey, Storage Dimensions, Inc., Storage Dimensions, Inc	98–1551	02/13/98
International Comfort Products Corporation, Stillwater Partners I, L.P., United Electric Company	98–1552	02/13/98
Morgan Stanley, Dean Witter, Discover & Co., Newco, a newly Delaware Corporation, Newco, a newly formed Delaware Corporation	98–1553	02/13/98
FPA Medical Management, Inc., St. Joseph Medical Corporation, St. Joseph Medical Corporation, Orange Coast Managed	98–1556	02/13/98
Rental Service Corporation, James S. Peterson, James S. Peterson Enterprises, Inc	98–1557	02/13/98
Dean Foods Company, American Stores Company, Lucky Stores, Inc	98–1559	02/13/98
Joseph M. Field, Sinclair Broadcast Group, Inc., Sinclair Broadcast Group, Inc	98–1560	02/13/98
Quantum Fund N.V., CMS Energy Corporation, Petal Gas Storage Company	98–1562	02/13/98
Voting Trust dated December 4, 1968 of Hallmark Cards, UST Inc., Cabin Fever Entertainment Inc	98–1567	02/13/98
Global Metal Technologies, Inc., ITT Industries, Inc., ITT Automotive, Inc	98–1572	02/13/98
Bruckmann, Rosser, Sherrill & Co., LP, American Paper Holdings, Inc., American Paper Holdings, Inc.	98–1575	02/13/98
Ronald O. Perelman, Warburg, Pincus Capital Company, L.P., Panavision Inc	98–1577	02/13/98
A.L. Alford, Jr., Tele-Communications, Inc., Tribune Publishing Company—Idaho; Tribune Publishing	98–1579	02/13/98
Kathryn Hach-Darrow, Harry T. Stephenson, Environmental Test Systems, Inc	98–1580	02/13/98
Robert A. Amato, Kenneth R. Thomson, Frames Data, Inc	98–1582	02/13/98
Consolidation Capital Corporation, Helmuth H. and Paula N. Eidel, Tri-City Electrical Contractors, Inc	98–1591	02/13/98
Consolidation Capital Corporation, Wilson Electric Co., Inc. Employee Stock Ownership Plan, Wilson Electric Company, Inc	98–1592	02/13/98
Consolidation Capital Corporation, William P. Love Jr. and Diane L. Love, SKC Electric, Inc. and SKCE, Inc	98–1593	02/13/98
Consolidation Capital Corporation, Roland G. Stephenson, Town & Country Electric Inc	98–1594	02/13/98
Consolidation Capital Corporation, Donald G. White, Riviera Electric Construction Co	98–1595	02/13/98
Applebee's International, Inc., Apple South, Inc., Apple South, Inc	98–1601	02/13/98
American Express Company, Administaff, Inc., Administaff, Inc	98–1606	02/13/98
MJD Communications Inc., Taconic Telephone Corp., Taconic Telephone Corp	98–1607	02/13/98
Trivest Fund II, Ltd., Noel Aquilera, Paramount Aviation, Inc	98–1618	02/13/98
The Sage Group plc, State of the Art, Inc., State of the Art, Inc	98–1623	02/13/98
Gerald W. Schwartz, ACME Metals, Incorporated, Universal Tool & Stamping	98–1624	02/13/98
John V. Holten, Gerald W. Schwartz, a Canadian individual, ProSource, Inc	98–1625	02/13/98
KKR 1996 Fund L.P., PRIMEDIA, Inc., PRIMEDIA, Inc	98–1637	02/13/98
MasTec, Inc., Steve Akerman, C&S Directional Boring, Inc	98–1639	02/13/98
Mail-Well, Inc., Alusuisse-Lonza Holding, Ltd. (a Swiss corporation), Lawson Mardon Packaging USA Inc	98–1641	02/13/98
Harborside Healthcare Corporation, John A. DePizzo, Jr., JAD Enterprises, Inc	98–1645	02/13/98

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, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–5536 Filed 3–3–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0115]

Lawyers Title Corp.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 4, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Patrick Roach, FTC/S–2627, Washington, DC 20580. (202) 326–2793.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 24, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed

Consent Order from Lawyers Title Corporation (''LTC''), which is designed to remedy the anticompetitive effects arising from LTC's acquisition of the title insurance operations of Reliance Group Holdings, Inc. (''Reliance Group''), including Reliance Group's indirect subsidiaries Commonwealth Land Title Insurance Company and Transnation Title Insurance Company (collectively ''Commonwealth''). Under the terms of the agreement LTC will be required to divest certain assets known as ''title plants'' in twelve counties or local jurisdictions in various parts of the United States. Title plants are privately owned collections of records and/or indices that are used by abstractors, title insurers, title insurance agents, and others to determine ownership of an interests in real property in connection with the underwriting and issuance of title insurance policies and for other purposes.

The proposed Consent Order has been placed on the public record for 60 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On August 20, 1997, LTC entered into an agreement to acquire the title insurance operations of Reliance Group in exchange for consideration to Reliance Group valued at approximately $456 million, consisting of cash, a minority voting interest in LTC, and additional non-voting convertible preferred shares of LTC. The proposed Complaint alleges that the acquisition, if consummated, would constitute a violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in local markets for title plant services in the following counties or local jurisdictions in the United States: Washington, DC.; Brevard County, Florida; Broward County, Florida; Clay County, Florida; Indian River County, Florida; Pasco County, Florida; St. Johns County, Florida; St. Lucie County, Florida; Ingham County, Michigan; Oakland County, Michigan; Wayne County, Michigan; and St. Louis City & County, Missouri.

Title plants are privately-owned collections of title information obtained from public records that can be used to conduct title searches or otherwise ascertain information concerning ownership of or interests in real property. Title plants typically contain summaries or copies of public records or documents (often in a format that is comparatively easily to store and readily retrievable) as well as indices to facilitate locating relevant records that pertain to a particular property. Title plants permit users to obtain real property ownership information with significantly greater speed and efficiency than by consulting the original public records, which may be located in a number of separate public offices (e.g. offices of the county recorder, tax authorities, and state and federal courts), may be stored in an inconvenient form, and may be indexed in a fashion that makes it difficult to readily research a particular property. Because of the county-specific way in which title information is generated and collected and the highly local character of the real estate markets in which the title plant services are used, geographic markets for title plant services are highly localized, consisting of the county or local jurisdiction embraced by the real property information contained in the title plant.

In each of the local jurisdictions named in the Complaint, the market for title plant services is highly concentrated and LTC and Reliance Group are direct competitors in the sale or provision of title plant services. In each of the local jurisdictions named, there are no commercially reasonable substitutes for title plant services. For a number of reasons, including the relatively large fixed costs associated with building and maintaining title plants, entry into the market for title plant services in each of the local jurisdictions named is difficult or unlikely to occur at a sufficient scale to deter or counteract the effect of the acquisition. For these reasons, the Complaint alleges that in each of the named local jurisdictions the effect of the acquisition may be substantially to lessen competition by, among other things, eliminating direct actual competition between LTC and Reliance Group in title plant services, increasing the likelihood that LTC will unilaterally exercise market power in title plant services, and increasing the likelihood of collusion among competing providers of title plant services.

The Consent Order requires LTC to divest the pre-acquisition title plant interests of either LTC or Reliance Group in each of the identified local jurisdictions to a buyer or buyers approved by the Commission. The divestitures are required to be completed within six months after the respondent signs the Consent Order agreement. In addition to the title plant assets themselves, the respondent also is required to divest all user or access agreements pertaining to the divested title plants. The respondent is further required for up to three years to continue to provide the buyers of the title plants with computer and other services previously provided for each divested title plant, and to assist the purchaser in transferring such services to another provider. In the period prior to divestiture, the respondent is required to maintain the viability and marketability of the properties, including updating the title plants in the same fashion as before the acquisition and maintaining in effect all user contracts and relationships.

The Consent Order includes a provision permitting the Commission to appoint a trustee to accomplish the divestiture of required plant interests if the divestitures are not accomplished by the respondent within the six-month period. The Consent Order also includes a requirement that for ten years the respondent provide the Commission with prior notice of future title plant acquisitions by the respondent in the counties where divestitures are required, if at the time of the acquisition the respondent continues to have an interest in a title plant serving the county. A prior notice provision is appropriate in this matter because the small transaction size of most individual title plant acquisitions is below the threshold of reportability under the Hart-Scott-Rodino Act (Clayton Act section 7A, 15 U.S.C. 18a, as amended) and because there is a creditable risk that the respondent will, but for an order to the contrary, engage in otherwise unreportable anticompetitive mergers.[1]

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–5533 Filed 3–3–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0103]

Roche Holding Ltd.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

[1] See Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions (June 21, 1995).

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 4, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Christina Perez, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2048.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 25, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing a Proposed Consent Order (''Order'') from Roche Holding Ltd (''Roche''), which remedies the anticompetitive effects of Roche's acquisition of Corange Limited. Corange is the parent company of Boehringer Mannheim (''BM''). Both Roche and BM manufacture a wide array of pharmaceutical and diagnostic instruments and reagents. The proposed Order remedies the acquisition's anticompetitive effects by requiring Roche to divest BM's cardiac thrombolytic agent and drugs of abuse testing (''DAT'') reagent assets as viable, on-going product lines. Roche has entered into an agreement to divest to Centocor, Inc. (''Centocor'') BM's cardiac thrombolytic agent assets.

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Public comments regarding the proposed divestiture of the United States and Canadian Retavase businesses to Centocor, Inc. will be considered with other comments on the proposed Order. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to a Stock Purchase Agreement signed May 24, 1997, Roche agreed to purchase 100% of the outstanding voting stock of Corange for approximately $11 billion. The proposed Complaint alleges that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for the research, development, manufacture and sale of cardiac thrombolytic agents and workplace DAT reagents.

Cardiac thrombolytic agents are pharmaceuticals used to treat heart attacks by dissolving blood clots in the blood vessels of the heart. Angioplasty, the only other method of treating heart attacks, is a very expensive surgical procedure that is not available at many hospitals in the United States. As a result, there are no competitive substitutes for cardiac thrombolytic agents.

The U.S. cardiac thrombolytic agents market is highly concentrated. According to studies published in the New England Journal of Medicine, the safest and most effective cardiac thrombolytic agents are BM's Retavase and Genetech's Activase. Roche owns 68% of Genetech's stock. As a result of these studies, it appears that the only other cardiac thrombolytic agent approved for use in the United States, Streptokinase, is not an acceptable substitute for most U.S. physicians. Also, because of the lengthy development time involved in entering the cardiac thrombolytic agent market, no other company is expected to enter the United States market for at least two years. For these reasons, the acquisition, if consummated, would lead to the elimination of the only head-to-head competition of safe and effective cardiac thrombolytic agents, and therefore, is likely to lead to higher prices.

DAT reagents are chemical antibodies that are combined with a urine specimen to detect the presence of an illegal drug. Workplace DAT is pre-employment, random, post-accident and reasonable cause testing of employees in law enforcement, federal government and private industry for safety and security reasons. It is conducted at commercial laboratories with high-volume dedicated instruments that can only use workplace DAT reagents. DAT conducted in hospitals is very different from workplace DAT. Hospitals use medium- to low-volume instruments that can conduct a wide-variety of tests and use a wide variety of reagents that cannot be used economically for workplace DAT.

The workplace market of DAT reagents is highly concentrated and new entry would be neither timely nor sufficient. A new producer of workplace DAT reagents would find it very difficult to develop a full line of workplace DAT reagents, as well as gain customer acceptance within two years. Roche and BM are two of only four suppliers of workplace DAT reagents in the United States. By eliminating the competition between two of the top three competitors in this highly concentrated market, the proposed acquisition would enhance the likelihood of coordinated interaction between or among the remaining firms in the market, increasing the likelihood that consumers in the United States would be forced to pay higher prices for workplace DAT reagents.

The proposed Order remedies the anticompetitive effects in the cardiac thrombolytic agent market by requiring Roche to divest all of the assets relating to BM's United States and Canadian Retavase businesses to Centocor, Inc. or another Commission-approved buyer. Centocor is an established biotechnology company that currently sells ReoPro. ReoPro is a drug that is given to a patient after a heart attack to prevent new blood clots from forming. Because this is a complementary product to Retavase, it is anticipated that Centocor will achieve significant marketing synergies if it is allowed to purchase the Retavase businesses. Although Centocor is not one of the large, well-known pharmaceutical

companies, it is well-respected by the medical community and has a significant capital base to support its proposed acquisition of the Retavase assets. In the event that Roche does not sell these assets to Centocor or another Commission-approved purchaser within ninety days of the Order's becoming final, a ''crown jewel'' provision in the Order permits a Commission-appointed trustee to divest the world-wide rights to Retavase.

The proposed Order also effectively remedies the proposed transaction's anticompetitive effects in the workplace DAT reagent market by requiring Roche to divest BM's DAT reagents and grant a non-exclusive license to all other Cloned Enzyme Donor Immuno-Assay (''CEDIA'') reagents in the United States, including, but not limited to, reagents used for therapeutic drug monitoring, thyroid analysis, testing for anemia, and hormone testing. In the event Roche fails to divest and license these assets within two months of the Order's becoming final, the proposed Order contains a ''crown jewel'' provision that allows a Commission-appointed trustee to divest all of BM's CEDIA reagents.

The proposed Order also requires Roche to provide substantial assistance to each of the acquirers so that they can each compete effectively in the relevant markets. First, Roche must contract manufacture a supply of the divested products for the time period it takes for each acquirer to establish its own manufacturing processes and obtain its own FDA approvals to manufacture and sell Retavase and DAT reagents in the United States. Second, Roche must provide technical assistance and advice to assist both acquirers in their efforts to begin manufacturing the divested products. Finally, the Order provides the Retavase acquirer and the reagent acquirer the ability to hire former BM employees associated with the marketing or sales of Retavase or CEDIA reagents, respectively.

In order to facilitate the smooth transfer of assets and ensure that the acquirers will get the assistance necessary to independently manufacture the products, the proposed Order also provides for the appointment of an interim trustee. The interm trustee will serve until the acquirers have received all necessary FDA approvals to manufacture and sell the divested products.

Because it is becoming essential for a DAT reagents supplier to also provide its customers with DAT analyzers, the proposed Order requires Roche to terminate BM's exclusive distribution arrangement with Hitachi Ltd., and to inform Hitachi, within ten days of divesting the DAT reagents, that, as to the reagent acquirer, it waives all exclusivity provisions of BM's agreement with Hitachi.

In addition, because of pending litigation between Genentech and BM, the proposed Order requires Roche to provide: (1) Full access to, and cooperation from, former BM employees and agents who have knowledge about the disputed patents; (2) access to any documents that may be relevant to the dispute; and (3) reimbursement for half of all the legal expenses relating to the dispute. In addition, Roche is prohibited from disclosing or otherwise making available to Genentech any information relating to the patent dispute without the prior written consent of the Retavase acquirer.

The Order also requires Roche to provide to the Commission a report of compliance with the divestiture and licensing provisions of the Order within sixty (60) days following the date the Order becomes final, and every ninety (90) days thereafter until Roche has completed the divestitures and licensing. The Order also requires Roche to notify the Commission at least thirty (30) days prior to any change in the structure of Roche that may affect compliance with the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–5534 Filed 3–3–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 951–0006]

Stone Container Corp.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 4, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Antalics, FTC/S–2627, Washington, DC 20580. (202) 326–2821.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 25, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Stone Container Corporation (''Stone Container''), the largest manufacturer of linerboard in the United States. Stone Container maintains its principal place of business at 150 N. Michigan Avenue, Chicago, Illinois 60601.[1]

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should

[1] Stone Container operates linerboard mills in seven states. Stone Container also operates more than sixty box plants, which convert linerboard (together with corrugating medium) into corrugated containers. Linerboard is used as the inner and outer facing or liner of a corrugated box, and corrugating medium is the fluted inner material.

withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that during 1993 Stone Container engaged in acts and practices that, collectively and in the prevailing business environment, constituted an invitation from Stone Container to competing linerboard manufacturers to join a coordinated price increase. This invitation to collude is an unfair method of competition, and violates Section 5 of the Federal Trade Commission Act.

In January 1993, Stone Container announced a $30 per ton price increase for all grades of linerboard, to take effect the following March. As of March 1993, several major linerboard manufacturers had failed to announce an equivalent price move, and Stone Container was forced to withdraw its price increase.

Stone Container concluded that its proposed price increase had failed to garner the requisite competitor support, in significant part because Stone Container and other firms in the industry held excess inventory. A firm that holds unwanted inventory will be tempted to shade prices in order to increase sales volume (or in any event, rivals may be concerned about this prospect). Excess inventory therefore acts as a constraint on prices and impedes coordinated interaction.[2]

Stone Container developed and implemented a strategy to invite its competitors to increase the price of linerboard. This invitation, if accepted by Stone Container's competitors, was likely to result in higher linerboard prices, reduced output, and injury to consumers. The centerpiece of this strategy was Stone Container's decision to suspend production (take ''downtime'') at five of its nine North American linerboard mills, and simultaneously to arrange to purchase excess inventory from several of its competitors. These unusual and costly actions to reduce and reallocate industry inventory were undertaken in full view of competing linerboard manufacturers, and with the intent of securing their support for a price increase.

During late June and early July 1993, Stone Container conducted a telephone survey of major U.S. linerboard manufacturers, asking competitors how much linerboard was available for purchase and at what price. Based upon its survey, Stone Container decided to reduce its linerboard production by approximately 187,000 tons.[3] This was the single largest voluntary reduction in output in the history of the U.S. linerboard industry. During the term of the mill downtime, Stone Container planned to purchase approximately 100,000 tons of linerboard from competitors, and to reduce its own linerboard inventories by approximately 87,000 tons.

Stone Container subsequently communicated to competitors its intention to take mill downtime and to draw down industry inventory levels, and its belief that these actions would support a price increase. The methods of communication included public statements—press releases and published interviews. Stone Container also communicated its scheme through direct, private conversations with high level executives of its competitors that were outside of the ordinary course of business. Senior officers of Stone Container contacted their counterparts at competing linerboard manufacturers to inform them of the extraordinary planned downtime and Stone Container's plan to make substantial linerboard purchases from its competitors. In the course of these communications, Stone Container arranged and agreed to purchase a significant volume of linerboard from each of several competitors.

Stone Container's intent was to coordinate an industry-wide price increase; there was no independent legitimate business justification for the company's actions. The unprecedented mill downtime was not a response to the company's own inventory build-up. Further, it would have been less costly for the company to self-manufacture linerboard (at its idled mills) than to purchase inventory from its competitors. Mill downtime and linerboard acquisitions were mechanisms that enabled Stone Container to be seen by competitors as incurring significant costs in order to manipulate industry supply conditions. These, together with other public and private communications, were a signal to rival firms to join in a coordinated price increase.

The Chairman and Chief Executive Officer of Stone Container has stated that the cost to the company of taking massive mill downtime was approximately $26 million, but that this investment was beneficial for the company and the linerboard industry. He has characterized the company's strategy as an ''unqualified success'' that helped to ''jump start'' an industry-wide price increase in October of 1993.

Invitations to collude have been judged unlawful under section 2 of the Sherman Act (attempted monopolization),[4] and under the federal wire and mail fraud statutes.[5] In addition, in recent years the Commission has entered into several consent agreements in cases alleging that an invitation to collude violates section 5 of the FTC Act. *Precision Moulding Co.*, C–3682 (1996); *YKK (U.S.A.) Inc.*, C–3345 (1993); *A.E. Clevite, Inc.*, C–3429 (1993); *Quality Trailer Products Corp.*, C–3403 (1992).

These cases illustrate that an invitation to collude may be communicated in explicit fashion. *E.g., American Airlines*, 743 F.2d at 1116 (''I have a suggestion for you. Raise your goddamn fares twenty percent. I'll raise mine the next morning.''). Alternatively, the invitation may be implicit in the respondent's words and deeds.[6] *E.g., Precision Moulding Co.* (alleging that during an uninvited visit to the headquarters of a competitor, respondent informed competitor that its prices were ''ridiculously low'' and that the competitor did not have to ''give the product away'').[7] Whether explicitly or implicitly, the respondent communicates its request that the competitor increase its prices, together with the assurance that respondent will follow—and not seek to undercut—upward price leadership.

In the present case, it is alleged that Stone Container's course of conduct implicitly invited competing linerboard manufacturers to joint a coordinated price increase. As noted above, senior officers of Stone Container allegedly communicated to competitors Stone Container's intention to reduce its linerboard production, to draw down its inventory, and simultaneously to purchase competitors' unneeded

[2] *See United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940); *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 906 (7th Cir. 1989); F. Scherer and D. Ross, *Industrial Market Structure and Economic Performance* at 268–73 (3d ed. 1990).

[3] During the third quarter of 1993, Stone Container took downtime at four linerboard mills in the United States and one in Canada for periods ranging from two weeks to two months.

[4] *United States* v. *American Airlines*, 743 F.2d 1114 (5th Cir. 1984), *cert. dismissed*, 474 U.S. 1001 (1985).

[5] *United States* v. *Ames Sintering Co.*, 927 F.2d 232 (6th Cir. 1990).

[6] *See* P. Areeda and H. Hovenkamp, *Antitrust Law* ¶ 1419.1d1 (1997 Supp.) (''To demand utter clarity . . . would unrealistically ignore the diverse and often veiled language of would-be conspirators.'').

[7] *See also United States* v. *General Electric Co.*, 1977–2 Trade Cas. (CCH) ¶ 61,659 (E.D. Pa. 1977) (General Electric adopted a price protection policy under which, if it offered a discount to a customer, it obligated itself to give the same discount retroactively to all other customers that bought the product within the previous six months. The district court recognized that, in effect, the company was offering its competitor assurances that General Electric would not engage in price discounting because of the substantial self-imposed penalty involved).

inventories. The complaint identifies additional factors that support the characterization of these actions as an invitation to collude: the mill downtime and the linerboard acquisitions were outside of the ordinary course of business; the high-level communications initiated by Stone Container were likewise extraordinary; and the entire scheme was undertaken with the purpose of securing an industry-wide price increase and without an independent legitimate business justification.

Stone Container has signed a consent agreement containing the proposed consent order. Stone Container would be enjoined from requesting, suggesting, urging, or advocating that any manufacturer or seller of linerboard raise, fix, or stabilize prices or price levels. The proposed consent order also prohibits Stone Container from entering into, adhering to, or maintaining any combination, conspiracy, agreement, understanding, plan or program with any manufacturer or seller of linerboard to fix, raise, establish, maintain, or stabilize prices or price levels.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary .

Concurring Statement of Commissioners Robert Pitofsky, Sheila F. Anthony and Mozelle W. Thompson

In the Matter of: Stone Container Corporation, File No. 951 0006.

The Commission recognizes that in invitation to collude cases, a fundamental question is whether the alleged ''invitation'' was merely legitimate business conduct. Our colleague, Commissioner Orson Swindle, dissents in this matter on grounds that Stone Container Corporation's behavior in curtailing its own production, and simultaneously purchasing excess inventory from its competitors, was conduct that did not clearly lack an ''independent legitimate business reason.'' As the Analysis To Aid Public Comment emphasizes, however, it would have been more economical for Stone Container to keep its plants open than to purchase inventory from competitors, and competitors would have recognized that fact. This conduct and other statements by Stone Container made clear that its goal was to manipulate industry supply conditions to invite a coordinated price increase. It is for these reasons that we accept the consent agreement for public comment.

While there may be some difference of view on the facts in this matter, we agree with Commissioner Swindle that there can be no implied invitation to collude when the actions that amount to the invitation are justified by business considerations.

Dissenting Statement of Commissioner Orson Swindle

In the Matter of: Stone Container Corporation, File No. 951 0006.

I have voted against the Commission's acceptance of a consent agreement in this case because I do not believe that the facts unearthed and presented in the investigation support the allegation that Stone Container (''Stone'') invited its competitors ''to join a coordinated price increase.''

The Commission's proposed complaint alleges that Stone took several actions in the second half of 1993 that amounted to an invitation to collude on linerboard prices. According to the complaint, Stone's invitation-to-collude strategy consisted at the outset of a plan ''to take downtime as its plants, to reduce its production by approximately 187,000 tons, and contemporaneously to purchase 100,000 tons of linerboard from competitors and to reduce Stone Container's inventory by 87,000 tons.'' To carry out this plan, Stone allegedly'' conducted a telephone survey of major U.S. linerboard manufacturers, asking competitors how much linerboard was available for purchase and at what price.''

Pursuant to its scheme, Stone's ''[s]enior officers''—whose role in this regard is alleged to have been ''outside the ordinary course of business''—''contacted their counterparts at competing linerboard manufacturers to inform them of the extraordinary planned downtime and linerboard purchases.'' Stone ''arranged and agreed to purchase a significant volume of linerboard from each of several competitors'' and is alleged to have ''communicated to competitors''—both in private conversations and through public statements—''its intention to take mill downtime and to draw down industry inventory levels, and its belief that these actions would support a price increase.'' The complaint asserts that Stone's communications with its competitors on these subjects were made with ''[t]he specific intent . . . to coordinate an industry wide price increase'' and that Stone's actions ''were undertaken with anticompetitive intent and without an independent legitimate business reason'' (emphasis added).

I have quoted at length from the proposed complaint because it (together with the Analysis To Aid Public Comment) is the document in which the Commission sets forth its theory of violation and, to the extent permissible, the evidence underlying that theory. As I see it, the acts and communications of Stone alleged in the complaint, as well as other evidence in this case, do not sufficiently support the Commission's theory of violation.

As 1993 approached, Stone and other firms in the linerboard industry had been and were experiencing financial difficulties, including excess production capacity, alleged excess inventory, and depressed price levels. It should hardly be surprising that Stone chose mill downtime and inventory reductions as a normal competitive response to general industry conditions. ''Extraordinary'' as Stone's downtime and inventory purchases may have been, it is difficult to second-guess the rationality of those actions from a business perspective. The assertion in the complaint that Stone's actions ''were undertaken with anticompetitive intent and without an independent legitimate business reason'' is a considerable stretch.[1] If senior officials of Stone had been more circumspect in their statements—particularly their public statements—about Stone's reasons for its own downtime and purchase decisions, I doubt that the Commission would have considered this matter a worthy target of our scarce resources.

The Commission's Analysis To Aid Public Comment discusses explicit and implicit invitations to collude and places the present situation in the latter category. I agree with that categorization as far as it goes, since no one from Stone is alleged to have contacted a competitor and baldly suggested a price increase or an output reduction (and thus this case is not a replay of American Airlines). Instead, it is the totality of Stone's conduct—when judged against the backdrop of Stone's remarks concerning low prices, excess capacity, and possibly inventory overhang—that has led the Commission to conclude that Stone implicitly invited its competitors to collusively raise prices.[2] I am unable to place on

[1] In their Concurring Statement, my colleagues rely on the Analysis To Aid Public Comment in this case for the proposition that ''it would have been more economical for Stone Container to keep its plants open than to purchae inventory from competitors . . .'' With all due respect, it is precisely the truth of that assertion that I find insufficiently supported by the evidence.

[2] The Analysis To Aid Public Comment cites *Precision Moulding Co., Inc.*, Docket No. C–3682, as an example of an implicit invitation to collude. According to the Analysis, Precision Moulding

Stone's actions (and its explanations of them) the sinister characterization that would permit me to condemn its otherwise justifiable actions. I am concerned that the Commission's decision in this case may deter corporate officials from making useful public statements (*e.g.*, in speeches to investors or presentations to securities analysts) that candidly address industry conditions, individual firms' financial situations, and other important subjects.

I respectfully dissent.

[FR Doc. 98–5535 Filed 3–3–98; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–246]

Public Buildings and Space

To: Heads of Federal agencies

Subject: Assessment of fees and recovery of costs for antennas of Federal agencies and public service organizations

1. *What is the Purpose of This Bulletin?*

This bulletin provides all Federal agencies with general guidelines for assessing antenna placement fees on other Federal agencies, on State and local government agencies, and on charitable, public service/public safety, and non-profit organizations. State and local government agencies, charitable, public service/public safety, and non-profit organizations are referred to as public service organizations throughout this bulletin. (The use of the phrase, ''public service organization'' is not intended to include Federal organizations or agencies, even though such organizations may also provide public services.)

While there may be other Federal agency specific statutory authorities which permit landholding agencies to perform certain tasks, studies, surveys or analysis when making their property available to other Federal agencies and the general public, this guidance is intended to identify several typical costs and common authorities.

This bulletin is not a grant of authority, but merely a source of informational guidance, further it is recommended that Executive departments and agencies consult their legal counsel prior to instituting any action relating to this bulletin.

2. When Does This Bulletin Expire?

This bulletin expires June 30, 1999, unless sooner canceled or revised.

3. What is This Bulletin's Background?

a. The use of wireless telecommunications equipment has been increasing and is expected to continue in the future. The Telecommunications Act of 1996 recognizes the increasing importance of wireless telecommunications services and provides guidance for the rapid deployment of new telecommunications technologies.

b. The General Services Administration (GSA), Office of Governmentwide Policy (OGP) has taken the leadership role concerning the Federal Government's policy on placement of wireless telecommunications equipment on Federal real property.

c. Based on the input from a working group representing several landholding Federal agencies, the GSA–OGP issued revised guidance on facilitating commercial access to Federal real property. The Associate Administrator for the OGP signed GSA Bulletin FPMR D–242, entitled ''Placement of Commercial Antennas on Federal Property,'' on June 11, 1997, and published it in the **Federal Register** on June 16, 1997 (62 FR 32611).

d. This bulletin is the result of the further efforts of the working group to provide guidance to Executive departments and agencies for assessing fees for antennas and other related equipment, which are dependent in whole or in part on the Federal spectrum rights for their transmissions. This guidance is generally focused on the placement of antennas belonging to other Federal agencies and public service organizations. Much of this guidance may also be useful when considering locating antennas and assessing fees for antenna placements on Federal property for other types of wireless telecommunications transmissions.

e. The Federal Communications Commission regulates the conditions and procedures under which communications entities offer and operate domestic wireless communications. This bulletin only is intended to serve as guidelines on the assessment of fees and recovery of costs for locating antennas of other Federal agencies and certain public service organizations on Federal agency property.

f. Other Federal agencies, independent regulatory commissions and agencies are encouraged to use these guidelines to the extent consistent with their missions and policies.

(1) GSA—In accordance with the Federal Property and Administrative Services Act of 1949, the Administrator is authorized and directed to charge for all space and services provided.

(2) Other Federal agencies are subject to their own applicable statutory authorities when providing antenna space and services to other Federal agencies and public service organizations.

g. Because of the myriad of legal authorities applicable to specific agencies, all Executive departments and agencies, and other Federal government organizations should consult their legal counsel prior to initiating any action relating to this bulletin.

4. What Action Is Required?

In the absence of other applicable authorities, Executive departments and agencies may assess fees or recover costs for services relating to antenna sites using the guidelines presented in subsections 4.a, 4.b, and 4.c of this bulletin. GSA, and Executive departments and agencies operating under a delegation of authority from GSA, will provide antenna sites and assess fees in accordance with the statutory authorities described in subsection 4.d.

a. *Under what authorities may Executive departments and agencies assess fees for antenna placements against other Executive departments and agencies?* Unless prohibited by law, regulation, or internal agency policy, Executive departments and agencies should consider using one of the legal authorities listed under subparagraphs (1), (2) or (3) below when deciding whether to assess user fees for the placement and servicing of antennas belonging to other Federal agencies.

Each of the following authorities has certain benefits or limitations, depending on the assessing agency's own programmatic needs.

For example, while an agency may be very familiar with interagency agreements under the Economy Act (discussed below), agency reimbursements under the Economy Act typically are restricted to recovering the actual costs of the assessing agency. Similarly, while authority to assess antenna siting fees pursuant to the Telecommunications Act of 1996 (discussed below) or pursuant to the Federal Property and Administrative Services Act (under a delegation of authority from GSA as discussed below) may allow agencies to assess market-based fees, unless the assessing agency has independent statutory authority to

''informed [its] competitor that its prices were 'ridiculously low' and that the competitor did not have to 'give' the product away.' '' I do not consider Stone's conduct and language to have communicated a message nearly as pointed as that conveyed by Precision Moulding.

retain such monetary proceeds, any fees received must be deposited as soon as practicable into the U.S. Treasury as miscellaneous receipts or into GSA's Federal Buildings Fund. Nevertheless, in the absence of specific agency authority to assess fees against other Federal agencies for antenna siting, Federal agencies should consider using one of the following:

(1) *Section 704 of the Telecommunications Act of 1996*, Pub. L. 104–104 (47 U.S.C. 332 note) (the ''Telecommunications Act''). This provision authorizes landholding agencies to charge reasonable fees to providers of telecommunications services whose antennas and equipment are for telecommunications services that are dependent, in whole or in part, upon the use of Federal spectrum rights for their transmission.

The legislative history accompanying section 704 offers little guidance on what might constitute a reasonable fee to assess another Federal agency that might qualify as such a provider of telecommunications services. Use of the phrase ''reasonable fees'' can be construed to allow agencies to charge ''market-based'' rents or user fees to public service antenna service providers (i.e., rents or fees that are based on comparable private sector rates even when those fees exceed the outleasing agency's actual costs). However, Federal interagency transactions typically are based on actual cost reimbursements, and to avoid possible questions about excessive charges, we recommend that agencies assess fees that are based on their actual costs when charging other Federal agencies under this authority. See sub-section 4.b regarding fees to public service organizations.

(2) Section 210 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 490) (the ''Property Act''). If a landholding agency, acting pursuant to subsection 210(k) of the Property Act, provides ''space and services'' (which GSA has concluded includes space for antenna sites) to another Federal agency, the landholding agency providing the antenna space (and related services) is authorized to charge the antenna-siting agency at rates approved by the Administrator of General Services and the Director of OMB (40 U.S.C. 490(k)).

Typically, these rates should approximate commercial charges for comparable space and services (i.e., the agency is authorized to assess market-based rental rates and fees for siting the antenna even if these charges exceed the landholding agencies' actual costs). The landholding agency may use the moneys derived from such charges to credit the appropriation originally charged with providing the service. However, any amounts collected in excess of the actual operating and maintenance costs of the service must be deposited into the U.S. Treasury as miscellaneous receipts.

In some instances, agencies occupying Federal property which is under the custody and control of GSA may, under a delegation of the Administrator's authority, charge for ''space and services'' (including providing space for antennas) under subsection 210(j) of the Property Act (40 U.S.C. 490(j) and 40 U.S.C. 486(e)). Such fees or charges must approximate commercial charges for comparable space and services (i.e., market rates) and the proceeds from such charges or fees must be deposited into GSA's Federal Buildings Fund (40 U.S.C. 490(f)).

(3) The Economy Act (31 U.S.C. 1535). While this Act does not authorize a Federal landholding agency to charge another Federal agency a user fee for the use of an interest in real property, in most instances it can be used as authority by a landholding agency to be reimbursed by the antenna-siting agency for the landholding agency's actual costs incident to the locating and maintenance of another agency's antenna. Federal agencies are cautioned that inter-agency transactions under the Economy Act are limited to ''goods and services'' and that ''antenna sites'' (e.g. leases of building rooftop space or other real property locations that might be suitable for antenna placements) would not qualify as a good or service. Nevertheless, landholding agencies may consider this authority to recoup the costs of other goods and services that might be incident to the siting and servicing of another agency's antenna. Such incidental services might include: protecting, maintaining, and actually locating the antenna and its related equipment on the site. Additional regulatory guidance on charging for Economy Act services can be found at 48 CFR Subpart 17.5.

b. *Under what authorities may Executive departments and agencies assess fees for antenna placements against public service organizations?*

(1) What authority do Executive departments and agencies have to provide sites and charge fees? While the Telecommunications Act also provides authority to Federal landholding agencies to provide antenna sites and incidental services to public service organizations whose telecommunication services are dependent upon the Federal spectrum rights (and provides authority to charge reasonable fees for the use of those sites), in most other instances Federal agencies will be required to rely on different statutory authorities when siting and servicing antennas on Federal lands for public service organizations.

(A) As discussed above section 704 of the Telecommunications Act of 1996 allows a Federal agency to provide Federal property, rights-of-ways or easements for antenna sitings to various public service organizations (e.g., emergency broadcast systems and public service radio stations, local fire, police and rescue organizations) if such organizations' telecommunications services are dependent, in whole or in part, upon the utilization of Federal spectrum rights.

However, this authority has obvious limitations where the public service organization provides telecommunications services that are not dependent, in whole or in part, on the Federal spectrum rights for their transmission or reception. For instance, the Telecommunications Act authority is likely inapplicable when the antenna is used for non-Federal spectrum broadcasts, or for broadband, microwave or data relay services.

When the public service organization's telecommunication services are not dependent upon the Federal spectrum rights, Federal landholding agencies will likely have to rely on their individual agency authorities to provide antenna sites and to assess fees. However, in the absence of such independent statutory authorities to provide antenna locations and to assess fees for those locations, landholding agencies may be able to use authority granted GSA under the Public Buildings Cooperative Use Act.

(B) Section 104 of the Public Buildings Cooperative Use Act (40 U.S.C. 490(a)(16)–(19) authorizes GSA to outlease space in or around public buildings to persons, firms or organizations engaged in ''commercial, cultural, educational or recreational activities'' (as defined under 40 U.S.C. 612a).

When a Federal agency receives an antenna siting request by a public service organization, and that agency is occupying space in a public building that is under GSA custody and control, the agency should refer the requesting public service organizations to the appropriate GSA regional office. The referring agency should also advise GSA whether that agency recommends GSA to accommodate the requesting public service organization's siting request or not. Of course, GSA's issuance of a Cooperative Use Act outlease or permit for the antenna placement will be conditioned upon the fact that the antenna placement is not disruptive to

other tenants in that building or the surrounding area.

Outleasing authority under this Act, while also available to other agencies through a delegation of authority from GSA, is limited to certain areas in, or contiguous to, public buildings (e.g., pedestrian access levels, rooftops, courtyards). Furthermore, any proceeds from antenna outleases under the Cooperative Use Act are required to be deposited into GSA's Federal Buildings Fund (40 U.S.C. 490(a)(18)). For these reasons, this authority will be of limited use to agencies considering siting public service antennas in rural or remote locations or to agencies hoping to retain the proceeds from these antenna outleases.

(2) What types of fees that can be charged public service organizations? The types of fees that agencies can charge public service organizations also differ from those that can be assessed against other Federal agencies. For instance, where the restrictions of the Economy Act would likely prevent a landholding agency from charging an antenna siting Federal agency more than the landholding agency's actual costs for the goods and services provided in siting that antenna, the landholding agencies should, whenever possible, assess market-based fees (i.e., fees potentially in excess of actual costs) when siting antenna for public service organizations.

Unless prohibited by law, regulation, or internal agency policy Executive departments and agencies may assess user fees for the placement and servicing of antennas belonging to public service organizations as follows:

(A) Pursuant to section 704 of the Telecommunications Act of 1996: If the antenna site and incidental services are provided to public service organizations whose antennas and equipment are for telecommunications services that are dependent, in whole or in part, upon the use of Federal spectrum rights for their transmission, landholding agencies are authorized to charge these organizations ''reasonable fees'' for their use of the Federal property, right-of-way or easement. As discussed above, the Telecommunications Act and its accompanying legislative history do not define what constitutes a reasonable fee. While we have recommended that landholding agencies charge other Federal agencies fees which would reimburse the assessing agency's actual costs (see subsection 4.(a)(1) above), when assessing public service organizations under this Act agencies should consult the following authorities, for guidance, when determining what could constitute a ''reasonable fee'' for the use of Federal property:

- 31 U.S.C. 9701. This provision expresses Congress's intent that each service or thing of value provided by an agency is to be self-sustaining to the extent possible. It authorizes landholding agencies to assess fees that are fair and based on the value to the recipient of the service or thing provided by the Government. Further, OMB Circular A–25, titled ''User Charges,'' revised July 8, 1993, sets out Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or services.
- President Clinton's August 10, 1995 Memorandum. While not itself a grant of statutory authority to assess user fees, the Presidential Memorandum of August 10, 1995, entitled ''Facilitating Access to Federal Property for the Siting of Mobile Services Antennas,'' provides that agencies, to the extent permitted by law, ''shall charge fees based on the market value for siting antennas on Federal property.'' 60 FR 42023 (1995), 40 U.S.C. 490 note.

Landholding agencies are reminded that, unless they have independent authority to retain user fees, any proceeds from antenna siting fees assessed under section 704 of the Telecommunications Act of 1996 or pursuant to 31 U.S.C. 9701 or the Presidential Memorandum, must be deposited into the U.S. Treasury as miscellaneous receipts.

(B) Pursuant to the Public Buildings Cooperative Use Act of 1976: The Public Buildings Cooperative Use Act of 1976 (40 U.S.C. § 490(a)(16)–(19)) authorizes the GSA Administrator to charge fees or rental rates for the outleased space that are ''equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the public building,'' 40 U.S.C. § 490(a)(16). The term ''public building'' is defined in the Public Buildings Act of 1959 (40 U.S.C. § 612(1)). Therefore, GSA charges market-based rents for antenna site outleases on major pedestrian access levels, courtyards and rooftops of public buildings under its custody and control. All proceeds from such antenna outleases are deposited into GSA's Federal Buildings Fund.

Other landholding agencies which have custody and control of public buildings and which wish to make antenna sites on those public buildings available to various public service organizations under the Cooperative Use Act should contact GSA's Public Buildings Service at telephone number (202) 501–1100.

- Acting under a delegation of authority from the Administrator of General Services, these landholding agencies could make space available for antenna siting in or around the public buildings under their custody and control and assess a rental rate for that antenna site outlease. The rental rate from such delegated outlease authority must be:

(i) Equivalent to the prevailing commercial rate for comparable antenna sites in the vicinity of the public building;

(ii) Approved by the Administrator of General Services, and;

(iii) All proceeds from the antenna site fees must be deposited into GSA's Federal Buildings Fund for crediting to the appropriation made for the operations of the public building (40 U.S.C. 490(a)(17)–(18) and 40 U.S.C. 486(e)).

- GSA, and Federal landholding agencies operating under a delegation of Public Buildings Cooperative Use Act authority from GSA, may in certain circumstances charge a rental rate less than the prevailing market rate if the Administrator of General Services deems such other rate to be in the public interest (40 U.S.C. § 490(a)(17)). The decision to charge less than the prevailing commercial rent rate rests solely with the GSA Administrator and will depend on the nature of the activity conducted on the antenna site (e.g., an antenna outlease of a very short duration or for broadcasts of an important public service and educational nature). The Administrator will charge market-based rental rates for all antenna outleases with organizations engaged in commercial activities. Landholding agencies should advise GSA officials about the nature and duration of the antenna site outlease before requesting a delegation of Cooperative Use Act outleasing authority.

c. *What types of costs relating to antenna sitings may Executive departments and agencies recover from other Federal agencies when charging actual costs, or from public service organizations that may be in addition to market-based site fees?*

(1) Executive departments and agencies may charge fees to other Executive departments and agencies that will recoup the landholding agency's actual cost (if any) of providing the property lease, easement or right-of-way. However, in addition to recouping these costs, the landholding agency may also recover the cost of all necessary and incidental expenses it incurred in the siting of antennas on that Federal property. This is also true in cases

where Executive agencies assess market-based fees from public service organizations for antenna placements on Federal property. Typical costs that might be necessary and incident to the placement of antennas and related telecommunications equipment on Federal property (in addition to fees for the use of the site property) include:

(i) Preparation of an Environmental Impact Statement or Environmental Assessment under the National Environmental Policy Act, and if required, development of a communications site plan;

(ii) Engineering evaluation to avoid electromagnetic intermodulations and interferences;

(iii) Various other studies or analyses of the impact of antennas and equipment on the current and planned Federal use(s) of the property;

(iv) Any direct or indirect (overhead) expenses for the preparation or recording of leases, licenses, easements, releases, surveys, title searches or other documents; and

(v) Various costs for utilities, protection, and necessary access to the site. (We note that charges for utilities are expressly authorized to be assessed to certain public service organizations in leased space under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(19)); and that these types of services would likely qualify as goods and services that could be provided to other Federal agencies under the Economy Act).

(2) In some instances, particularly when these costs are minimal, or when it is not practicable or possible to individually identify individual cost components, the landholding agency may estimate its aggregate actual cost and incorporate that amount into a single lump sum charge or a nominal user fee. The landholding agencies should take care to see that these types of charges, to the maximum extent possible, reflect the agencies' actual costs (for siting Federal antennas) or applicable market rates (for siting public service antennas).

(3) Under Federal appropriations law, it is impermissible for one agency to use its financial resources to augment the operations of another agency in the absence of statutory authority to do so. For this reason, any time an Executive department or agency incurs costs for placing an antenna of another Federal agency on its property, unless the landholding agency has independent authority to spend its appropriated funds to support another agency's antenna siting activities, the landholding agency should charge the agency whose antenna is being located on its property for all costs associated with the siting and servicing of the antenna.

(4) If there is any question about what costs can be incurred as necessary and incidental expenses to the placement of an antenna or related equipment on agency property, agency legal counsel should be consulted prior to the agency's incurring those costs.

d. *What are GSA's authorities for providing property for antenna sites and for assessing fees for those sites and any related services?*

The following is a summary of the authorities which govern GSA's ability to provide sites and services for antennas and equipment of Federal agencies and public service organizations on GSA-controlled real property, and which establish GSA's authority to assess fees for such antenna sites and services. These authorities also are applicable to Executive departments and agencies acting under a delegation from GSA. Under the below-defined authorities, funds received in sections 4.d.(1)–4.d.(4) are deposited into the Federal Buildings Fund. Funds received in section 4.d.(5) are deposited into the U.S. Treasury as miscellaneous receipts.

(1) Section 210 of the Federal Property and

Administrative Services Act of 1949, as amended, (40 U.S.C. 490), (the Property Act):

(A) Subsection 210(a)(6) of the Property Act authorizes the Administrator of General Services to obtain payments for services, space, maintenance, repairs or other facilities furnished to any Federal agency;

(B) Subsection 210(j) authorizes and directs the Administrator of the General Services to charge anyone furnished services, space, maintenance, repair or other facilities at rates that approximate commercial charges for comparable space and services (including rooftop antenna space);

(C) Subsection 210(j) further provides that the Administrator may exempt anyone from charges if he determines that such charges would be infeasible or impractical. GSA Order PBS 4210, titled ''Rent Exemption Procedures'', issued December 20, 1991, provides additional guidance on when the Administrator (or the Commissioner of GSA's Public Buildings Service by delegation) may exempt someone from these charges.

(2) Section 104 of the Public Buildings Cooperative Use Act of 1976 amended the Property Act (40 U.S.C. 490(a) (16)–(19)) by authorizing the Administrator to:

(A) Enter into leases of space on major public access levels, courtyards and rooftops of any public building with persons, firms, or organizations engaged in commercial, cultural, educational, or recreational activities (as defined in 40 U.S.C. 612a); and to establish rental rates for such leased space equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the building; and to use leases that contain terms and conditions that the Administrator deems necessary to promote competition and protect the public interest;

(B) Make available, on occasion, or to lease at such rates and on such other terms and conditions as the Administrator deems to be in the public interest, rooftops, courtyards and certain other areas in public buildings to persons, firms or organizations engaged in commercial, cultural, educational or recreational activities that will not disrupt the operation of the building.

(3) The Economy Act (31 U.S.C. 1535)—authorizes GSA to provide, on a reimbursable basis, goods and services to other Federal agencies, including any goods or services that might be related to the placement of another agency's antenna on GSA-controlled property.

(4) 31 U.S.C. 9701—directs GSA, like other landholding agencies, to assess fees that are fair and based on the value of the service or thing provided by the Government. (Since GSA typically assesses charges that are based on commercial equivalent charges for comparable space and services, pursuant to its Property Act authorities, GSA seldom relies on this authority.)

(5) Section 704 of the Telecommunications Act of 1996, Pub. L. 104–104 (47 U.S.C. 332 note)—authorizes GSA to charge reasonable fees for the use of GSA property by agencies or organizations whose antennas and related equipment are for telecommunications services that are dependent, in whole or in part, upon the use of Federal spectrum rights for their transmission. (Given GSA's other Property Act authorities, GSA will seldom use this authority.)

(6) The Presidential Memorandum of August 10, 1995—directs that Executive agencies shall charge fees based on the market value for siting antennas on Federal property to the extent permissible under law. In light of this Presidential directive and GSA's statutory authority to charge market-value fees (i.e., commercial equivalent rates) under the Property Act, GSA will continue to assess market based fees whenever practical and feasible (60 FR 42023 (1995), 40 U.S.C. 490 note).

5. Who Does This Bulletin Apply To?

This bulletin is intended to offer guidelines that apply to Executive

departments and agencies considering the placement on their property of antennas and related equipment belonging to other Federal agencies and public service organizations. Other Federal agencies and independent regulatory commissions are encouraged to apply these guidelines to the extent consistent with their missions and policies.

6. How Do You Obtain Further Information?

Please contact Mr. Stanley C. Langfeld, Director, Real Property Policy Division on (202) 501–1737 for further information on this bulletin.

Dated: February 25, 1998.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 98–5483 Filed 3–3–98; 8:45 am]

BILLING CODE 6820–23–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 technical review committee to meet during the month of March 1998:

Name: Technical Review Committee on the Agency for Health Care Policy and Research Publications Clearinghouse.

Date and Time: March 23, 1998, 9 a.m.–3 p.m.

Place: Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 502, Rockville, MD 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the AHCPR Publications Clearinghouse that was published in the Commerce Business Daily on May 19, 1997.

The purpose of this contract is to continue the operation of the AHCPR Publications Clearinghouse. The Clearinghouse operation includes a 24-line information and publication dissemination call center; the storage, distribution, and postal metering of publications; the maintenance and management of an automated mailing and inventory control system; and the management, storage, and shipping of exhibits. These services are required to ensure the timely dissemination of AHCPR research findings and related publications to the research community and general public.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above-referenced 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 meeting. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, implementing regulations, 41 CFR 101–6.1023 and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Judy Wilcox, Center for Health Information Dissemination, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 501, Rockville, Maryland 20852. 301/594–1364.

Dated: February 11, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–5523 Filed 3–3–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–12]

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 Seleda Perryman, Assistant CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. An Epidemiologic Study of the Relation Between Maternal and Paternal Preconception Exposure to Ionizing Radiation and Childhood Leukemia (0920–0364)—Extension—The National Center for Environmental Health proposes an extension of a case-control study of the relation between maternal and paternal preconception exposure to ionizing radiation and childhood leukemia. The study is designed to determine whether preconception gonadal doses from ionizing radiation are higher in the parents of children with leukemia than in parents of healthy children. This hypothesis is based on previous study findings that, compared with control groups, children with leukemia were more likely to have fathers who worked at the Sellafield nuclear facility in Great Britain and to have received higher doses of ionizing radiation prior to the conception of the child. Funding for the study is being provided to the University of Colorado Health Sciences Center by the National Center for Environmental Health of the Centers for Disease Control and Prevention.

The study is designed as a multicenter case-control study. Cases will be children with leukemia and controls will be children without leukemia selected at random from the same population as the cases. In addition, the next older sibling will be used in a second control group. The main exposure of interest, paternal and maternal gonadal absorbed doses from ionizing radiation during the six-month time period before conception, will be quantified by taking detailed histories from the parents about medical, occupational, and environmental exposures that they had during the time period of interest. Gonadal doses will be estimated from the documentation of each exposure. By calculating the doses of ionizing radiation each parent received, we can compute odds ratios and confidence intervals for paternal and maternal doses separately and combined. These findings will clarify whether the previously determined risks can be detected in other populations with similar exposures. Consistency in the results of this study with those of a

similar study in Great Britain would have a major impact on current medical practice and occupational exposure standards. If this study does not detect an elevated risk for leukemia, it will be unlikely that preconception gonadal doses from ionizing radiation that are received by the general public are related to childhood leukemia. There is no cost to the respondents.

Respondents	No. of respondents	No of responses/respondents	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Pediatric Oncologist Introduction of Study to Parent(s)	5	123	0.083	51
Request for Patient Information from Other Physicians	5	1	0.166	1
Request for Participation	1,968	1	0.1666	328
Exposure Questionnaire	1,968	1	2.1666	4,264
Re-interview 10%	197	1	2.16	426
Medical Record Requests	219	1	1	219
Occupational Record Requests	50	5	.5	125
Total				5,414

2. Evaluation of the National Domestic Violence Hotline (NDVH)–NEW—The National Center for Injury Prevention and Control's Division of Violence Prevention intends to conduct a survey of 150 local domestic violence abuse agencies who have received referrals from the National Domestic Violence Hotline—(1.800.799.SAFE). The specific topic area for this study relates to whether or not the agencies can handle the amount of referrals they receive from the NDVH.

The purpose of this survey is to determine:

—The ability of the local agencies to handle NDVH referrals
—The appropriateness of the NDVH referrals
—Basic information about the size and programs offered by the local agencies

Results from this research will be used to enhance government programs that support local anti-domestic violence organizations. In addition, this information will also be used by the NDVH to further enhance their ability to deliver appropriate referrals to the over 140,000 annual callers. The study will be done by telephone. There is no cost to the respondents.

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Local Agency	150	1	.17	25
Total				25

Dated: February 23, 1998.

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–5516 Filed 3–3–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Low Income Home Energy Assistance Program Quarterly Allocation Estimates.

OMB No.: 0970–0037.

Description: Used by States to report their estimated funding requirements on a percentage bases, by quarter. The information is used to develop apportionment requests and to provide funding to States when their program requirements are most acute. Certain States need the bulk of their funds during the winter months while others require theirs during the summer months.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–535	51	1	.25	13

Estimated Total Annual Burden Hours: 13.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 26, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–5479 Filed 3–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Interim Tribal TANF Data Report.

OMB NO.: New Collection.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act and section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It consists of desegregated demographic and program information that will be used to determine participation rate and other statutory required indicators for the Tribal Temporary Assistance for Needy Families (Tribal TANF) program.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interim Tribal TANF Data Report	18	4	451	32,472

Estimated Total Annual Burden Hours: 32,472.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comments: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: February 26, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–5546 Filed 3–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Child Welfare Demonstrations Pursuant to Section 1130 of the Social Security Act (the Act); Parts B and E of Title IV of the Act; Pub.L. 103–432 and Pub.L. 105–89

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Public Notice.

SUMMARY: This public notice announces that the Department of Health and Human Services (Department) is seeking proposals on child welfare demonstration projects and has published Information Memorandum ACYF–CB–IM–98–01 dated February 13, 1998, entitled Child Welfare Demonstration Projects, which informs interested parties of (1) the principles, goals and objectives the Department will consider in exercising its discretion to approve or disapprove demonstration projects which would require waivers of certain sections of the Act under the authority in section 1130 (b) (of Part A of title XI) of the Social Security Act (the Act), added by Pub.L. 103–432 and amended by Pub.L. 105–89; (2) the procedures the Department expects the States to employ in involving the public in the development of proposed demonstration projects under section 1130; and (3) the procedures the Department will follow in receiving and reviewing the demonstration proposals.

The Information Memorandum (1) contains guidelines and procedures for submitting a proposal; and (2) identifies limitations on demonstration projects and provisions of titles IV–B and IV–E of the Act that are not subject to waiver. The Department will give preference to proposals that test policy and service program alternatives that are unique in their approach to serving children and families, that differ significantly from other approved child welfare demonstrations, and that are from States that have not previously been approved for a Child Welfare Demonstration project. The Department will give first consideration to proposals that reflect the topical priorities outlined in Appendix I of the Information Memorandum.

FOR FURTHER INFORMATION CONTACT: Copies of the Information Memorandum containing the guidelines, procedures for submission and topical priorities can be found at the ACF Website at http://www.acf.dhhs.gov/programs/cb/demonstrations or may be obtained from the National Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, (800) 394–3366, INTERNET address <nccanch@calib.com>. For information contact the Children's Bureau, Administration on Children, Youth and Families, DHHs at (202) 205–8618.

DATES: Proposals for a Child Welfare Demonstration project will be accepted

at any time. States that are interested in a project to be considered for approval in fiscal year 1998 may qualify for priority attention by sending a Letter of Intent before March 16, 1998 and submitting a full proposal by April 30, 1998.

ADDRESSES: All Letters of Intent and complete proposals should be submitted to Michael W. Ambrose, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Room 2068, Washington, DC 20201. Facsimile transmission of Letters of Intent ONLY will be accepted providing it is followed by an original copy. The FAX number is (202) 260–9345.

SUPPLEMENTARY INFORMATION: This announcement and Information Memorandum Number ACYF–CB–IM–98–01 do not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person, or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

Dated: February 18, 1998.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–5522 Filed 3–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: March 13–15, 1998; March 13–12 p.m.–5 p.m.; March 14–9 a.m.–5 p.m.; March 15–9 a.m.–12 p.m.

Place: Renassiance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC.

Status: Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

To be Considered: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

Contact Person for More Information: Gary H. Blumenthal, 352–G Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201–0001, (202) 619–0634.

Dated: February 25, 1998.

Gary H. Blumenthal,

Executive Director, President's Committee on Mental Retardation.

[FR Doc. 98–5524 Filed 3–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0517]

Medical Devices; Device Tracking; New Orders to Manufacturers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the agency has issued new orders to manufacturers of devices that were subject to tracking. These new orders became effective on February 19, 1998, and require manufacturers to continue tracking the devices under the revised tracking provisions of the recently enacted Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA allows the agency discretion in issuing orders to manufacturers to track devices that meet certain criteria. FDA is soliciting comments on what factors should be considered in exercising its discretion in determining whether the agency should not track a particular device, even though it meets the statutory criteria. FDA specifically is requesting comments on whether there are factors that FDA should consider in exercising its discretion in releasing certain devices listed in this notice from tracking requirements. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance that addresses device tracking under FDAMA, including the application of certain requirements under the current tracking regulations.

DATES: Written comments concerning this notice may be received by May 4, 1998.

ADDRESSES: Written comments may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4692.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Device Act of 1990 (the SMDA) added tracking provisions to the Federal Food, Drug, and Cosmetic Act (the act) by adding new section 519(e) of the act (21 U.S.C. 360i(e)). As added by the SMDA, section 519(e)(1) of the act required the adoption of a method of tracking, even if FDA did not issue an order. Specifically, any person registered under section 510 of the act (21 U.S.C. 360), and engaged in the manufacture of a device, had to track the device if the failure of that device would be reasonably likely to have serious adverse health consequences, and the device was either a permanently implantable device or a life sustaining or life supporting device used outside a device user facility. Section 519(e)(2) of the act also authorized FDA to ''designate'' other devices that must be tracked.

FDA issued regulations implementing tracking requirements in the **Federal Register** of August 16, 1993 (58 FR 43442). The regulations became effective on August 29, 1993, and are codified in part 821 (21 CFR part 821). Under tracking provisions established by the SMDA, manufacturers had the responsibility to identify devices that met the statutory criteria for tracking. For illustrative purposes, the agency set out in § 821.20(b)(1) and (b)(2) a list of example devices it considered subject to mandatory tracking under section 519(e)(1) of the act. Devices designated for tracking by FDA under section 519(e)(2) of the act were listed in § 821.20(c).

FDAMA was enacted on November 21, 1997. Section 211 of FDAMA amended section 519(e)(1) of the act to authorize FDA, in its discretion, to issue orders that require a manufacturer to track a class II or class III device if the failure of the device would be reasonably likely to have serious adverse health consequences, or the device is intended to be implanted in the human body for more than 1 year, or is life sustaining or life supporting and used outside a device user facility. Section 519(e)(2) of the act, as amended by FDAMA, provides that patients receiving a tracked device may refuse to provide their name, address, social security number, or other identifying information, for tracking purposes. Accordingly, tracking may be required

under section 519(e), as amended by FDAMA, only if FDA issues an order and only if the criteria described previously are met. FDAMA tracking provisions became effective on February 19, 1998.

II. Implementation of FDAMA Tracking Authority

FDA has initiated the measures identified in section II of this document to implement the tracking authority given to the agency under section 519(e) of the act, as amended by FDAMA.

A. Manufacturer Notification/Public Meeting

On December 19, 1997, FDA sent letters to manufacturers identified as having responsibilities to track devices under section 519(e) of the act. These letters advised the firms that FDAMA would implement important statutory changes in these areas and that FDA had announced in the **Federal Register** of December 18, 1997 (62 FR 66373), that it would conduct a public meeting on January 15, 1998, to discuss such changes. The letter also advised that existing device tracking requirements imposed by previously issued FDA regulations or FDA orders would remain in effect, until FDA notified a firm of any changes in its responsibilities.

At the January 15, 1998, public meeting held in Rockville, MD, written and oral comments were received from consumer groups, clinicians, manufacturers and device industry associations. These comments ranged from considering clinical management issues, and the use of alternative tracking mechanisms, to considering the likelihood of device failure.

B. Issuance of Tracking Orders

On February 11, 1998, FDA issued orders to manufacturers who would be required to track their devices under section 519(e), as revised by FDAMA. These orders became effective on February 19, 1998. The devices subject to these new orders are the types of devices currently identified in the agency's tracking regulations at 21 CFR 821.20(b)(1), (b)(2), and (c), except that arterial stents and intraocular lenses have been added. FDA has determined that these devices meet the criteria under revised section 519(e) of the act. These devices are as follows:

TABLE 1.—DEVICES MEETING THE CRITERIA UNDER REVISED SECTION 519(e) OF THE ACT

21 CFR Section	Classification
870.3450	Vascular graft prosthesis of less than 6 millimeters diameter
870.3460	Vascular graft prosthesis of 6 millimeters and greater diameter
(no cite)	Total temporomandibular joint prosthesis
(no cite)	Glenoid fossa prosthesis
(no cite)	Mandibular condyle prosthesis
(no cite)	Interarticular disc prosthesis (interpositional implant)
870.3545	Ventricular bypass (assist) device
870.3610	Implantable pacemaker pulse generator
870.3680(b)	Cardiovascular permanent pacemaker electrode
870.3800	Annuloplasty ring
870.3925	Replacement heart valve
(no cite)	Automatic implantable cardioverter/defibrillator
878.3720	Tracheal prosthesis
882.5820	Implanted cerebellar stimulator
882.5830	Implanted diaphragmatic/phrenic nerve stimulator
(no cite)	Implantable infusion pumps
(no cite)	Arterial stents (used in coronary arteries or peripheral arteries)
886.3600	Intraocular lens
868.2375	Breathing frequency monitors (apnea monitors) (including ventilatory efforts monitors)
868.5895	Continuous ventilator
870.5300	DC-defribrillator and paddles
876.3350	Penile inflatable implant
878.3530	Silicone inflatable breast prosthesis
878.3540	Silicone gel-filled breast prosthesis
876.3750	Testicular prosthesis, silicone gel-filled
(no cite)	Silicone gel-filled chin prosthesis
(no cite)	Silicone gel-filled angel chik reflux valve
880.5725	Infusion pump

C. FDA Review/Reconsideration of Devices Requiring Tracking

Although FDA has issued orders to subject all of the devices described previously to tracking requirements under section 519(e) of the act, as revised by FDAMA, FDA recognizes that the new law provides the agency with discretion to not require tracking of devices that meet the statutory criteria. FDA believes that certain factors may indicate that tracking for some devices, even though they meet the statutory criteria under section 519(e) of the act, may not be necessary to protect the public health. Accordingly, FDA is soliciting comments on what factors FDA should consider in exercising its discretion to require, or not to require, tracking of those devices that meet the statutory criteria stated in section 519(e) of the act. Comments should not merely identify what devices that meet the statutory tracking criteria should or should not be tracked, but should fully address the factors that should be relevant in the agency's exercise of discretion. After reviewing the comments received in response to this document, FDA will determine what factors should be considered in exercising its discretion. After determining what those factors should be, FDA will rescind any orders issued under section 519(e) of the act, if the agency determines that tracking is not necessary to protect the public health.

The agency has requested comments on the implementation of tracking requirements enacted by FDAMA. After considering the: (1) Agency's experience; (2) information provided by the public at the January 15, 1998, meeting; and (3) written submissions received afterwards, the agency has

tentatively identified several products that are subject to the February 1998, tracking orders for which there may be factors that may be considered in the agency's exercise of discretion not to track a particular device, even though it meets the statutory criteria. These devices are the following:

TABLE 2.—PREVIOUSLY ''MANDATED'' DEVICES—PERMANENTLY IMPLANTED DEVICES

21 CFR Section	Classification
870.3450	Vascular graft prosthesis of less than 6 millimeters diameter
870.3460	Vascular graft prosthesis of 6 millimeters and greater diameter
(no cite)	Interarticular disc prosthesis (interpositional implant)
870.3800	Annuloplasty ring
878.3720	Tracheal Prosthesis
(no cite)	Arterial stents (used in coronary arteries or peripheral arteries)

TABLE 3.—PREVIOUSLY ''DESIGNATED'' DEVICES

21 CFR Section	Classification
876.3350	Penile inflatable implant
878.3530	Silicone inflatable breast prosthesis
878.3540	Silicone gel-filled breast prosthesis
876.3750	Testicular prosthesis, silicone gel-filled
(no cite)	Silicone gel-filled chin prosthesis
(no cite)	Silicone gel-filled angel chik reflux device
880.575	Infusion pump (i.e., those designated and labeled for use exclusively for fluids with low potential risks, e.g., enteral feeding, anti-infectives)

The agency invites comments on these devices, as well as any other devices that should be added or deleted from the list of those devices subject to tracking requirements.

III. Comments

Interested persons may, by or before May 4, 1998 submit to the Dockets Management Branch (address above) written comments concerning this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The notice and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 25, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–5520 Filed 2–27–98; 3:14 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0132]

FDA Modernization Act of 1997: Guidance on Medical Device Tracking; Availability

AGENCY: Food and Drug Administration

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance on Medical Device Tracking.'' This guidance is intended to provide guidelines to manufacturers and distributors about their responsibilities for medical device tracking under the Food, Drug and Cosmetic Act (the act), as amended by the Food and Drug Administration Modernization Act (FDAMA). This guidance addresses what statutory and regulatory tracking requirements have changed and what requirements remain the same under the FDAMA amendments. The agency requests comments on this guidance. Elsewhere, in this issue of the **Federal Register**, FDA is announcing new orders to manufacturers of devices that were subject to tracking.

DATES: Written comments concerning this guidance must be received by May 4, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the ''Guidance on Medical Device Tracking'' (available on 3.5'' diskette) to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4692.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211 of the Food and Drug Administration Modernization Act (Pub. L. 105–115) (FDAMA) amended the tracking provisions of section 519(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(e)), authorizing FDA to order manufacturers to track devices meeting criteria established under FDAMA. These amendments became effective on February 19, 1998. This guidance explains device tracking under section 519(e) of the act, as amended by FDAMA, including: (1) Changes in the criteria requiring devices to be tracked; (2) the rights of patients to refuse to disclose identifying information; (3) the discretion FDA has in issuing tracking orders; (4) FDA review and reconsideration of devices meeting tracking criteria; and (5) the application of certain requirements in the agency's existing tracking regulations in 21 CFR part 821.

This guidance represents the agency's current thinking on medical device

tracking under tracking provisions revised by FDAMA. It does not create or confer any rights for, or on, any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. This is a Level 1 guidance. Public comment prior to implementation of this guidance document is not required because the guidance is needed to implement new statutory tracking requirements enacted by FDAMA. The agency is providing for a comment period of 60 days after the date of publication of the **Federal Register** notice of availability for the document.

II. Electronic Access

In order to receive the guidance entitled ''Guidance on Medical Device Tracking'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800.899.0381 or 301.827.0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (169) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the WWW. Updated on a regular basis, the CDRH Home Page includes ''Guidance on Medical Device Tracking,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Guidance on Medical Device Tracking'' will be available at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT-100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may, by or before May 4, 1998 submit to the Dockets Management Branch (address above) written comments regarding this guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 25, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–5519 Filed 2–27–98; 3:14 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1036–N]

Medicare Program; March 16–17, 1998, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for March 16, 1998, from 9:00 a.m. until 5 p.m., March 17, 1998, from 8:30 a.m. until 12:00 noon e.s.t.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kang, M.D., Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Gary C. Dennis, M.D.; Mary T. Herald, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D. (Renominated-Pending Selection); Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Derrick K. Latos, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; and Kenneth M. Viste, Jr., M.D. (Renominated-Pending Selection). The chairperson is Kenneth M. Viste, Jr., M.D.

Council members will receive an update on Medicare+Choice Program and Children's Health Initiative. The agenda will provide for discussion and comment on the following topics:

- Documentation Guidelines.
- Practice Expense.
- Physician Supervision of Allied Health Professions.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the Executive Director by 12 noon, March 6, 1998, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12 noon, March 12, 1998. Anyone who is

not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, March 12, 1998. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 26, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–5637 Filed 2–27–98; 4:20 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; ''Transmission and Linkage Analysis of Alcoholism in a Southwestern American Indian Tribe; Collection of EEG Phenotypes Associated With Alcoholism''

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously in the **Federal Register** on July 1, 1997, and allowed 60 days for public comment. There were two or three telephone inquiries asking which tribes were involved, who was doing the work, and which data collection instruments were being used, no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after Dec. 31, 1999, unless it displays a currently valid OMB control number.

Proposed Collection

Title: ''Transmission and Linkage Analysis of Alcoholism in a Southwestern American Indian Tribe; Collection of EEG Phenotypes Associated with Alcoholism''. Type of Information Collection request: New. Need and Use of Information Collection: The information proposed for collection in this study will be used by the NIAAA to determine resting EEG and ERP phenotypes in large American Indian families, correlate this information with psychiatric diagnoses from previous studies, and perform linkage analysis in order to map the genes for these phenotypes which appear to confer vulnerability to alcoholism in Caucasians. There are obvious great advantages in studying the large families the NIAAA already contacted, psychiatrically interviewed, and genotyped. The NIAAA hypothesizes that this EEG family study will enable elucidation of the transmission and linkage of alcoholism vulnerability in this tribe. The intent is to identify subgroups of American Indian alcoholics who may be more responsive to particular treatment of prevention strategies.

Frequency of Response: On Occasion. Affected Public: Individuals. *Type of Respondents:* Native American adults. *Estimated Number of Respondents:* 400. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* 3.25. *And Estimated Total Annual Burden Hours Requested:* 1300. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hour	Total hours
Clients—400 ..... Total Number of Respondents: 400. Total Number of responses: 400. Total Hours: 1300.	1	400	3.25	1300

Request for Comments

Comments are invited on: (a) Whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, NIH, 12420 Parklawn Drive, Suite 451, Rockville, Maryland 20852.

Direct Comments To OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research (DICBR), NIAAA, 12420 Parklawn Drive, Suite 451, Rockville, Maryland 20852, or call non-toll-free number (301) 443–5781.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before April 3, 1998.

Dated: February 18, 1998.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 98–5587 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Frederick Cancer Research and Development Center Advisory Committee.

The open portion of the meeting will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person in advance of the meeting.

Committee Name: Frederick Cancer Research and Development Center Advisory Committee.

Date: April 1, 1998.

Place: Frederick Cancer Research and Development Center Building 549, Executive Board Room, Frederick, Maryland 21702–1201.

Open: 8:30 a.m.–10:00 a.m.

Agenda: Discussion of administrative matters such as future meetings, budget and information items related to the operation of the NCI Frederick Cancer Research and Development Center.

Closed: 10:00 a.m. to Adjournment.

Agenda/Purpose: Presentations and discussions by the Operations and Technical Support Contractor, Science Applications International Corporation (SAIC) and Advanced BioScience Laboratories—Basic Research Program (ABL–BRP) pertaining to the future direction for the Frederick Cancer Research and Development Center.

Contact Person: David J. Goldstein, Ph.D., Executive Secretary, Frederick Cancer Research and Development Center, P.O. Box B, Frederick, MD 21702–1201, Telephone: 301–846–1108.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The report and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the programs, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated February 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5575 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Role of Respiratory Infections in Childhood Asthma.

Date: March 26, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Anne P. Clark, Ph.D., Two Rockledge Center, Room 7186, 6701 Rockledge Drive, Bethesda, MD 20892–7924 (301) 435–0280.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Psychosocial Factors and Cardiovascular Disease.

Date: March 31, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Insulin Resistance Atherosclerosis Study (IRAS).

Date: March 31–April 1, 1998.

Time: 7:00 p.m.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

Contact Person: Anthony M. Coelho, Ph.D., Two Rockledge Center, Room 7194, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5581 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Ensuring Adequate Utilization of Epidemiologic Data.

Date: May 7, 1998.

Time: 8:30 a.m.

Place: Two Rockledge Center, 6701 Rockledge Drive, Room 9112, Bethesda, MD 20892.

Agenda: To identify approaches for better utilization of public use data sets in epidemiology studies.

Contact Persons: Ms. Lorraine Silsbee, Division of Epidemiology and Clinical Applications, Two Rockledge Center, 6701 Rockledge Drive, Room 8157, Bethesda, Maryland 20892, (301) 435–0709.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5582 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the Special Emphasis Panel on Cooley's Anemia Review Meeting, National Heart, Lung, and Blood Institute, which was published in the **Federal Register** on February 11, 1998 (63 FR 6947).

The date and time of this meeting has changed to March 20, 1998, 8:00 a.m., at the Holiday Inn Bethesda and will be closed to the public as previously advertised.

Dated: February 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5983 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Notice is hereby given of the second workshop of the NIDCD Working Group on Early Identification of Hearing Impairment on March 13, 1998 at the Double Tree Hotel, 1750 Rockville Pike, Rockville MD 20852. The meeting is being held to solicit the Working Group's input regarding research issues related to the characterization of hearing impairment and the intervention selected and provided to neonates or infants identified as having a hearing impairment following hearing screening and will be held from 8 am to approximately 2 pm.

The entire meeting is open to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Lynn Huerta, Ph.D., Division of Human Communication, NIDCD, EPS Room 400C, Bethesda, MD 20892, 301–402–3458 in advance of the meeting.

Dated: February 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5567 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Interdisciplinary Studies in Reproductive Toxicology and Epidemiology.

Date: April 1–3, 1998.

Time: 7:00 p.m.

Place: Clarion Hotel, 700 Sixteenth Street, Sacramento, CA 95814.

Contact Person: Dr. Ethel Jackson, National Institute of Environmental Health Sciences, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: February 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5568 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), April 8–10, 1998, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892.

In accordance with the provisions set forth in secs. 552b(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 8 from 6:00 p.m. to adjournment on April 10 for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and roster of members will be provided, upon request by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Natcher Building, Room 6AS–37J, Bethesda, Maryland 20892, (301) 594–8892. For any further information, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, at least two weeks prior to the meeting date.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: February 24, 1998.

LaVerne Stringfield,

NIH Committee Management Officer.

[FR Doc. 98–5569 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB 8 M1.

Date: March 19, 1998.

Time: 8:30PM.

Place: Canterbury Hotel, 1733 N Street, N.W., Washington, D.C. 20036.

Contact: Roberta Haber, Ph.D., Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8898.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology

and Hematology Research, National Institutes of Health.)

Dated: February 24, 1998.

LaVerne Stringfield,

NIH Committee Management Officer.

[FR Doc. 98–5570 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel (SEP) meetings.

Purpose/Agenda: To review and evaluate grant applications and contract proposals.

Name of Committee: NIDA Special Emphasis Panel (Treatment).

Date: March 3, 1998.

Time: 10:00 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—''Technical and Logistical Support Assistance to NIDA, OSPC'').

Date: March 5, 1998.

Time: 9:30 a.m.

Place: Parklawn Building, Conference Q, 3rd Floor, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Mr. Lyle Furr, Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel (AIDS Biomedical and Clinical).

Date: March 11, 1998.

Time: 11:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis (AIDS Biomedical and Clinical).

Date: March 11, 1998.

Time: 2:00 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.277, Drug Abuse Research Scientist Development and Research Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: February 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5571 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel (Organization and Management of Drug Abuse Treatment Services) on March 4, 1998, at 8:30 a.m., at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209, which was published in the **Federal Register** on January 26, 1998, Volume 63, FR 6575.

The date and time of this committee have been changed to March 3, 1998, at 2:00 p.m.

Dated: February 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5572 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Closed Meetings

Notice is hereby given of changes in the National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings, which was published in the **Federal Register** on January 26, 1998, Volume 63, FR 3756.

The NIDA Special Emphasis Panel (Training and Career Development) on March 2–4, 1998, at 8:30 a.m., at the Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.

The dates and location of this committee have been changed to April 6–8, 1998, at the Ritz-Carlton at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

The AIDS Biomedical and Clinical Research Subcommittee on March 10–11, 1998, at 8:30 a.m., at the Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

The location of this committee has been changed to Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Dated: February 24, 1998.

LaVerne Y. Stringfield,

Commitee Management Officer, NIH.

[FR Doc. 98–5573 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 14–15, 1998, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, Maryland.

This meeting will be open to the public from 11 a.m. to 6 p.m. on May 14, for the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 14, from 8:30 a.m. to 11:00 a.m., and also closed on May 15, (8:30 a.m. to adjournment) for the review, discussion, and evaluation of individual grant applications. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafter, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960)

Dated: February 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5574 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Novel HIV Therapies: Integrated Preclinical/Clinical Program.

Date: March 30–April 2, 1998.

Time: 7:30 p.m. to Adjournment.

Place: Holiday Inn Gaithersburg, Whetstone Conference Room, 2 Montgomery Village Avenue, Gaithersburg, MD 20879, (301) 948–8900.

Contact Person: Dr. Allen C. Stoolmiller, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C05, Bethesda, MD 20892, (301) 496–7966.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: February 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5576 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of the following meetings:

Name of SEP: National Institute on Aging Special Emphasis Panel, Age-Related Degeneration.

Date of Meeting: March 4, 1998.

Time of Meeting: 1:00 p.m. to adjournment.

Place of Meeting: San Francisco Bay Collection, San Francisco, California.

Purpose/Agenda: To review one program project grant.

Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, The Effects of Aging on Cardiac Diastolic Function.

Date of Meeting: March 4–5, 1998.

Time of Meeting: March 4–7:30 p.m. to recess. March 5–9:00 a.m. to adjournment.

Place of Meeting: Hampton Inn-Union Station, 2211 Market Street, St. Louis, Missouri.

Purpose/Agenda: To review a proposed grant.

Contact Person: Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Molecular Mechanisms of MGUS.

Date of Meeting: March 11, 1998.

Time of Meeting: 1:00 p.m. to adjournment.

Place of Meeting: The Drake Hotel, Oak Brook, Illinois.

Purpose/Agenda: To review a program project application in the area of peripheral gammopathy for the May 1998 council round.

Contact Person: Dr. Sheryl Brining, Dr. Mary Nekola, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute on Aging Special Emphasis Panel, NIA Roybal Center Grant Review.

Dates of Meeting: March 25–27, 1998.

Times of Meeting: March 25—9:00 to recess. March 26—9:00 a.m. to recess. March 27—9:00 a.m. to adjournment.

Place of Meeting: Hyatt Regency Hotel, 7400 Block of Wisconsin Avenue, Bethesda, Maryland 20814.

Purpose/Agenda: To evaluate and review center grant applications.

Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute of Aging Special Emphasis Panel, Pathogenic Protein Interactions in Alzheimer's Disease (Teleconference).

Date of Meeting: March 31, 1998.

Time of Meeting: 1:00 p.m. to adjournment.

Place of Meeting: Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20814.

Purpose/Agenda: To review a program project amendment.

Contact Person: Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute of Aging Special Emphasis Panel, Aging Heart: Basis of Increased Ischemic/Reflow Injury.

Dates of Meeting: April 7–8, 1998.

Times of Meeting: April 7–7:30 p.m. to recess. April 8–8:00 a.m. to adjournment.

Place of Meeting: Omni International Hotel, Cleveland, Ohio.

Purpose/Agenda: To review a program project grant.

Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposal and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: February 24, 1998.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–5577 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 3, 1998.

Time: 2 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.242, 93.281, 93.282)

Dated: February 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5579 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Initial Review Group meetings.

Name of Subcommittee: Population Research Subcommittee.

Date: March 3, 1998.

Time: 8:00 a.m.–adjournment.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Scott Andres, Ph.D., Acting Director, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Name of Subcommittee: Population Research Subcommittee.

Date: March 5, 1998.

Time: 1:00 p.m.–adjournment.

Place: Division of Scientific Review, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20814.

Contact Person: Scott Andres, Ph.D., Acting Director, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Name of Subcommittee: Mental Retardation Subcommittee.

Date: March 3–5, 1998.

Time: March 3–8:00 p.m.–10:00 p.m.; March 4–8:00 a.m.–5:00 p.m.; March 5–8:00 a.m.–adjournment.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Name of Subcommittee: Maternal and Child Health Research Subcommittee.

Date: March 3–4, 1998.

Time: March 3–8:00 a.m.–5:00 p.m.; March 4–8:30 a.m.–adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Gopal M. Bhatnagar, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Name of Subcommittee: Medical Rehabilitation Research Subcommittee.

Date: March 6, 1998.

Time: 8:00 a.m.–adjournment.

Place: The Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Ms. Anne Krey, Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review research grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: February 25, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5980 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Section 10(d) of the Federal Advisory Commttee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, March 26–27, 1998, Natcher Conference Center, Conference Rooms E1, Bethesda, Maryland.

The meeting will be open to the public from 8:00 a.m. to 5:00 p.m. on March 26 and 8:00 a.m. to adjournment on March 27. Attendance by the public will be limited to space available. Board topics will include: (1) a report on fiscal issues concerning the National Center for Medical Rehabilitation Research (Center) and the Institute; (2) reports on the program activities of the Center; (3) a discussion of general priority areas of research for the Center; and (4) a discussion of support for medical rehabilitation research by government agencies.

Ms. Debbie Welty, Board Secretary, NICHD, 6100 Building, Room 2A03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–402–2242, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Welty.

Dated: February 26, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5585 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given the following meeting:

Purpose/Agenda: To review and evaluate a contract proposal.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: March 13, 1998.

Time: 10:30 a.m.

Place of Meeting: Willco Building, Suite 400, 6000 Executive Boulevard, Rockville, MD.

Contact Person: Sean O'Rourke, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meeting timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552(b)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891. Alcohol Research Center Grants; National Institutes of Health)

Dated: February 26, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5586 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: March 9–10, 1998.

Time: 8:30 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Biological and Physiological Sciences.

Date: March 11, 1998.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 6170, Telephone Conference.

Contact Person: Dr. Dennis Leszczyski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, Maryland 20892, (301) 435–1044.

Date: March 11, 1998.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

Name of SEP: Chemistry and Related Sciences.

Date: March 16, 1998.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4172, Telephone Conference.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: March 18, 1998.

Time: 10:00 a.m.

Place: Georgetown Inn, Washington, DC.

Contact Person: Dr. Harold Davidson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4216, Bethesda, Maryland 20892, (301) 435–1776.

Name of SEP: Clinical Sciences.

Date: March 26, 1998.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.

Date: March 30, 1998.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Biological and Physiological Sciences.

Date: March 31, 1998.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4212, Telephone Conference.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435–1222.

Name of SEP: Clinical Sciences.

Date: April 3, 1998.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Biological and Physiological Sciences.

Date: April 8, 1998.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Biological and Physiological Sciences.

Date: April 17, 1998.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

Name of SEP: Behavioral and Neurosciences.

Date: April 29, 1998.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, MD.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.

Date: March 16–17, 1998.

Time: 9:00 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: March 25, 1998.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5578 Filed 3–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: March 23.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4100, Telephone Conference.
Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 24, 1998.
Time: 12:30 p.m.
Place: Holiday Inn-National Airport, Crystal City, VA.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Multidisciplinary Sciences.
Date: April 5–7, 1998.
Time: 6:00 p.m.
Place: Holiday Inn on the Lane, Columbus, OH.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Chemistry and Related Sciences.
Date: April 14, 1998.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 4172, Telephone Conference.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.
Name of SEP: Multidisciplinary Sciences.
Date: April 14, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4182, Telephone Conference.
Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Biological and Physiological Sciences.
Date: March 9, 1998.
Time: 8:30 a.m.
Place: Holiday Inn, Silver Spring, MD.
Contact Person: Dr. Robert Su, Scientific Review Administrator, 6701 Rockledge Drive, Room 5144, Bethesda, Maryland 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: April 2, 1998.
Time: 9:00 a.m.
Place: American Inn, Bethesda, MD.
Contact Person: Dr. David Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435–1038.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: February 26, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–5584 Filed 3–3–98; 8:45 am]

BILLING CODE 4146–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–24 1A]

Notice of Proposed Information Collection, OMB Approval Number 1004–0051

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paper Work Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request renewal of existing approval to collect certain information from individuals who are required to provide the actual grazing use made by their livestock while grazing public rangelands. The report is used most frequently to document the grazing use made for an end-of-season grazing billing when authorized within the terms and conditions of a permit or lease that incorporates an allotment management plan. The report is also used for documenting forage harvest, a key data for use in conjunction with the data from other monitoring studies, when evaluating trend in rangeland health for grazing allotments. Form 4130–5 (ACTUAL GRAZING USE REPORT) is used under authority of Sections 3 and 15 of the Taylor Grazing Act and associated regulations found at 43 CFR 4130.3–2(d) and 4130.8–1(e). It requests information necessary to compute the amount of forage consumed by the authorized grazing animals and prepare the grazing billing. Requested information is: Name of grazing allotment, Pasture(s) grazed, dates of grazing use, and numbers and kind or class of livestock. Information concerning other factors that affect the grazing use may be voluntarily provided, such as death losses of grazing animals, environmental influences such as insects, abnormal weather events, fire, etc. It also documents the grazing use for the allotment files.

DATES: Comments on the proposed information collection must be received by May 8, 1998.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street N.W., Room 401 LS Bldg., Washington, D.C. 20240. Comments may be sent via Internet to: gramey@wo.blm.gov. Please include ''Attn: 1004–0051'' and your name and return address in your Internet message. Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, N.W., Washington, D.C.

Comments will be available for public inspection at the L Street address during regular business hours (8:45 a.m. to 4:15 p.m., Monday through Friday).

FURTHER INFORMATION CONTACT: George Ramey (202) 452–7747.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in current published rules to solicit comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, 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. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315, 315 *et seq.*), the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901 *et seq.*) provide the authority for the Bureau of Land Management to administer the livestock grazing program consistent with land-use plans, multiple-use objectives, sustained yield, environmental values, economic considerations, and other factors. Sections 3 and 15 of the TGA and Regulations in 43 CFR 4130.3–2(d) require permitees or lessees (graziers) to furnish a record of the actual grazing use made on public rangeland grazing allotments when specified as a term or condition of a permit or lease. The Regulations at 43 CFR 4130.8–1(e) provide for the end-of-season billing based upon the record of actual grazing use. The Regulations were issued on February 21, 1984 (49 FR 6452) and last amended on February 22, 1995 (60 FR 9964). Form 4130–5, Actual Grazing Use Report, is the approved form to be used for recording the actual grazing use made on public rangelands.

The BLM Authorizes livestock grazing on the public lands within specified terms and conditions. Recordation and reporting of actual grazing use may be included in permits or leases to provide information that is necessary for evaluating the monitoring data collected on the grazing allotment and for after the season billing for grazing use when authorized under an allotment management plan. The *information provided by the grazier* is used by the BLM for two specific purposes:

a. To *calculate the fees due for the grazing use completed.* Fees are due the United States upon issuance of a billing notice and must be paid in full prior to grazing use, except when an allotment management plan (AMP) provides for delayed payment and has been incorporated into a grazing permit or lease. In this later situation, a billing notice, based upon the actual grazing use completed, will be issued at the end of the grazing period or year (43 CFR 4130.8–1(e)). Copies of the actual grazing use report form are furnished with the annual grazing authorization for use by the graziers in record keeping during the season. Because the information collected is used for billing for grazing use or makes up a part of the allotment monitoring records, the permittee or lessee must keep accurate and current records for the period of time covered by his/her permit or lease. The information collected includes allotment and pasture location of the grazing, the date and numbers of livestock turned on or removed from the range, and the kind or class of livestock grazed. The actual grazing use report is required to be submitted within 15 days following the end of the grazing period. Failure to collect this information will prevent the BLM from providing proper administration.

b. To *obtain information needed to monitor and evaluate livestock grazing use* on the public lands for the purposes of determining if adjustments in the amount of use are needed, or if other management actions are having the desired effects. Knowledge of actual livestock grazing use is essential in the monitoring and the evaluation of the livestock grazing management program. Information on the specific use is essential for an accurate and complete analysis and evaluation of the effects of livestock grazing during particular periods of time, as interrelated with other factors such as climate, growth characteristics of the vegetation, and utilization levels on the plants. Failure to collect this information would result in less than satisfactory data and reduced capability to make adjustments in grazing use or management.

Other information required by Form 4130–5 provides: *The name and address* used to identify the permittee or lessee for matching the actual use record with the appropriate grazing case records. *The Signature of the grazier and date* signifies a certification that the information is complete and accurate report of the grazier's livestock use of public rangeland. The graziers may provide other information that they wish in addition to the required elements.

The BLM completes administrative calculations of animal unit months of grazing use made within the allotment and pasture by the kind or class of livestock for summary use in preparing a grazing bill and/or for use in the evaluation of monitoring data for the allotment. The record is retained to document the BLM files. Without this information, the BLM could not fulfill its responsibility to manage uses of the public land as required by law.

The required information is only available from the grazing operators. Specific information is only known by a grazier who identifies specific information pertinent to the purposes of the form in completing the record of grazing use. The form was designed to request only basic information required to administer the livestock grazing on public land. The information is contained in the grazier's personal plans or records kept for the ranching business purposes and does not impose a significant burden.

Since grazing on the unreserved public lands is administered only by the BLM, there is no duplication of information collections.

Because the actual grazing use that occurs is not constant from year to year, the required information collection must be made for each grazing season for which grazing use is sought. This report is completed annually during the period when actual grazing use is required for either end-of-season billing under an AMP, or for use in evaluating the monitoring data for rangeland management. This information collection is consistent with guidelines in 5 CFR 1320.6 without which the BLM would not be able to administer the Public Land Laws.

There are no assurances of confidentiality but the Privacy Act Notice is provided to inform the applicants of the uses to be made. There are no plans for publishing information for statistical use.

On March 25, 1994 the BLM published in the **Federal Register** a notice of proposed rulemaking to amend the regulations for livestock grazing. A comment period of 120 days was allowed. Included in the notice was a request for comments on the information collections involved including, this collection (1004–0051). Several comments were received on this section addressing information resources and questions of timeliness relating to compliance. Federal Register 2/22/95, page 9925. Copies of the comments are on file at the Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, and may be reviewed by contacting Jim Gegen at that Office.

The BLM experience and recent tabulations of activity indicate approximately 15,000 records are

processed each year. The annual cost to the Government is estimated to be $82,500 for information analysis, calculations and filing the records in appropriated case files, incidental expenses for postage based on 15 minutes time with each form at $21 per hour. Annual costs to the 15,000 respondents is estimated at $136,200, including postage based on 6,250 burden hours at $21 per hour to prepare the form and to receive and file their actual grazing use report.

Several years experience has shown that it takes an average of about 25 minutes for an estimated 15,000 graziers to complete the form. Because of the variations in size and complexity of range livestock operations, some of the 15,000 responses may take a few minutes in one recording session to complete the form, while others may take up to 60 minutes combined through several sessions during the grazing year, with each requiring a few minutes to enter the required data.

Any interested member of the public may request and obtain, without charge, a copy of BLM Form 4130–5 the person identified under **FOR FURTHER INFORMATION CONTACT**.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: February 26, 1998.

Carole J. Smith,

Information Collection Officer.

[FR Doc. 98–5467 Filed 3–3–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(CA–067–7122–6606); CACA–35511]

Notice of Extension of Public Comment Period for the Imperial Project Joint Draft Environmental Impact Statement on the Imperial Project Proposed Gold Mining/ Processing Operation, Imperial County

SUMMARY: Notice is hereby given that the comment period of the Joint Draft Environmental Impact Statement/ Impact Report (DEIS/EIR) prepared by the Bureau of Land Management and the County of Imperial is extended for an additional 45 days.

DATES: Written comments must be post-marked no later than April 13, 1998.

ADDRESS: Written comments should be addressed to Douglas Romoli, Attn: Imperial Project, El Centro Field Area, 1661 South Fourth St., El Centro, California 92243.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli (909) 697–5237.

SUPPLEMENTARY INFORMATION: The end of comment period, as noted in the Joint Draft EIS/EIR for the Imperial Project DEIS/EIR, was January 27, 1998, extended to February 26, 1998. The comment period is now extended to April 13, 1998. Names and addresses of private individuals commenting on this project will be made available to the general public under the Freedom of Information Act unless those individuals specifically request confidentiality at the beginning of their written comment.

Dated: February 24, 1998.

Tim Salt,

Acting District Manager.

[FR Doc. 98–5375 Filed 3–3–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW118156]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

February 19, 1998.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW118156 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW118156 effective December 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 98–5497 Filed 3–3–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 137811]

Public Land Order No. 7319; Withdrawal of Public Land for Spirit Mountain Caverns; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 230.71 acres of public land from surface entry (except for disposal by exchange) and mining, for a period of 50 years for the Bureau of Land Management to protect important cave/geological resource values at the Spirit Mountain Caverns near Cody, Wyoming. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 4, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry (except disposal by exchange) under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect important cave/geological values at the Spirit Mountain Caverns:

Sixth Principal Meridian

T. 52 N., R. 102 W.,
Sec. 5, lot 19, SW¼NE¼SE¼, S½NW¼SE¼, SW¼SE¼, W½SE¼SE¼, and SE¼SW¼;
Sec. 8, NW¼NE¼ and NE¼NW¼.

The area described contains 230.71 acres in Park County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 17, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–5500 Filed 3–3–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–08–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on March 23, 1998.

New Mexico Principal Meridian, New Mexico

T. 8 N., R. 3 W., accepted February 13, 1998 for Group 933 New Mexico.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the New Mexico State Office Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 for inspection, until officially filed. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: February 23, 1998.

Kelly R. Williamson Jr.,

Acting Chief Cadastral Surveyor for New Mexico.

[FR Doc. 98–5646 Filed 3–3–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, and Great Egg Harbor National Scenic and Recreation River.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) is proposing in 1998 to conduct mail and on-site surveys of visitors and landowners within the Great Egg Harbor River corridor to identify characteristics, use patterns, expectations, preferences, and perceptions of the area and its management.

ESTIMATED NUMBERS OF

	Responses	Burden hours
Great Egg Harbor River Visitor and Landowner Mail Survey	1000	500
Great Egg Harbor River On-Site Visitor Survey	1500	250
Total	2500	750

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. The NPS goal in conducting these surveys is to incorporate survey information into a General Management Plan to be used by local municipalities to guide planning and alternative management strategies for the Great Egg Harbor River.

DATES: Public comments will be accepted on or before May 4, 1998.

SEND COMMENTS TO: Troy Hall, Ph.D., Department of Forestry, Virginia Tech, Blacksburg, VA 24061–0324.

FOR FURTHER INFORMATION CONTACT: Troy Hall. Voice: 540–231–7264, Email: <tehall@vt.edu>.

SUPPLEMENTARY INFORMATION:

Titles: Great Egg Harbor River Visitor and Landowner Mail Survey. Great Egg Harbor River On-Site Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information to incorporate into the General Management Plan for the Great Egg Harbor National Scenic and Recreation River which will guide future management and planning for the Great Egg Harbor River.

Automated data collection: At the present time, there is no automated way to gather this information, since it includes asking visitors and landowners about their perceptions, expectations, and preferences in the Great Egg Harbor River corridor area.

Description of respondents: A sample of individuals who use the Great Egg Harbor River for recreation purposes (mail and on-site surveys) or who own riverfront property (mail survey only) along the River.

Estimated average number of respondents: 1000 (mail survey); 1500 (on-site survey).

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 30 minutes (mail survey); 10 minutes (on-site survey).

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 500 hours (mail survey); 250 hours (on-site survey).

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–5289 Filed 3–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, and Sequoia and Kings Canyon National Parks.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) is proposing in 1998 to conduct a survey of community residents in one gateway community near Sequoia and Kings Canyon National Parks to refine those issues related to fire management and associated smoke that are most important to people who live there. This information collection will support ongoing fire management planning at Sequoia and Kings Canyon National Parks.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed survey. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. The NPS goal in conducting this survey is to obtain park neighbors' perceptions of the existing fire management program and its effect on residents, the community, and the ecosystem. Results of the survey will assist NPS fire managers in their management decisions by providing information about the knowledge, needs and desires of the affected public living in the community that is closest to the two parks. The intended effect of this information collection is to better inform park managers about issues important to park neighbors, to assist them in developing citizen education and involvement programs, and to help them formulate fire management decision making criteria for fires in the Park.

DATES: Public comments will be accepted on or before May 4, 1998.

SEND COMMENTS TO: William Kaage, Fire Management Officer, Sequoia and Kings Canyon National Parks, Three Rivers, California 93271–9700, phone: 209–565–3160.

FOR FURTHER INFORMATION CONTACT: William Kaage, Fire Management Officer, Sequoia and Kings Canyon National Parks, Three Rivers, California 93271–9700, phone: 209–565–3160; e-mail: <william__kaage@nps.gov>.

SUPPLEMENTARY INFORMATION:

Title: Fine Management Planning Survey at Sequoia and Kings Canyon National Parks.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information concerning perceptions of residents who live near Sequoia and Kings Canyon National Parks regarding forest fire, fire ecology, regional fire management history and the effects of fire management practices on their community and the ecosystem. The proposed information to be collected from park neighbors is not available from existing records, sources, or observations either regularly or comprehensively.

Automated data collection: At the present time, there is no automated way to gather this information, since it includes asking gateway community residents about their perceptions of fire management in the region.

Description of Respondents: A sample of adult householders living in one gateway community near Sequoia and Kings Canyon National Parks.

Estimated average number of respondents: The number is estimated to be approximately 500 respondents.

Estimated average number of respondents: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 15 minutes.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: The total burden for 1998 will be approximately 125 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–5290 Filed 3–3–98; 8:45 am]

BILLING CODE 7310–70–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on February 10, 1998, the United States lodged with the Court a proposed Consent Decree under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.* in *United States* v. *H. Brown Co., et al.*, No. 1:96–CV–949 (W.D. Mich). The Consent Decree resolves certain claims of the United States against Exide Corporation, Fisher Steel & Supply Company, Friedland Iron & Metal Company, and Franklin Iron & Metal Company under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), at the H. Brown Superfund Site (''Site''), located in Walker, Kent County, Michigan. Under the Consent Decree, the settling defendants will pay the United States $120,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *H. Brown Co., et al.*. D.J. Ref. No. 90–11–2–835A. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $7.75 for the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–5498 Filed 3–3–98; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, March 6, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Year 2000 Compliance. Closed pursuant to exemptions (2) and (8).
2. SSP Vacancies and Related Personnel Matters. 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. 98–5647 Filed 2–27–98; 4:22 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Withdrawal of Application for Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its June 30, 1997, application for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

Technical Specifications 4.6.1.1, 3/4.6.1.2, and 3/4.6.1.3 require the testing of the containment to verify leakage limits at a specified test pressure. The proposed amendment would have (1) modified the list of valves that can be opened in Modes 1 through 4, (2) added a footnote on procedure controls, (3) removed a footnote on Type A testing, and (4) made editorial changes to the Technical Specifications and associated Bases sections.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 30, 1997 (62 FR 40854). However, by letter dated October 7, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 30, 1997, and the licensee's letter dated October 7, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, MD, this 15th day of October 1997.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Special Projects Office—Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 98–5528 Filed 3–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Co,; Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, 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 its regulations for Facility Operating Licenses Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of the Diablo Canyon Nuclear Power Plant (DCNPP), Unit Nos. 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated December 8, 1997, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Final Safety Analysis Report (FSAR) and design change reports for the facility changes made under 10 CFR 50.59 for DCNPP. Under the proposed exemption, the licensee would schedule updates to the single, unified FSAR for DCNPP based on the refueling cycle of Unit 2.

The Need for the Proposed Action

Section 50.71(e)(4) requires licensees to submit updates to their FSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since Units 1 and 2 of DCNPP share a common FSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. Allowing the exemption would maintain the FSAR current within 24 months of the last revision and still would not exceed a 24-month interval for submission of the 10 CFR 50.59 design change report for either unit.

Environmental Impacts of the Proposed Action

No changes are being made in the types or amounts of any radiological effluent that may be released off site. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. The Commission concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. The Commission concludes that there are no significant non-radiological impacts associated with the proposed exemption.

Alternatives to the Proposed Action

As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the operation of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on February 26, 1998, the staff consulted with the California State official, Mr. Steve Hsu of the Radiologic Health Branch of the State Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing 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 exemption.

For further details with respect to the proposed action, see the licensee's letter dated December 8, 1997, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Md. this 26th day of February 1998.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–5529 Filed 3–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Committee Meeting; Revised Agenda

The agenda for the 449th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on March 2–4, 1998, in Conference Room T–2B3, 111545 Rockville Pike, Rockville, Maryland, has been revised to discuss proposed NRC Commission definition of several concepts related to risk-informed, performance-based regulation. This discussion is scheduled between 11:15 a.m. and 12:15 p.m. on Tuesday, March 3, 1998.

The agenda for March 2 and 4, 1998 remains the same as published in the **Federal Register** on Friday, February 20, 1998 (63 FR 8696).

Further information regarding this meeting can be obtained by contacting Dr. Medhat El-Zeftawy, Acting Chief, Nuclear Reactors Branch (telephone 301/415–6889), between 7:30 a.m. and 4:15 p.m. EST.

Dated: February 26, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–5608 Filed 3–3–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23047; 812–10924]

Ark Funds, et al.; Notice of Application

February 26, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

Summary of the Application

Applicants request an order to permit ARK Funds to acquire all of the assets and stated liabilities of all of the series of Marketvest Funds and Marketvest Funds, Inc., and one series of ARK Funds.

Applicants

ARK Funds, Allied Investment Advisors, Inc. (''Allied''), First National Bank of Maryland (''First National''), Marketvest Funds and Marketvest Funds, Inc. (collectively, ''Marketvest Funds''), Dauphin Deposit Bank and Trust Company (''Dauphin''), and First Maryland Bancorp (''First Maryland'').

Filing Dates

The application was filed on December 24, 1997. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

Hearing or Notification of Hearing

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1998, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: ARK Funds, One Freedom Valley Drive, Oaks, PA 19456; Allied, 1000 East Pratt Street, Baltimore, MD 21202; First National and First Maryland, 25 South Charles St., Baltimore, MD 21202; Marketvest Funds, Inc. and Marketvest Funds, Federated Investors Tower, Pittsburgh, PA 15222–3779; and Dauphin, 213 Market St., Harrisburg, PA 17101.

FOR FURTHER INFORMATION CONTACT: Annmarie J. Zell, Staff Attorney, (202) 942–0532, or Christine Y. Greenlees, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. ARK Funds, a Massachusetts business trust, is an open-end management investment company registered under the Act. ARK Funds currently consists of twenty-two portfolios, including the ARK Stock Portfolio (the ''ARK Acquired Fund'') and the ARK Pennsylvania Tax-Free Portfolio. ARK Funds is organizing four new portfolios: ARK Short-Term Bond Portfolio, ARK U.S. Government Bond Portfolio, ARK Value Equity Portfolio and ARK International Equity Selection Portfolio (together with the ARK Pennsylvania Tax-Free Portfolio, the ''Acquiring Funds'').

2. Marketvest Funds, a Massachusetts business trust, and Marketvest Funds, Inc., a Maryland corporation, are open-end management investment companies registered under the Act. Marketvest Funds currently consists of two series: Marketvest Pennsylvania Intermediate Municipal Bond Fund and Marketvest International Equity Fund. Marketvest Funds, Inc. currently consists of three series: Marketvest Short-Term Bond Fund, Marketvest Intermediate U.S. Government Bond Fund and Marketvest Equity Fund (together with Marketvest Pennsylvania Intermediate Municipal Bond Fund and Marketvest International Equity Fund, the ''Marketvest Acquired Funds.'') The Marketvest Acquired Funds and the ARK Acquired Fund collectively are referred to as the ''Acquired Funds.''

3. Allied is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and is the investment adviser for the Acquiring Funds and the ARK Acquired Fund. Allied is a wholly-owned subsidiary of First National. First National is a wholly-owned subsidiary of First Maryland, a bank holding company. As of October 31, 1997, First National or its affiliates, all of which are part of a common control group (''First National Group''), held of record 100% of the outstanding shares of the ARK Pennsylvania Tax-Free Portfolio and the Ark Stock Portfolio, and held or shared voting power and/or investment discretion with respect to more than 5% of these shares.

4. Dauphin is the investment adviser of the Marketvest Acquired Funds. Dauphin is a ''bank,'' as defined in section 202(a)(2) of the Advisers Act, and therefore is exempt from registration as an investment adviser under section 202(a)(11)(A) of the Advisers Act. Dauphin is a wholly-owned subsidiary of First Maryland. As of October 31, 1997, Dauphin or its affiliates, all of which are part of a common control group (the ''Dauphin Group''), held of record more than 5% of the Marketvest Acquired Funds, and held or shared voting power and/or investment discretion with respect to more than 5% of these shares. In

addition, as of the same date, defined benefit plans of Dauphin or its subsidiaries owned in excess of 5% of the Marketvest Acquired Funds.

5. On November 7, 1997, and November 11, 1997, respectively, the boards of directors and trustees of Marketvest Funds (the ''Marketvest Boards'') and the board of trustees of ARK Funds (the ''ARK Board''), including the disinterested directors and trustees, unanimously approved the proposed reorganization (the ''Reorganization'') described in an agreement and plan of reorganization (the ''Reorganization Agreement'').[1] Pursuant to the Reorganization Agreement, each Acquiring Fund will acquire all of the assets and stated liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund based on the Funds' relative net asset values on the closing date (the ''Closing Date''). Each Reorganization Agreement further provides that the Acquiring Fund will issue and distribute pro rata to the corresponding Acquired Fund's shareholders of record, determined as of the close of business on the Closing Date, the Acquiring Fund shares issued in exchange for the Acquiring Fund's assets. This distribution will be accomplished by the issuance of the Acquiring Fund shares to open accounts on the share records of the Acquiring Fund in the names of the Acquired Fund shareholders representing the full and fractional number of Acquiring Fund shares due each shareholder pursuant to the Reorganization Agreement. All issued and outstanding shares of the Acquiring Fund will simultaneously be canceled on the books of the Acquired Fund. No additional shares representing interests in the Acquired Fund will be issued, and the Acquired Fund subsequently will be liquidated.

6. The Marketvest Acquired Funds offer one class of shares, which are subject to a front-end sales charge but are not subject to a contingent deferred sales charge. The Marketvest Acquired Fund shares also are subject to distribution and shareholder servicing fees, which currently are being waived. The Acquiring Funds and the ARK Acquired Fund offer two classes of shares, a Retail Class and an Institutional Class. As of the date of the application, there were no Retail Class shareholders of the ARK Acquired Fund. The Institutional Class shares are subject to neither a sales charge (front-end or deferred) nor rule 12b–1 fees, but the ARK Board has authorized payment by the Institutional Class of shareholder service fees of 0.06%. For the purposes of the Reorganization, the Marketvest Acquired Funds will be reorganized into the Institutional Class of the corresponding Acquiring Funds, and the Institutional Class of the ARK Acquired Fund will be reorganized into the Institutional Class of the Corresponding Acquiring Fund. The Institutional Class shares and the Marketvest Acquired Fund shares have similar rights and obligations as described in the application. No sales load will be imposed with respect to the shares of the Acquiring Funds to be issued in the Reorganization. Following the consummation of the Reorganization, Acquired Fund shareholders will be subject to the shareholder service fees applicable to the Institutional Class shares.

7. The investment advisory fees for the Acquired Funds and Acquiring Funds are payable annually. At the present time, Allied and Dauphin are waiving a portion of their advisory fees. Allied intends to continue to waive a portion of its advisory fees after the Reorganization.

8. The investment objectives of each Acquired Fund and it corresponding Acquiring Fund are similar. The investment restrictions and limitations of each Acquired Fund and corresponding Acquiring Fund are substantially similar, but in some cases involve differences in the general investment strategies utilized by these funds.

9. The Marketvest Boards and the ARK Board (together, the ''Boards''), including in both cases the disinterested directors and trustees, found that participation in the Reorganization is in the best interest of each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization.

10. In approving the Reorganization, the Boards considered: (a) the terms and conditions of the Reorganization Agreement, including that (i) the exchange of Acquired Fund shares for Acquiring Fund shares will take place on a net asset value basis, (ii) no sales charge will be incurred by Acquired Fund shareholders in connection with their acquisition of Acquiring Fund shares, and (iii) First Maryland will pay any unamortized organizational expenses on the books of the Acquired Fund; (b) the tax-free status of the Reorganization; (c) the advantages which may be realized by the Acquired Funds and Acquiring Funds, including economies of scale; (d) the agreement of First Maryland to bear the costs associated with the Reorganization; and (e) the fact that the advisory fee would be substantially similar for the Acquired Fund shareholders becoming shareholders of the corresponding Acquiring Funds. In addition, the Marketvest Boards reviewed a number of factors, including the investment objectives, policies and restrictions of the Acquiring Funds and their relative compatibility with those of the corresponding Marketvest Acquired Funds, and the shareholder services and other fees applicable to the Institutional Class of the Acquiring Funds as compared to those applicable to the Marketvest Acquired Funds. The Boards also considered the potential benefits to First Maryland and its affiliates which could result from the Reorganization and concluded that, despite these potential benefits, various factors, including those noted in (a) through (e) above, render the Reorganization fair and in the best interests of the shareholders of the Acquired Funds and the Acquiring Funds.

11. The expenses incurred in connection with the Reorganization, which First Maryland will bear, are expected to include professional fees and the cost of printing and mailing the prospectus/proxy statements, soliciting proxies and holding the required shareholder meetings.

12. Registration statements on Form N–14 were filed with the SEC with respect to the Marketvest Acquired Funds and the ARK Acquired Fund on February 13, 1998 and February 23, 1998, respectively. Applicants sent a prospectus/proxy statement to shareholders of each Marketvest Acquired Fund on February 20, 1998 for their approval at a meeting of shareholders scheduled for March 19, 1998. Applicants expect to send a prospectus/proxy statement to shareholders of the ARK Acquired Fund approximately 30 days before the shareholders meeting, which is currently schedule for April 23, 1998.

13. The Reorganization Agreement between Marketvest Funds and the ARK Funds may be terminated by the mutual written consent of the Marketvest Board and the ARK Board at any time prior to

[1] Acquired Funds and the corresponding Acquiring Funds are:

(i) Marketvest Short-Term Bond Fund and ARK Short-Term Bond Fund,

(ii) Marketvest Intermediate U.S. Government Bond Fund and ARK U.S. Government Bond Portfolio,

(iii) Marketvest Equity Fund and ARK Value Equity Portfolio,

(iv) Marketvest Pennsylvania Intermediate Municipal Bond Fund and ARK Pennsylvania Tax-Free Portfolio,

(v) Marketvest International Equity Fund and ARK International Equity Selection Portfolio, and

(vi) ARK Stock Portfolio and ARK Value Equity Portfolio.

the Closing Date or by either party at any time after June 30, 1998, if the closing has not occurred prior to that date. The Reorganization Agreement relating to the ARK Acquired Fund may be terminated and abandoned by the ARK Board at any time prior to the Closing Date.

14. The consummation of the Reorganization will be subject to the following conditions set forth in the Reorganization Agreement: (a) the shareholders of each Acquired Fund will have approved the Reorganization Agreement; (b) applicants will have received the exemptive relief which is the subject of the application; (c) an opinion of counsel with respect to the federal income tax aspects of the Reorganization will have been received; and (d) each Acquired Fund will have declared and paid a dividend or dividends on the shares of the Acquired Fund which, together with all previous dividends, will have the effect of distributing to the shareholders of the Acquired Fund all of the Acquired Fund's investment company taxable income and tax-exempt interest income for the final taxable period and all of its net capital gains realized in the final taxable period. Applicants agree not to make any material changes to the Reorganization Agreement that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person that owns 5% or more of the outstanding voting securities of such other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person, (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if such other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 because the Funds may be affiliated for reasons other than those set forth in the rule. The ARK Acquired Fund and the ARK Value Equity Portfolio (the Fund into which the ARK Acquired Fund is merging) have a common investment adviser, Allied. Allied is a wholly-owned subsidiary of First National. First National Group holds of record more than 5% of the outstanding voting securities of the ARK Acquired Fund and the ARK Pennsylvania Tax-Free Portfolio and holds or shares voting and/or investment discretion with respect to more than 5% of such outstanding voting securities. Because of this ownership, the ARK Acquired Fund and the ARK Pennsylvania Tax-Free Portfolio might be deemed to be an ''affiliated person'' of First National under section 2(a)(3)(B) of the Act. Therefore, the Reorganization of the ARK Acquired Fund and the ARK Value Equity Portfolio may not meet the ''solely by reason of'' requirement of rule 17a–8.

4. The Dauphin Group holds of record more than 5% of the outstanding voting securities of the Marketvest Acquired Funds and holds or shares voting and/or investment discretion with respect to more than 5% of their outstanding voting securities. First National and Dauphin are under common ownership and control by First Maryland. By virtue of this ownership, an Acquiring Fund may be deemed to be an ''affiliated person of an affiliated person'' of a Marketvest Acquired Fund. Thus, the applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the proposed Reorganization.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b). Applicants note that the Boards, including the disinterested directors and trustees, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Funds' shares for the Acquiring Funds' relative net asset values.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–5549 Filed 3–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26832; 70–9069]

Conectiv, Inc.; Order Authorizing Acquisition of Public Utility Companies and Related Transactions; Approving Organization of Service Company Subsidiary; Authorizing Certain Affiliate Transactions; Approving Service Agreements; and Reserving Jurisdiction

February 25, 1998.

Conectiv, Inc. (''Conectiv''), a Delaware corporation not currently subject to the Public Utility Holding Company Act of 1935, as amended (''Act''), has filed an application-declaration, as amended, under sections 6(a), 7, 9, 10, 11 and 13 of the Act, and rules 80 through 91, 93 and 94, seeking approvals related to the proposed combination of Delmarva Power & Light Company (''Delmarva''), a Delaware and Virginia public utility company, and Atlantic Energy, Inc. (''Atlantic''), a New Jersey public utility holding company exempt by order under section 3(a)(1) from all provisions of the Act, except section 9(a)(2). Conectiv requests, among other things, an order under sections 9(a)(2) and 10 of the Act authorizing its acquisition of all of the issued and outstanding common stock of Delmarva and Atlantic by means of the mergers described below. Following the transactions, Conectiv will register as a holding company under section 5 of the Act.[1]

The Commission issued a notice of the filing on October 3, 1997 (Holding Co. Act Release No. 26763). The Commission received a request for a hearing dated October 27, 1997, from South Jersey Gas Company (''South Jersey''), a New Jersey public utility company engaged in the transmission, distribution, transportation and sale of natural and mixed gases in New Jersey.

[1] Conectiv will file a notification of registration on Form U5A within 30 days of the merger and will file a registration statement on Form U5B within 90 days.

South Jersey filed supplemental comments on November 7, 1997. By letter dated December 22, 1997, South Jersey withdrew its request for a hearing.

I. Background

Delmarva provides electric service in Delaware, Maryland and Virginia and gas service in Delaware. As of June 30, 1997, Delmarva provided electric utility service to approximately 445,000 customers in an area encompassing about 6,000 square miles in Delaware (255,000 customers), Maryland (170,000 customers) and Virginia (20,000 customers), and gas utility service to approximately 102,000 customers in an area of about 275 square miles in northern Delaware.

Delmarva's gas facilities are located exclusively in New Castle County, Delaware. Delmarva owns gas property consisting of a liquefied natural gas plant in Wilmington, Delaware with a storage capacity of 3.045 million gallons and a maximum daily sendout capacity of 49,898 Mcf per day.[2] Delmarva also owns four natural gas city gate stations at various locations in its gas service territory. The stations have a total contract sendout capacity of 125,000 Mcf per day. Delmarva has 111 miles of transmission mains (including 11 miles of joint-use gas pipelines that are used 10% for gas distribution and 90% for electricity production), 1,539 miles of distribution mains and 1,091 miles of service lines.

Delmarva is engaged indirectly, through subsidiaries and affiliates, in various nonutility activities. In general, these activities include: acquisition and operation of service businesses primarily involving heating, ventilation and air conditioning sales, installation and servicing, and other energy-related activities; provision of a full-range of retail and wholesale telecommunications services; ownership and financing of an office building that its leased to Delmarva and/or its affiliates; oil and gas exploration and development; ownership of approximately 2.9% of the common stock of Chesapeake Utilities Corporation, a publicly traded gas utility company with gas utility operations in Delaware, Maryland and Florida;[3] gas-related activities; and a variety of unregulated investments. These activities, and the subsidiaries through which they are engaged, are described in detail in Appendix A to this order. On June 30, 1997, Delmarva's nonutility subsidiaries and investments constituted approximately 7.5% of the consolidated assets of Delmarva and its subsidiaries.

On June 30, 1997, there were 61,269,320 shares of Delmarva Common Stock, par value $2.25 per share, outstanding and 1,253,548 shares of Delmarva preferred stock outstanding. For the fiscal year ended June 30, 1997, Delmarva's operating revenues on a consolidated basis were approximately $1,256 million, of which approximately $1,018 million were derived from electric operations, $134 million from gas operations and $104 million from other operations. Consolidated assets of Delmarva and its subsidiaries at June 30, 1997 were approximately $2,992 million, consisting of approximately $2,531 million in electric utility property, plant and equipment; approximately $236 million in gas utility property, plant and equipment; and approximately $225 million in other corporate assets.

Atlantic's principal subsidiary is Atlantic City Electric Company (''ACE''), a public utility company engaged in the generation, transmission, distribution and sale of electric energy. ACE serves a population of approximately 476,000 customers in a 2,700 square-mile area of Southern New Jersey.[4]

Delmarva and ACE have undivided ownership interests in two nuclear plants: Peach Bottom Nuclear Generating Station, a Pennsylvania facility in which each company holds a 7.51 percent interest, and Salem Nuclear Generating Station, a New Jersey facility in which each company holds a 7.41 percent interest. Delmarva and ACE also hold undivided ownership interests in two Pennsylvania coal-fired thermal units, the Keystone and Conemaugh generating stations.[5]

Atlantic is engaged indirectly, through subsidiaries and associates, in a variety of nonutility activities. In general, these activities include: brokering of used utility equipment to developing countries; provision of utility consulting services related to the design of substations and other utility infrastructure; investment in leveraged leases of commercial aircraft and container ships; development and operation of independent power production projects; ownership and operation of thermal heating and cooling system; and provision of other energy-related services to business and institutional energy users. These activities, and the subsidiaries through which they are engaged, are described in detain in Appendix B to this order. As of June 30, 1997, Atlantic's nonutility subsidiaries and investments constituted approximately 8.9% of the consolidated book value of the assets of Atlantic and its subsidiaries.

As of June 30, 1997, there were 52,502,479 shares of Atlantic Common Stock, no par value, outstanding and no shares of preferred stock outstanding. For the year ended June 30, 1997, Atlantic had operating revenues on a consolidated basis of approximately $987 million. Total assets as of June 30, 1997 were approximately $2,758 million.

The electric service territories of ACE and Delmarva are not contiguous, and the companies are not directly interconnected. However, Delmarva and ACE, together with other members of PJM Interconnection, LLC (''PJM''), a regional power pool described below, have undivided interests in, or joint rights to use, certain 500 kv transmission facilities that are used to import power from the west and to deliver power from jointly owned power plants to their owner's systems. These facilities include a transmission line over the Delaware River and other extra-high voltage lines that directly connect the jointly owned power plant with lower voltage lines of PJM.

PJM is a ''tight'' power pool.[6] The application describes PJM as the largest

[2] The facility is used primarily as a peak-shaving facility for Delmarva's gas customers.

[3] The application requests the Commission to reserve jurisdiction over Conectiv's acquisition of the common stock of Chesapeake Utilities Corporation for a period of three years from the date of this order to permit Conectiv to effect an orderly disposition of the stock or otherwise comply with the requirements of the Act.

[4] ACE is also a holding company by reason of its ownership of Deepwater Operating Company (''Deepwater''), a public utility company. Deepwater owns no physical assets. It operates generating facilities in New Jersey for ACE.

ACE claims exemption from registration under section 3(a)(1) of the Act by rule 2. Prior to the consummation of the proposed mergers, Deepwater will be either merged into ACE or made a subsidiary of Atlantic Energy Enterprises, Inc., a holding company for Atlantic's nonutility subsidiaries.

[5] The application states that the four plants in which ACE and Delmarva hold ownership interests will account for a substantial proportion of Conectiv's generation resources, although the plants are located outside the utilities' traditional service areas.

[6] The Commission noted in *Untili Corp.*, Holding Co. Act Release No. 25524 (April 24, 1992):

Generally, a tight power pool consists of two or more electric systems which coordinated the planning and/or operation of their bulk power facilities for the purpose of achieving greater economy and reliability in accordance with a contractual agreement that establishes each member's responsibilities.

Tight power pools have centralized dispatch of generating facilities, whereby energy and operating reserves are interchanged among the participant systems and transferred over facilities owned by the individual participants. Participants have contractual requirements relating to generating

and most sophisticated centrally dispatched electric control area in North America, and the third largest in the world.[7] The PJM service territory includes all or part of Pennsylvania, New Jersey, Maryland, Delaware, Virginia and the District of Columbia. PJM's objectives are to ensure reliability of the bulk power transmission system and to facilitate an open-competitive wholesale electric market.

PJM became the first operational Independent System Operator[8] in the United States on January 1, 1998, managing the PJM Open Access Transmission Tariff and facilitating the Mid-Atlantic spot market. With the implementation of the Tariff, PJM began operating the nation's first regional, bid-based energy market.

In order to achieve economy and reliability in the bulk power supply within the PJM region, PJM members coordinate the planning and operation of their systems, share installed and operating reserves to reduce installed generator requirements, and participate in centralized unit commitment, coordinated bilateral transactions, and instantaneous real-time dispatch of energy resources to meet customer load requirements throughout PJM. Within the PJM pool, there is a wholesale energy market based on a ''split-the-savings'' energy exchange. There is also a reciprocal sharing of capacity resources and a competitive market is transmission entitlements to import energy.

Delmarva's generation and bulk transmission, and ACE's generation and transmission facilities are operated on an integrated basis with those of other PJM members. The PJM staff centrally forecasts, schedules and coordinates the operation of generating units, bilateral transactions and the spot energy market to meet load requirements.[9] To maintain a reliable and secure electric system, PJM monitors, evaluates and coordinates the operation of over 8,000 miles of high-voltage transmission lines. Operations are closely coordinated with neighboring control areas, and information is exchanged to enable real-time security assessments of the transmission grid. PJM provides accounting services for energy, ancillary services, transmission services, and capacity reserve obligations.

Conectiv was formed to become a holding company for Delmarva and Atlantic following consummation of the proposed mergers, as contemplated by a merger agreement dated as of August 9, 1996, as amended and restated as of December 26, 1996 (''Merger Agreement''). At present, Conectiv's common stock, consisting of 1,000 issued and outstanding shares, is owned by Delmarva and Atlantic, each of which owns 500 shares. The shareholders of Delmarva and Atlantic approved the proposed mergers at their respective meetings held on January 30, 1997.

Conectiv will serve approximately 921,000 electric customers in New Jersey, Delaware, Maryland and Virginia, and 102,000 gas customers in Delaware. The service territory of the Conectiv system will extend from the Virginia portion of the Delmarva Peninsula north to Atlantic City, New Jersey and west to Wilmington, Delaware. As of, and for the fiscal year ended, June 30, 1997, the combined assets of Delmarva and Atlantic would have totalled approximately $5.75 billion, the combined operating revenues would have totaled approximately $2.24 billion and the combined installed generating capacity would have totaled 4417 MW.

Conectiv believes that the mergers will lead to economies of scale through the elimination of duplicate facilities and positions, integration of corporate and administrative programs, improved purchasing and production capacity and reserves, and generally more efficient operations. Conectiv estimates that the mergers could result in net cost savings of more than $500 million during the ten-year period following the mergers. Conectiv expects approximately 59.55% of the savings to occur through labor reductions in redundant positions, 4.48% from reduced facilities, 21.51% from economies of scale and cost avoidance in corporate and administrative programs, 9,64% from purchasing economies for non-fuel materials and supplies, and 4.82% from purchasing economies for fuel and power purchases.

Under the Merger Agreement, DS Sub, Inc., a Delaware direct subsidiary of Conectiv formed for purposes of the merger,[10] will be merged with and into Delmarva, with Delmarva as the surviving corporation (''Delmarva Merger''), and Atlantic will be merged with and into Conectiv, with Conectiv as the surviving corporation (''Atlantic Merger'' and, together with Delmarva Merger, ''Mergers''). As a result of the Mergers, Delmarva and its direct subsidiaries and certain direct subsidiaries of Atlantic will become direct subsidiaries of Conectiv, and Conectiv will be a holding company within the meaning of the Act.

Upon consummation of the Mergers, each issued and outstanding share of Delmarva Common Stock will be converted into the right to receive one share of Conectiv common stock (''Conectiv Common Stock'') (''Delmarva Conversion Ratio''). Each issued and outstanding share of Atlantic common stock (''Atlantic Common Stock'') will be converted into the right to receive 0.75 shares of Conectiv Common Stock (''Atlantic Conversion Ratio'') and 0.125 shares of Class A common stock of Conectiv (''Conectiv Class A Common Stock'').[11] Based on the capitalization and the Delmarva Conversion Ratio and the Atlantic Conversion Ratio, the shareholders of Delmarva and Atlantic would own securities representing approximately 60.6% and 39.4%, respectively, of the outstanding shares of the Conectiv Common Stock, and the shareholders of Atlantic would own 100% of the outstanding shares of the Conectiv Class A Common Stock.

The Conectiv Class A Common Stock is a ''letter'' or ''tracking'' stock, designed to track the performance of the currently regulated electric utility business of ACE (''Targeted Business'').[12] The application states that the Conectiv Class A Common Stock, which will be issued only to the holders

capacity and operating reserves, together with specific financial penalties if these requirements are not met. Sufficient transmission capacity is made available to realize the full value of operating and planning coordination.

Id. at 10, n.22.

[7] Comparable tight pools are the New York Power Pool and the New England Power Pool (''NEPOOL'').

[8] Independent system operators are generally established to coordinate access to and delivery of electric power generated by a number of sources. The U.S. Department of Energy in an August 1997 report entitled *Electricity Prices in a Competitive Environment: Marginal Cost Pricing of Generation Services and Financial Status of Electric Utilities*, defines an ''Independent System Operator'' as ''[a] neutral operator responsible for maintaining an instantaneous balance of the grid system. The Independent System Operator performs its function by controlling the dispatch of flexible plants to ensure that loads match resources available to the system.'' *Id.* at 106.

[9] The PJM staff coordinates the planning of generation to meet combined peak loads of the control area. They coordinate planning of the interconnected bulk power transmission system to deliver energy reliably and economically to customers. PJM conducts many specialized planning studies within the pool and with surrounding entities.

[10] The authorized capital stock of DS Sub consists of 1000 shares of common stock, $0.01 par value, all of which is held by Conectiv.

[11] The outstanding shares of preferred stock of Delmarva and Atlantic will not be affected.

[12] In conjunction with the Mergers and the findings and recommendations of the New Jersey Commission on April 30, 1997, on the restructuring of the New Jersey electric industry, ACE expects to move all of its currently nonregulated operations out of ACE. ACE would retain only the Targeted Business.

of the Atlantic Common Stock, allocates proportionately more of the risks associated with the Targeted Business to Atlantic's current stockholders and, at the same time, provides them the opportunity to participate in proportionately more of the growth prospects of the Targeted Business. The Merger Agreement provides, subject to declaration by the Conectiv Board of Directors, and its obligation to react to the financial condition and regulatory environment of the company and its results of operations, that the dividends declared and paid on the Conectiv Class A Common Stock will be maintained at a level of $3.30 per share per annum until the earlier of July 1, 2001, or the end of the twelfth calendar quarter in which the Mergers become effective (''Initial Period''). The application-declaration states, that after the Initial Period, Conectiv intends to pay dividends to the holders of the Conectiv Class A Common Stock at a rate equal to 90% of net earnings attributable to the Targeted Business in excess of $40 million.[13] Through the use of the tracking stock, the holders of Atlantic Common Stock will retain more than half the benefits and risks relating to the Targeted Business after the Mergers.

Holders of the Conectiv Class A Common Stock will not have any specific rights or claims against the businesses, assets and liabilities of the Targeted Business, other than as common stockholders of Conectiv. Holders will be subject to risks associated with an investment in Conectiv and all of its businesses, assets and liabilities. Both holders of Conectiv Common Stock and holders of Conectiv Class A Common Stock will be entitled to one vote per share on all matters submitted to a vote at any meetings of stockholders, subject to the rights, if any, of holders of any outstanding class of preferred stock. The holders of Conectiv Common Stock and the holders of Conectiv Class A Common Stock will vote as one class for all purposes, except as may otherwise be required by the laws of Delaware.[14]

Both the Class A Common Stock and the Common Stock will be publicly traded, will have full voting rights and will be able to be evaluated through regular periodic filings under the Securities Exchange Act of 1934.[15] The Conectiv Class A Common Stock will have no preference or accrual rights. Further, the Conectiv Class A Common Stock will have the same priority in liquidation as the Common Stock.

The application explains that the use of two classes of Conectiv common stock was proposed during the merger negotiations as a means to address the merger partners' differing evaluations of the growth prospects of, and uncertainties associated with deregulation of, ACE's regulated electric utility business. The Boards of Delmarva and Atlantic determined that the use of tracking stock was necessary to bridge the companies' differing views concerning the appropriate conversion ratio for a business combination.

Delmarva currently has in place a long-term incentive plan and Atlantic has in place an equity incentive plan. Upon completion of the Mergers, a Conectiv plan will replace both plans.[16] The Conectiv plan provides for a maximum number of five million shares of Conectiv Common Stock available for issuance under the plan.

Prior to the consummation of the Mergers, Conectiv will form a subsidiary service company, Conectiv Resource Partners, Inc. (''Conectiv Resource'') (formerly Support Conectiv, Inc.), to serve the Conectiv system companies.[17] Conectiv Resource will provide a variety of administrative, management, engineering, construction, environmental and support services, including services relating to electric power planning, electric system operations, materials management, facilities and real estate, accounting, budgeting and financial forecasting, finance and treasury, rates and regulation, legal, internal audit, corporate communications, environmental matters, fuel procurement, corporate planning, investor relations, human resources, marketing and customer services, information systems and general administrative and executive management services.[18]

Conectiv Resource will enter into a service agreement with each associate company to which it renders services (''Service Agreement'').[19] In accordance with the Service Agreement, services provided by Conectiv Resource will be directly assigned, distributed or allocated to an associate company by activity, project, program, work order or other appropriate basis. Employees of Conectiv Resource will record transactions utilizing the existing data capture and accounting systems of each client associate company. Costs of Conectiv Resource will be accumulated in accounts of Conectiv Resource and directly assigned, distributed and allocated to the appropriate client company in accordance with the guidelines set forth in the Service Agreement.

It is anticipated that Conectiv Resource will be staffed by the transfer of current personnel of Delmarva, Atlantic and their subsidiaries. Conectiv Resource's accounting and cost allocation methods and procedures will be structured so as to comply with the Commission's standards for service companies in registered holding company systems. Conectiv states that the Service Agreement is structured so as to comply with section 13 of the Act and the Commission's rules and regulations under the Act. Thus, charges for all services provided by Conectiv Resource to associate companies will be

[13] The Merger Agreement further provides that if, and to the extent that, the annual dividends, paid on the Conectiv Class A Common Stock during the Initial Period exceeds 100% of Conectiv's earnings attributable to the Targeted Business in excess of $40 million per year during the Initial Period, the Conectiv Board may consider this fact in determining the appropriate annual dividend rate on the Conectiv Class A Common Stock following the Initial Period.

[14] There are also special provisions governing the conversion and redemption of the Conectiv Class A Common Stock, either at the discretion of Conectiv or in the event of a merger, tender offer or disposition of all or substantially all of the assets of the Targeted Business. A more complete description of the Conectiv Class A Common Stock is provided in the ''Description of the Company's Capital Stock'' on pages 75 to 97 of the Joint Proxy filed as Exhibit C–2 to the application. Risk factors associated with the dual class capital structure are also discussed extensively in the Joint Proxy on pages 14 to 22 under the heading ''Risk Factors.''

[15] The notes to the consolidated financial statements of Conectiv will include condensed financial information of ACE. Complete financial statements of ACE will continue to be filed with the Commission under the Securities Exchange Act of 1934 and will be available to Conectiv stockholders upon request.

[16] On January 30, 1997, the shareholders of Delmarva and Atlantic approved the Conectiv Incentive Compensation Plan, a comprehensive cash and stock compensation plan providing for the grant of annual incentive awards as well as long-term incentive awards such as restricted stock, stock options, stock appreciation rights, performance units, dividend equivalents and other types of awards as the committee of the Conectiv Board that will administer the plan deems appropriate.

[17] Conectiv Resource's authorized capital stock will consist of up to 3,000 shares of common stock, $1 par value per share. Conectiv requests authorization to acquire the voting securities of Conectiv Resource as part of the Mergers. Conectiv will hold all issued and outstanding shares of Conectiv Resource common stock.

[18] No change in the organization of Conectiv Resource, the type and character of the companies to receive services, the methods of allocating costs to associate companies, or the scope or character of services shall be made unless and until Conectiv Resource has given the Commission written notice of the proposed change not less than 60 days prior to the proposed effectiveness of the change. If, upon receipt of such notice, the Commission notifies Conectiv Resource within the 60-day period that a question exists as to whether the proposed change is consistent with the provisions of section 13 of the Act or related rules, Conectiv Resource will be required to file a declaration and the proposed change shall not become effective until authorized by order of the Commission.

[19] *See* Exhibit B–2 to the application.

on an at-cost basis, as determined under rules 90 and 91 under the Act.

The interested state regulatory authorities have approved the proposed Mergers and/or related matters. The Virginia State Corporation Commission approved the Mergers by order dated August 6, 1997. The Delaware Public Service Commission approved the Mergers by order dated September 23, 1997, the Pennsylvania Public Utility Commission, by order dated October 2, 1997, authorized the transfer of control of ACE and Delmarva to Conectiv through a transfer of stock. The New Jersey Board of Public Utilities approved the Mergers by order dated December 30, 1997. The Maryland Public Service Commission approved the Mergers by order dated July 16, 1997. The Federal Energy Regulatory Commission (''FERC'') approved the proposed Mergers on July 30, 1997.[20] The Nuclear Regulatory Commission approved the transfer of the nuclear power licenses to Conectiv by order dated December 18, 1997. Delmarva and Atlantic filed Premerger Notification and Report Forms with the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The applicable waiting period expired on August 25, 1997 without any comments being provided on the filing.

Fees and expenses in the estimated amount of $19,318,060 are anticipated in connection with the proposed transaction.

II. Discussion

The proposed acquisition by Conectiv of all of the issued and outstanding common stock of Delmarva and of Atlantic requires prior Commission approval under sections 9(a)(2) and 10 of the Act. The various issuances and sales of securities,[21] and related acquisitions of securities, involved in the Mergers are subject to sections 6(a) and 7, and 9(a)(1) and 10 respectively, of the Act.The proposed service agreements are subject to section 13 of the Act and rules 80–91, 93 and 94. The Commission has reviewed the proposed transactions and finds that the requirements of the Act are satisfied, except as to the matter over which jurisdiction is reserved.

A. Statutory Integration Requirements

As a preliminary matter, it is necessary to determine the extent to which the proposed principal system of Conectiv, *i.e.*, the combined electric properties of Delmarva and Atlantic, is an integrated public utility system within the meaning of section 2(a)(29)(A) of the Act. The Commission's application of the integration requirements of section 10(c)(1) of the Act, and by reference, section 11(b)(1), is central to its authorization of the proposed acquisition by Conectiv of Delmarva and Atlantic. Once this question is decided, it is necessary to consider whether Conectiv may own the Delmarva gas integrated system as an additional system.

1. Integration Standards

Section 10(c)(1) requires the Commission not to approve an acquisition that ''would be detrimental to the carrying out of the provisions of section 11.'' [22] Section 11(b)(1) of the Act, in turn, generally confines the utility properties of a registered holding company to a ''single integrated public-utility system,'' either gas or electric, as discussed below.[23]

Section 2(a)(29)(A) defines an integrated public-utility system, as applies to electric utility properties, to mean:

> a system consisting of one or more units of generating plants and/or transmission lines or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair * * * the advantages of localized management, efficient operations, and the effectiveness of regulation.

Section 2(a)(29)(B) defines an integrated public-utility system, as applied to gas utility properties, to mean:

> a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair * * * the advantages of localized management, efficient operations, and the effectiveness of regulation: *Provided,* That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

In view of the separate definitions and their differing criteria, the Commission has long held that gas and electric properties do not together constitute an integrated system.[24]

2. The Combined Electric Properties

On the basis of the statutory definition of an electric integrated public utility system, the Commission has established four standards that must be met before the Commission will find that an integrated public system will result from a proposed acquisition of securities:

(1) The utility assets of the system are physically interconnected or capable of physical interconnection;

(2) The utility assets, under normal conditions, may be economically operated as a single interconnected and coordinated system;

(3) The system must be confined in its operations to a single area or region; and

(4) The system must not be so large as to impair (considering the state of the art and the area or region affected) the advantages of

[20] *See Atlantic City Power Electric Company and Delmarva Power & Light Company,* Dkt. No. EC97–7–01 (July 30, 1997).

[21] These transactions include the issuance of Conectiv Common Stock in exchange for shares of Delmarva and Atlantic Common Stock and the issuance of Conectiv Class A Common Stock for Atlantic Common Stock.

[22] The Commission has interpreted this provision to bar a utility acquisition by a registered (or to-be-registered) holding company that would not be permissible under section 11(b)(1) of the Act. *See, e.g., Electric Bond and Share Co.,* 33 S.E.C. 21, 31, (1952).

Section 10(c)(1) further prohibits Commission approval of an acquisition that ''is unlawful under the provisions of section 8.'' Section 8 prohibits an acquisition by a registered holding company of an interest in an electric utility and a gas utility serving substantially the same territory without the express approval of the state commission when the state's law prohibits or requires approval of the acquisition.

New Jersey, Virginia, Delaware and Pennsylvania law do not prohibit the proposed ownership by Conectiv of both gas and electric properties. As previously noted, all of the interested state utility commissions have approved the proposed merger and/or related matters.

[23] The limitation in intended to eliminate evils that Congress found to exist ''when the growth and extension of holding companies bears no relation to * * * the integration and coordination of related operating properties.'' Section 1(b)(4) of the Act. Congress believed that, ''in the absence of clearly overriding considerations a utility system should have a management single-mindedly devoted to advancing the interests of its investors and consumers and not engaged, through the means of the holding company device, in operating other utility or non-utility businesses.'' *New England Electric System,* 41 S.E.C. 888 (1964), *rev'd, SEC* v. *New England Electric System,* 346 F.2d 399 (1st Cir. 1966), *rev'd and remanded,* 384 U.S. 176 (1965), *on remand,* 376 F.2d 107 (1st Cir. 1967), *rev'd,* 390 U.S. 207 (1968).

The ''other business'' clauses of section 11(b)(1) further limit the nonutility businesses of a registered holding company to those that are ''reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system,'' on a finding by the Commission that the interests are ''necessary or appropriate in the public interest or for the protection of investors of consumes and not detrimental to the proper functioning'' of the integrated system.

[24] *SEC* v. *New England Electric System,* 384 U.S. at 178, n.7 and the cases cited in the decision.

localized management, efficient operation, and the effectiveness of regulation.[25]

The combined electric properties satisfy each of these four requirements.

The Commission has previously determined that the physical interconnection requirement of the Act can be satisfied on the basis of contractual rights to use third parties' transmission lines, when the merging companies are members of a tight power pool.[26] In addition, Delmarva and ACE are interconnected through their undivided ownership interests in, and/or rights to use, the same regional generation facilities and extra-high voltage facilities, as well as through their contractual rights to use the transmission facilities of other members of the PJM regional power pool. Although it would be possible to construct a transmission line directly interconnecting Delmarva and ACE, Conectiv believes that such action is unnecessary because present transmission arrangements provide adequate service.[27]

The proposed Mergers also satisfy the requirement that the utility assets, under normal conditions, may be ''economically operated as a single interconnected and coordinated system.'' [28] The Commission has interpreted this language to refer to the physical operation of utility assets as a system in which, among other things, the generation and/or flow of current within the system may be centrally controlled and allocated as need or economy directs.[29] In approving the acquisition of Public Service Company of New Hampshire by Northeast Utilities, the Commission noted that ''the operation of generating and transmitting facilities of PSNH and the Northeast operating companies is coordinated and centrally dispatched under the NEPOOL Agreement.'' [30] Similarly, in *Unitil Corp.*, the Commission concluded that the combined electric utility assets of the companies may be operated as a single interconnected and coordinated system through their participation in NEPOOL.[31] In this matter, in addition to coordinated operation through PJM, Conectiv will have a central operating transmission and generation control center in Newark, Delaware. For these reasons, Conectiv will be able to operate its combined electric utility assets as a single interconnected and coordinated system.

The Commission's third and fourth requirements are also satisfied. The Conectiv electric system will operate in a single area or region in four contiguous states in the Mid-Atlantic region.[32] The system will not be so large as to impair ''the advantages of localized management, efficient operations, and the effectiveness of regulation.'' After the Mergers, Conectiv will maintain system headquarters in Wilmington, Delaware. This structure will preserve the benefits of localized management and the system, as described above, will facilitate efficient operations. Delmarva and ACE will continue to exist as subsidiaries of Conectiv, and their utility operations will remain subject to their respective state commissions. Delmarva and Atlantic have received the requisite orders from these regulators as a condition precedent to consummating the proposed Mergers.

The Commission finds that the combined electric properties of Delmarva and Atlantic will constitute an integrated public utility system. The Commission has further determined that the proposed acquisition by Conectiv of this electric integrated system will ''ten[d] towards the economical and efficient development of an integrated public-utility system,'' and so satisfy the requirement of section 10(c)(2) of the Act.

B. Proposed Ownership of Delmarva's Gas Operations

In addition to the principal electric integrated electric system, Conectiv proposes to acquire and retain the integrated gas public utility system of Delmarva.[33] Although section 11(b)(1) generally limits a registrant to ownership of a single integrated system, an exception to this requirement is provided in section 11(b)(1)(A)–(C) (''ABC clauses''). A registered holding company may own one or more additional systems, if each system meets the criteria of these clauses. Specifically, the Commission must find that (A) the additional system ''cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system,'' (B) the additional system is located in one or adjoining states, and (C) the combination of systems under the control of a single holding company is ''not so large * * * as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.''[34] The Commission has repeatedly held that a registered holding company cannot own properties that are not part of its principal integrated system unless they satisfy the ABC clauses.[35] Only clause A is at issue here.[36]

1. Requirements of Clause A

The Commission has construed the provisions of clause A to require an affirmative showing by a registrant that an additional system could not be operated under separate ownership without a loss of economies ''so important as to cause a serious impairment of that system,'' and ''substantial in the sense that they were important to the ability of the additional system to operate soundly.''[37] The Commission has applied this standard

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[25] *Environmental Action, Inc. v. SEC,* 895 F.2d 1255, 1263 (9th Cir. 1990), citing *Electric Energy, Inc.,* 38 S.E.C. 658, 668 (1958).

[26] *Unitil Corp.,* Holding Co. Act Release No. 25524 (Apr. 24, 1992).

[27] *See Unitil Corp.,* Holding Co. Act Release No. 25524, citing *Electric Energy Inc.,* 38 S.E.C. at 669 (direct interconnection not required in circumstances that would have resulted in an uneconomic duplication of transmission facilities).

[28] *See Cities Services Co.,* 14 S.E.C. 28, 55 (1943) (Congress intended that the utility properties be so connected and operated that there is coordination among all parts, and that those parts bear an integral operating relationship to one other).

[29] *North American Co.,* 11 S.E.C. 194, 242 (1942), *aff'd on constitutional issues,* 327 U.S. 686 (1946). The Commission explained that ''even though we find physical interconnection exists or may be effected, evidence is necessary that in fact the isolated territories are or can be so operated in conjunction with the remainder of the system that central control is available for the routing of power within the system.'' *Id.*

[30] *Northeast Utilities,* Holding Co. Act Release No. 25221 at n.85, *modified,* Holding Co. Act Release No. 25273 (Mar. 15, 1991), *aff'd sub nom. City of Holyoke* v. *SEC,* 972 F.2d 358 (D.C. Cir. 1992).

[31] *Unitil Corp.,* Holding Co. Act Release No. 25524.

[32] While Conectiv will have ownership interests in Pennsylvania, its service area will be limited to Virginia, Maryland, Delaware and New Jersey.

[33] As noted previously, Conectiv requests the Commission to reserve jurisdiction over Conectiv's acquisition of the Chesapeake Utilities Corporation stock for a period of three years from the date of this order to permit Conectiv to effect an orderly disposition of the stock or otherwise comply with the requirements of the Act.

[34] *North American Co.,* 11 S.E.C. at 206; and *New Century Energies, Inc.,* Holding Co. At Release No. 26748 (Aug. 1, 1997).

[35] *See, e.g. United Gas International Co.,* 9 S.E.C. 52, 65 (1941) (section 11(b)(1) permits more than one integrated system only if the additional system or systems meets the standards of the ABC clauses; a utility subsidiary is not retainable as part of an additional system unless those clauses are satisfied). *See also Philadelphia Co.,* 28 S.E.C. 35, 46 (1948), *aff'd,* 177 F.2d 720 (D.C. Cir. 1949). *Accord New Century Energies, Inc.,* Holding Co. Act Release No. 26748.

[36] As explained below, the proposed acquisition of the gas integrated system does not raise any issues under clauses B or C.

[37] *New England Electric System,* 41 S.E.C. at 892–93. The Commission has variously phrased the rule under clause A. *See SEC* v. *New England Electric System,* 384 U.S. at 181 (citing, among other orders, *Philadelphia Co.,* 28 S.E.C. at 46 (''For the economies to be 'substantial,' they must be 'important' in the sense that they are of such nature that their loss would cause a serious economic impairment of the system.'').

to the additional system in question, in light of the relevant facts and circumstances. In his matter, based on the relevant facts and circumstances, the Commission finds that the additional system may be owned and operated by Conectiv after the Mergers are consummated.[38]

Conectiv prepared and submitted a supplemental severance study (''Severance Study'') with respect to the gas operations. The analysis focuses upon the increases in operating costs that would result from divestiture.

In *New England Electric System* and earlier cases, the Commission took the approach of examining the substantiality of the estimated loss in relation to total revenues, expenses and income resulting from divestiture. The Commission suggested in an early leading decision that cost increases resulting in a 6.78% loss of operating revenues, a 9.72% increase in operating revenue deductions, a 25.44% loss of gross income and a 42.46% loss of net income would afford an ''impressive basis for finding a loss of substantial economies.''[39] The Severance Study indicates that the ratios in this matter are significantly higher than guidelines established in Commission precedent and thus would result in greater loss of economies if the gas system were severed. The record indicates that the cost increases that would result from severance of the gas operations here would satisfy, and in all instances exceed, those thresholds.[40] As set forth in the Severance Study, divestiture of the gas operation into a stand-alone company would result in lost economies of $14.7 million. On a percentage basis, the Severance Study indicates that divestiture of the gas operations would amount to 14.07% of gas operating revenues, 17.4% of gas operating revenue deductions, 73.42% of gross gas income and 105.88% of net gas income.

In order to recover these lost economies, the Severance Study indicates that the new stand-alone company would need to increase customer rates by about 14.8% ($15.5 million) in order to provide an 9.36% rate of return on rate base.[41] In the absence of rate relief, the Severance Study concludes that the lost economies would result in a 3.35% rate of return on rate base for the gas operations, a rate greater than the 2.01% projected stand-alone rate of return in *Unitil Corp.*, where retention was authorized.[42]

To the extent that competition between competing sources of energy remains a concern, the Commission notes that section 10(b)(1) of the Act, among other things, prohibits an acquisition that would result in ''the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers.'' The Commission's analysis under section 10(b)(1) includes consideration of federal antitrust policies. In addition, the FERC and the Antitrust Division of the U.S. Department of Justice, which typically have concomitant jurisdiction over merger transactions, consider the anticompetive consequences of the proposed transaction.[43] As previously noted, the FERC gas approved the proposed Mergers and no comments were received in conjunction with the Hart-Scott-Rodino filing.

The Commission finds that the requirements of clause A are satisfied with respect to Conectiv's ownership of the Delmarva gas operations as an additional integrated system.

2. Requirements of Clauses B and C

The proposed acquisition of the gas integrated system does not raise any issues under clauses B or C. With respect to clause B, the principal electric system to Conectiv will be located in New Jersey, Delaware, Maryland and Virginia; the additional gas system will be located in an adjoining state—Delaware. As required by clause C, the combination of systems under the ownership of Connectiv will not be ''so large * * * as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.''

C. Proposed Nonutility Interests of Conectiv

Section 11 (b)(1) limits the nonutility interests of a registered holding company to those that are ''reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system.'' The Commission must find that the interests are ''necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning'' of the integrated system. The Commission has interpreted these provisions to require the existence of an operating or functional relationship between the utility operations of the registered holding company and its nonutility activities.[44] With respect to new acquisitions, the Commission has interpreted section 10(c)(1) of the Act to mean that ''any property whose disposition would be required under section 11(b)(1) may not be acquired.''[45]

The Commission has examined the various nonutility interests that Conectiv seeks to acquire and has concluded that the statutory requirements for ownership are satisfied. The Commission has further concluded that Delmarva's and Atantic's existing investments in these activities, as of the date of consummation of the Mergers, should be disregarded for purposes of calculating the dollar limitation upon investment in energy-related companies under new rule 58.[46] As in previous similar matters involving to-be-registered holding companies, the Commission reaches this conclusion in view of the fact that the Mergers partners were not subject to the restrictions that section 11(b)(1) and relevant Commission precedent places upon the nonutility investments of registered system companies.[47]

D. Proposed Dual Class of Equity Stock of Conectiv

As discussed previously, the Merger Agreement contemplates that Delmarva stockholders will receive one share of Conectiv Common Stock in exchange for each share of Delmarva Common Stock. Atlantic stockholders will receive 0.75 shares of Conectiv Common Stock and 0.125 shares of a tracking stock,

[38] *See New England Electric System*, 41 S.E.C. at 893 (''a registrant seeking to retain an additional system has the burden of showing by clear and convincing evidence that such additional system cannot be operated under separate ownership without the loss of economies so important as to cause a serious impairment of that system'').

[39] *Engineers Public Service Co.*, 12 S.E.C. 41 (1942), *rev'd on other grounds and remanded*. 138 F.2d 936 (D.C. Cir. 1943), *vacated as moot*, 332 U.S. 788 (1947).

[40] *See* Exhibit J–I to the application.

[41] 9.36% is the effective cost of capital for the stand-alone gas business, based on use of the weighted average approximate costs for capital of Delmarva as of September 30, 1996.

[42] *See Unitil Corp.*, Holding Co. Act Release No. 25524.

[43] Under section 203 of the Federal Power Act, the FERC ''shall approve'' a merger if it is ''consistent with the public interest.'' *See Gulf States Utilities Co.* v. *FPC*, 422 U.S. 747, 758 (1973).

[44] *See generally Michigan Consolidated Gas Co.*, 444 F.2d 913 (D.C. Cir. 1971).

[45] *Texas Utilities Co.*, 21 S.E.C. 827, 829 (1946) (denying approval to acquisition of transportation company by registered holding company).

[46] *See* Holding Co. Act Release No. 26667 (Feb. 14, 1997), 62 FR 7900 (Feb. 20 1997) (adopting rule 58).

[47] *See, e.g., New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (proposed combination of utility and exempt holding company and stand-along utility). The Act is silent concerning nonutility diversification by exempt holding companies, such as Atlantic, and the Commission has never determined the limits upon diversification by these companies. *See, e.g., Pacific Lighting Corp.*, 45 S.E.C. 152 (1973) (two commissioners held that the nonutility activities of exempt holding companies should complement the utility operations; two other commissioners proposed guidelines under which utility activities would be separated from nonutility activities).

Conectiv Class A Common Stock, in exchange for each share of Atlantic Common Stock.

As explained above, the proposed issuance of tracking stock in this matter represents a means by which Delmarva and Atlantic addressed the difference in their evaluations of the overall impact of the growth prospects of, and uncertainties associated with deregulation of, the regulated electric utility business of Atlantic. The use of tracking stock in connection with the Mergers addresses the concerns of the managements of the merger partners and allows the respective stockholders of Delmarva and Atlantic to gain, as shareholders of Conectiv, the level of exposure that the companies' managements have deemed advisable to the growth prospects of the regulated utility business of Atlantic and the uncertainties associated with deregulation of that business.

Conectiv seeks authorization for issuance of the Conectiv Class A Common Stock under Section 7(c)(2)(A) of the Act. Section 7(c)(2)(A) provides for the issuance of securities ''solely * * * for the purpose of effecting a merger.'' [48] Section 7(d) of the Act provides in pertinent part, that if the requirements of section 7(c) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that:

(1) The security is not reasonably adapted to the security structure of the declarant and other companies in the same holding company system;

(2) The security is not reasonably adapted to the earning power of the declarant;

(3) Financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest; [or]

* * * * *

(6) The terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.[49]

The Commission has also considered whether the Class A Common Stock would give rise to any abuse that the Act is intended to prevent.[50] Various provisions of the Act are intended to ensure that a holding company system does not have an unnecessarily complicated capital structure or that voting power is unfairly or inequitably distributed among system security holders.[51] In these respects, it does not appear that the issuance of the Class A Common Stock would be detrimental to the interests of investors or consumers. There will be no effect on the legal title to Conectiv assets or the responsibilities for the liabilities of Conectiv or its subsidiaries.[52] The Class A Common Stock will be directly linked to the performance of the Targeted Business and thus adapted to the earning power of Conectiv. The Class A Common Stock will be subject to the requirements of the other federal securities laws and will be listed on the New York Stock Exchange.[53] The Class A Common Stock has all of the attributes of common stock, particular voting rights.[54] The only voting securities of Conectiv that will be publicly held after the Mergers will be Common Stock and Class A Common Stock. In addition to common stock of Delmarva, all of which will be held by Conectiv, Delmarva will continue to have 1,253,548 shares of outstanding voting preferred stock (not including 2.8 million shares of Quarterly Income Preferred Securities). The only class of voting securities of Conectiv's direct and indirect nonutility subsidiaries will be common stock. The shareholders of both Delmarva and Atlantic approved the proposed Mergers.

Set forth below are summaries of the historical capital structure of Delmarva and Atlantic as of June 30, 1997 and the *pro forma* consolidated capital structure of Conectiv as of June 30, 1997:

DELMARVA AND ATLANTIC HISTORICAL CONSOLIDATED CAPITAL STRUCTURES

[Dollars in thousands]

	Delmarva	Atlantic
Common Stock Equity	$942,322	$782,688
Preferred stock not subject to mandatory redemption	89,703	30,000
Preferred stock subject to mandatory redemption	70,000	113,950
Long-term Debt	923,710	786,187
Total	2,025,735	1,712,825.

CONECTIV PRO FORMA CONSOLIDATED CAPITAL STRUCTURE

[Dollars in thousands, unaudited]

	Conectiv
Common Stock (incl. additional paid in capital)	$1,461,721
Class A Common Stock	136,840
Retained Earnings	*266,630
Preferred stock not subject to mandatory redemption (of subsidiaries)	119,703
Preferred stock subject to mandatory redemption (of subsidiaries)	183,950
Long-term Debt	1,709,897

[48] The Commission notes that section 7(c)(1) provides that a declaration regarding the issuance of securities by a registered holding company cannot become effective unless it relates to certain specified types of securities including ''a common stock * * * being without preference as to dividends or distribution over * * * any outstanding security of the [holding company].'' Because authorization of the issuance of the Class A Common Stock is sought under section 7(c)(2), the Commission does not have to reach the question of whether the dividend rate of the stock constitutes a ''preference as to dividends'' for purposes of section 7(c)(1).

[49] Section 7(d)(4) requires the Commission to find that the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale, or distribution of the security are not reasonable. Section 7(c)(5) addresses the issuance of a guarantee or other assumption of liability.

[50] Section 1(c) of the Act directs the Commission to interpret all the provisions of the Act to meet the problems and eliminate the evils enumerated in section 1(a).

[51] *See* sections 10(b) of the Act (Commission is not to approve an acquisition that ''will unduly complicate the capital structure of the holding-company system'' or be ''detrimental to the public interest, the interests of investors or consumers or the proper functioning of [the] holding-company system''); 10(c)(1) (Commission is not to approve an acquisition that would be detrimental to the carrying out of the provisions of section 11''); and 11(b)(2) (Commission is to ensure that the corporate structure of a registered holding company ''does not unduly complicate the structure, or unfairly or inequitably distribute voting power among security holders''). *See, e.g., American Power & Light Co.* v. *SEC*, 329 U.S. 90 (1946) (upholding constitutionality of section 11(b)(2) and affirming orders requiring the dissolution of two subholding company subsidiaries of a registered holding company on the grounds of undue capital complexity).

[52] Pennsylvania was the only state to exercise jurisdiction over the transfer of stock involved in the Mergers. The order of the Pennsylvania Public Utility Commission approved the issuance of the Conectiv Class A Common Stock.

[53] The Commission has noted that: Concerns with respect to investors have been largely addressed by developments in the federal securities laws and in the securities markets themselves. Registered holding companies are subject to extensive reporting requirements under the Act. In addition, the securities of those companies are publicly held and are registered under the Securities Act of 1933. The companies are subject to the continuous disclosure requirements of the Securities Exchange Act of 1934. * * * The interest of investors is protected not only by the requirements of this Act but also by the disclosure requirements of these other statutes.

Southern Co., Holding Co. Act Release No 25639 (Sept. 23, 1992).

[54] *Compare Cities Service Co.*, 34 S.E.C. 28, 33–34 (1956) (Commission found an unfair and inequitable distribution of voting power in conflict with the standards of section 11(b)(2) where Class A stock represented approximately 46% of the combined common and Class A equity of the company, and the public holdings of Class A stock alone amounted to 35% of the combined equity, but the Class A had no voting power).

CONECTIV PRO FORMA CONSOLIDATED CAPITAL STRUCTURE—Continued

[Dollars in thousands, unaudited]

	Conectiv
Total	3,878,741

*The *pro forma* consolidated capital structure of Conectiv has been adjusted to reflect future nonrecurring charges directly related to the Mergers, which result in, among other things, the recognition of additional current liabilities and a reduction in retained earnings.

Conectiv's *pro forma* consolidated common equity to total capitalization ratio of 48% comfortably exceeds the ''traditionally acceptable 30% level.'' [55]

In view of all these considerations, the Commission has concluded that sections 7(d), 10(b) and 10(c) of the Act do not require any negative findings.

III. Conclusion

The Commission has carefully examined the application under the applicable standards of the Act, and has concluded that the proposed issuances, sales and acquisitions and related transactions are consistent with those standards. The Commission has reached these conclusions on the basis of the complete record before it.

Due notice of the filing of the application-declaration has been given in the manner prescribed in rule 23 under the Act, and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that, except as to the matter over which jurisdiction has been reserved, the applicable standards of the Act and rules are satisfied, and that no adverse findings are necessary:

It is ordered, under the applicable provisions of the Act and rules under the Act, that, except as to the matter over which jurisdiction has been reserved, the application-declaration, as amended, is, granted and become effectively immediately, subject to the terms and conditions prescribed in rule 24 under the Act;

It is further ordered, that jurisdiction is reserved over Conectiv's ownership of Chesapeake Utilities Corporation for up to three years from the date of this order; and

It is further ordered, that Conectiv will file a post-effective amendment no later than the end of that three-year period requesting the Commission to dispose of the matter over which jurisdiction is reserved, in the event that the matter is not moot.

[55] *Northeast Utilities*, Holding Co. Act Release No. 25221.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

Delmarva

Delmarva has seven direct nonutility subsidiaries: Delmarva Services Company, Delmarva Energy Company (''DEC''), Conectiv Services, Inc. (''CSI''), Conectiv Communications, Inc., Delmarva Capital Investments, Inc. (''DCI''), Conectiv Solutions LLC (''Solutions'') and East Coast Natural Gas Cooperative, L.L.C. (''ECNG'').

1. *Delmarva Services Company.* Delmarva Services Company, a Delaware corporation and a direct subsidiary of Delmarva, was formed in 1986 to own and finance an office building that it leases to Delmarva and/or its affiliates.[1] Delmarva Services Company also owns approximately 2.9% of the common stock of Chesapeake Utilities Corporation, a publicly-traded gas utility company with gas utility operations in Delaware, Maryland and Florida.[2]

2. *DEC.* DEC, a Delaware corporation and a direct subsidiary of Delmarva, was formed in 1975. It is currently engaged, directly and through its subsidiary, in rule 58 energy marketing activities.

Conectiv/CNE Energy Services LLC, a Delaware limited liability company in which DEC holds a 50% interest,was formed in 1997 to engage in rule 58 energy marketing activities in the New England states.[3]

3. *CSI,* directly and through subsidiaries, provides a wide range of energy-related goods and services to industrial, commercial and residential customers. CSI is engaged in the design, construction and installation, and maintenance of new and retrofit heating, ventilating, and air conditioning (''HVAC''), electrical and power systems, motors, pumps, lighting, water and plumbing systems, and related structures as approved by the Commission.[4]

a. Power Consulting Group, Inc., a Delaware corporation, was formed in 1997 to provide electrical engineering, testing and maintenance services to large commercial and industrial customers.[5]

b. Conectiv Plumbing, L.L.C., a Delaware limited liability company owned 90% by CSI, provides plumbing services primarily in connection with the CSA HVAC business. Conectiv Plumbing, L.L.C. was formed in 1998 in connection with the acquisition of an HVAC company. Under New Jersey law, an individual with a New Jersey master plumbing license must hold at least a 10% equity interest in a company providing plumbing services in New Jersey. To meet this requirement, the bulk of the acquired company's HVAC business was retained within CSI but the related and incidental plumbing services were spun down to a new subsidiary, Conectiv Plumbing, L.L.C., that is 10% owned by a master plumber.

4. *Conectiv Communications, Inc.,* A Delaware corporation and a direct sibsidiary of Delmarva, was formed in 1996 to provide a full-range of retail and wholesale telecommunications services.[6]

5. *DCI,* a Delaware corporation and a direct subsidiary of Delmarva, was formed in 1985 to be a holding company for the following unregulated investments. In addition DCI acts as a vehicle for the development and sale of properties that are not currently used or useful in the utility business.[7]

a. DCI I, Inc., a Delaware corporation and a wholly owned subsidiary of DCI formed in 1985 to invest in leveraged leases.[8]

b. DCI II, Inc., a Virgin Islands corporation and a wholly owned foreign sales subsidiary of DCI formed in 1985 to be involved in equity investments in leveraged leases.[9]

[1] *See UNITIL Corp.,* Holding Co. Act Release No. 25524 (Apr. 24, 1992) (subsidiary that had acquired real estate to support the system's utility operations deemed to be retainable under the standards of section 11(b)(1)).

[2] As noted previously, Conectiv has requested that the Commission reserve jurisdiction over the Chesapeake stock for a period of three years from the date of this order to permit Conectiv to effect an orderly disposition of the Chesapeake stock.

[3] *See* rule 58(b)(1)(v) (subject to certain conditions, no Commission approval is required for a registered holding company to acquire the securities of a company that derives substantially all of its revenues from ''the brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas or other combustible fuels''). *See also New Century Energies, Inc.,* Holding Co. Act Release No. 26784 (Aug. 1, 1997).

[4] *See Cinergy Corp.,* Holding Co. Act Release No. 26662 (Feb. 7, 1997) (''Cinergy Solutions Order'').

[5] Subject to certain conditions, rule 58(b)(1)(ii) exempts the acquisition of the securities of a company that derives substantially all of its revenues from ''[t]he development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations.'' *See also Allegheny Power System, Inc.,* Holding Co. Act Release No. 26085 (July 14, 1994) (investments in technologies related to power conservation and storage, conservation and load management, environmental and waste treatment, and power-related electronic systems and components).

[6] Section 34 of the Act provides an exemption from the requirement of prior Commission approval for the ownership by a registered holding company of interests in companies engaged in a broad range of telecommunications activities and businesses. Section 34 permits ownership of interests in telecommunications companies engaged exclusively in the business of providing telecommunications service upon application to the Federal Communications Commission for a determination of ''exempt telecommunications company'' status. Conectiv Communications, Inc. is an exempt telecommunications company under section 34 of the Act.

[7] DCI is managing real estate that was acquired for an intended utility purpose that has ceased to exist, to enable the utility to obtain the necessary rights of way for transmission lines and other utility operations. Unlike many other states, Delaware does not provide a right of condemnation for a franchised electric utility. Rather, the utility is often forced to acquire the underlying fee simple for a larger parcel in order to obtain an easement or right of way. The development and sale of these properties is a means of recovering the costs associated with their acquisition.

[8] *See Central and South West Corp.,* Holding Co. Act Release No. 23578 (Jan. 22, 1985) (approving leveraged lease investments by a registered holding company)

[9] *Id.*

c. DCTC-Burney, Inc., a Delaware corporation and a wholly owned subsidiary of DCI formed in 1987 to invest in ''qualifying facilities.'' [10]

i. Forest Products, L.P., a Delaware limited partnership, in which DCTC-Burney, Inc. is the sole 1% general partner, and which is a general partner in Burney Forest Products, A Joint Venture.

ii. Burney Forest Products, A Joint Venture, a California general partnership which is owned by DCTC-Burney, Inc. and Forest Products, L.P. The partnership owns a wood-burning qualifying facility in Burney, CA. DCTC-Burney, Inc.'s total direct and indirect ownership interest is 45%.

d. Luz Solar Partners, Ltd. IV, a California limited partnership which owns a solar-powered generating station in Southern California in which DCI owns a 4.7% limited partnership interest.[11]

e. UAH-Hydro Kennebec, L.P., a New York limited partnership which owns a hydro-electric project in which DCI owns a 27.5% limited partnership interest.[12]

f. Christiana Capital Management, Inc., a Delaware corporation and a wholly owned subsidiary formed in 1987, which owns an office building leased to associates.[13]

g. Delmarva Operating Services Company, a Delaware corporation and a wholly owned subsidiary of DCI formed in 1987, operates and maintains the following qualifying facilities under contracts with the plants' owners: the Delaware City Power Plant in Delaware City, DE; a qualifying facility in Burney, CA; and a qualifying facility in Sacramento, California, owned by the Sacramento Power Authority under a subcontract with Siemens Power Corporation.[14]

6. *Solutions*, a Delaware limited liability company, is jointly owned by Delmarva and Atlantic. Solutions was formed in 1997 to provide, directly or through subsidiaries, power systems consulting, end use efficiency services, customized on-site systems services and other energy services to large commercial and industrial customers.[15] Solutions, directly or through subsidiaries, provides energy management services, often on a turnkey basis. Energy management services may involve the marketing, sale, installation, operation and maintenance of various products and services related to the business of energy management and demand-side management, and may include energy audits; facility design and process enhancements; construction, maintenance and installation of, and training client personnel to operate energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies; design and specification of energy consuming equipment; and general advice on programs.[16] Solutions also provides conditioned power services, that is, services designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical system to ensure the level of power quality required by the customer, particularly with respect to sensitive electronic equipment, again as approved by the Commission.[17]

Solutions also markets comprehensive asset management services, on a turnkey basis or otherwise, in respect of energy-related systems, facilities and equipment, including distribution systems and substations, transmission facilities, electric generation facilities (stand-by generators and self-generation facilities), boilers, chillers (refrigeration and coolant equipment), HVAC and lighting systems, located on or adjacent to the premises of a commercial or industrial customer and used by that customer in connection with its business activities, as previously permitted by the Commission.[18] Solutions also provides these services to qualifying and non-qualifying cogeneration and small power production facilities under the Public Utility Regulatory Policies Act of 1978 (''PURPA'').[19]

Solutions provides consulting services to associate and nonassociate companies. The consulting services may include: technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services, risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar or related services.[20] Solutions also offer marketing services to nonassociate business in the form of bill insert and automated meter-reading services, as well as other consulting services, such as how to set up a marketing program.[21]

Solutions provides service Line repair and extended warranties with respect to all of the utility or energy-related services lines that enter a customer's house, as well as utility bill insurance and other similar or related services.[22] Solutions may also provide centralized bill payment centers for ''one stop'' payment of all utility and municipal bills, and annual inspection, maintenance and replacement of any appliance.[23] Solutions also is engaged in the marketing and brokering of energy commodities, including retail marketing activities.[24]

Solutions also provides other goods and services, from time to time, related to the consumption of energy and maintenance of property by those end-users, where the need for the service arises as a result of, or evolves out of, the above services and the incidental services do not differ materially from the enumerated services.[25]

In connection with its activities, Solutions from time to time may form new subsidiaries to engage in the above activities, or acquire the securities or assets of nonassociate companies that derive substantially all of their revenues from the above activities.

Provision of the above goods and services, which are closely related to the system's core energy business, is intended to further Conectiv's goal of becoming a full-service energy provider.

7. *ECNG*, a Delaware limited liability company in which Delmarva holds a 1/7th interest, is engaged in gas-related activities. Delmarva participates in ECNG to make bulk purchases of gas in order to improve the efficiency of its natural gas local distribution operations.[26]

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[10] A ''qualifying facility'' is defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''). Subject to certain conditions, Rule 58(b)(1)(viii) exempts the acquisition of the securities of a company that is primarily engaged in ''the development, ownership or operation of 'qualifying facilities'* * *, and any integrated thermal, steam host, or other necessary facility constructed, developed or acquired primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA.'' *See also New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1,1997); *Entergy Corp.*, Holding Co. Act Release No. 26322 (June 30, 1995); *Southern Co.*, Holding Co. Act Release No. 26212 (Dec. 30, 1994); *Central and South West Corp.*, Holding Co. Act Release No. 26156 (Nov. 3, 1994); *Central and South West Corp.*, Holding Co. Act Release No. 26155 (Nov. 2, 1994); and *Northeast Utilities*, Holding Co. Act Release No. 25977 (Jan. 24, 1994).

[11] *Id.*

[12] *Id.*

[13] *See Unitil Corp.*, Holding Co. Act Release No. 25524 (Apr. 24, 1992).

[14] *See supra* note 9.

[15] Upon consummation of the proposed transactions, Solutions will become a wholly-owned subsidiary of Conectiv.

[16] Subject to certain conditions, rule 58(b)(1)(i) exempts the acquisition of the securities of a company that derives substantially all of its revenues from ''[t]he rendering of energy management services and demand-side management services'' *See also Eastern Utilities Associates*, Holding Co. Act Release No. 26232 (Feb. 15, 1995); *Northeast Utilities*, Holding Co. Act Release No. 25114–A (July 27, 1990) and *New England Electric System*, Holding Co. Act Release No. 22719 (Nov. 19, 1982).

[17] *See supra* note 4.

[18] *Id.*

[19] *See* rule 58(b)(1)(viii) (an energy-related company can engage in the development, ownership or operation of ''qualifying facilities,'' as defined under PURPA, and any integrated thermal, steam host, or other necessary facility constructed, developed or acquired primarily to enable the qualifying facility to satisfy the useful thermal output requirements of PURPA). Solutions will not undertake any Asset Management Service without further Commission approval if, as a result thereof, Solutions would become a public utility company within the meaning of the Act.

[20] *See* The Cinergy Solutions Order; *see also* rule 58(b)(1)(vii) (relating to the sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations).

[21] *See Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26757 (Aug. 27, 1997) (the ''1997 CNG Order'').

[22] *See* the *Cinergy Solutions* Order.

[23] *See Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26363 (Aug. 28, 1995).

[24] *See supra* note 3.

[25] *See* the 1997 *CNG* Order.

[26] ECNG members provide emergency backup natural gas supplies to other members and jointly undertake the bulk purchase and storage of natural gas for use in their local distribution business. Because these activities are functionally related to the operations of the gas utility business of Delmarva, ECNG is retainable by Conectiv under section 11(b)(1). Further, upon Commission approval of the Mergers, ECNG will be exempt from all obligations, duties or liabilities imposed upon it by the Act as a subsidiary company or as an affiliate of a registered holding company or of a subsidiary company. *See* rule 16 under the Act.

Delmarva also has a nonutility subsidiary trust, Delmarva Power Financing I (''DPFI''), which was formed in 1996 in connection with the issuance by Delmarva of Cumulative Quarterly Income Preferred Securities.

Appendix B

Atlantic

Atlantic has three direct nonutility subsidiaries, Atlantic Energy International, Inc. (''AEII''), Atlantic Energy Enterprises, Inc. (''AEE''), and Solutions.[1]

1. *AEII*, a Delaware corporation, is a direct subsidiary of Atlantic formed in 1996 to broker used utility equipment to developing countries and to provide utility consulting services related to the design of sub-stations and other utility infrastructure. This subsidiary will wind down its business by June 30, 1998.

2. *AEE*, a New Jersey corporation, is a direct subsidiary of Atlantic formed in 1995 to be a holding company for Atlantic's non-regulated subsidiaries. Through its six wholly owned subsidiaries, and 50% equity interest in Enerval, LLC, a natural gas marketing venture, AEE has pursued growth opportunities in energy-related fields, that will complement Atlantic's existing businesses and customer relationships.

a. ATE, a New Jersey corporation and a wholly owned subsidiary of AEE formed in 1986, holds and manages capital resources for AEE. ATE's primary investments are equity investments in leveraged leases of three commercial aircraft and two container ships.[2] ATE owns a 94% limited partnership interest in EnerTech Capital Partners L.P., a limited partnership that will invest in and support a variety of energy technology growth companies.[3]

b. AGI, a New Jersey corporation and a wholly owned subsidiary of AEE formed in 1986. AGI develops, owns and operates independent power production projects.[4]

i. Pedrick Ltd., Inc., a New Jersey corporation and a wholly owned subsidiary of AGI, formed in 1989 to hold a 35% limited partnership interest in Pedricktown Cogeneration Limited Partnership.

ii. Pedrick Gen., Inc., a New Jersey corporation and a wholly owned subsidiary of AGI, formed in 1989 to hold a 15% general partnership interest in Pedricktown Cogeneration Limited Partnership.

iii. Vineland Limited, Inc., a Delaware corporation and a wholly owned subsidiary of AGI, formed in 1990 to hold a 45% limited partnership interest in Vineland Cogeneration Limited Partnership.

iv. Vineland General, Inc., a Delaware corporation and a wholly owned subsidiary of AGI, formed in 1990 to hold a 5% general partnership interest in Vineland Cogeneration Limited Partnership.

v. Binghamton General, Inc., a Delaware corporation and a wholly owned subsidiary of AGI, formed in 1990 to hold a 10% general partnership interest in Binghamton Cogeneration Limited Partnership, whose assets have been sold to a third party.

vi. Binghamton Limited, Inc., a Delaware corporation and a wholly owned subsidiary of AGI, formed in 1990 to hold a 35% limited partnership interest in Binghamton Cogeneration Limited Partnership, whose assets have been sold to a third party.

c. ATS, a Delaware corporation and a wholly owned subsidiary of AEE, formed in 1994. ATS and its subsidiaries develop, own and operate thermal heating and cooling systems. ATS also provides other energy-related services to business and institutional energy users. ATS has made investments in capital expenditures related to district heating and cooling systems to serve the business and casino district in Atlantic City, NJ. ATS is also pursuing the development of thermal projects in other regions of the U.S.[5]

i. Atlantic Jersey Thermal Systems, Inc., a Delaware corporation and wholly owned subsidiary formed in 1994, that owns a 10% general partnership interest in TELPI (as defined below).

ii. ATS Operating Services, Inc., a Delaware corporation and a wholly owned subsidiary formed in 1995 that provides thermal energy operating services.

iii. Thermal Energy Limited Partnership I (''TELPI''), a Delaware limited partnership wholly owned by Atlantic Thermal and Atlantic Jersey Thermal Systems, that holds an investment in the Midtown Energy Center. The Midtown Energy Center, which produces steam and chilled water, represents the initial principal operations of ATS. Currently, TELPI is operating the heating and cooling equipment of several businesses in Atlantic City, NJ. Some of these businesses will be served by the ATS district system once it is in commercial operation and others will continue to be served independently by ATS.

iv. Atlantic Paxton Cogeneration, Inc., a wholly owned subsidiary that is currently inactive and expected to be dissolved sometime in 1998.

v. Atlantic-Pacific Glendale, LLC, a Delaware limited liability company in which ATS holds a 50% interest, was formed in 1997 to construct, own and operate an integrated energy facility to provide heating, cooling and other energy services to DreamWorks Animation, LLC in Glendale, California.

vi. Atlantic-Pacific Las Vegas, LLC, a Delaware limited liability company in which ATS holds a 50% interest, was formed in 1997 to finance, own and operate an integrated energy plant to provide heating and cooling services to three affiliated customers in Las Vegas, Nevada.

d. CCI, a Delaware corporation and a wholly owned subsidiary of AEE formed in 1995 to pursue investments and business opportunities in the telecommunications industry.[6]

e. ASP, a New Jersey corporation and a wholly owned subsidiary of AEE formed in 1970 that owns and manages certain investments in real estate, including a 280,000 square-foot commercial office and warehouse facility in southern New Jersey. Approximately fifty percent of the space in this facility is currently leased to system companies and fifty percent is leased to nonaffiliates.[7]

f. AET, a Delaware corporation and a wholly owned subsidiary of AEE formed in 1991. AET is currently winding up its sole investment in technology. The Earth Exchange, Inc., which is nominal. There are no future plans for investment activity at this time by AET.

g. Enerval, a Delaware limited liability company. In 1995, AEE and Cenerprise, Inc., a subsidiary of Northern States Power established Enerval, formerly known as Atlantic CNRG Services, LLC. AEE and Cenerprise each own 50 percent of Enerval. Enerval provides energy management services, including natural gas procurement, transporation and marketing. Disucssions are underway for the purchase of AEE of Cenerprise's interest.[8]

3. *Solutions*, a Delaware limited liability company that is jointly owned by Delmarva and Atlantic, was formed in 1997 to provide, directly or through subsidiaries, power systems consulting, end use efficiency services, customized on-site systems services and other energy services to large commercial and industrial customers.[9]

ACE also has a nonutility subsidiary trust, Atlantic Capital I (''ACT''), which was formed in 1996 in connection with the issuance by ACE of Cumulative Quarterly Income Preferred Securities.

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BILLING CODE 8010–01–M

[1] ACE has a very small home security business, with annual revenues of less than $10,000, that is located exclusively in its service territory. The business incurs few costs at this point. Accordingly, Conectiv seeks to retain this business under section 11(b)(1). Although it is currently operated within ACE, it may be moved to a separate subsidiary of Conectiv. If this occurs, the subsidiary will apply for exempt telecommunications company status under section 34.

[2] *See Central and South West Corp.*, Holding Co. Act Release No. 23588 (Jan. 22, 1985).

[3] Activities involving ''the development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations'' are energy-related activities within the meaning of rule 58(b)(1)(ii). *See also New Century Energies*, Holding Co. Act Release No. 26748 (Aug. 1, 1997).

[4] *See supra* note 9.

[5] Subject to certain conditions, rule 58(b)(1)(vi) exempts the acquisition of the securities of a company that derives substantially all of its revenues from ''the production, conversion, sale and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources; and the servicing of thermal energy facilities.'' *See also New Century Energies*, Holding Co. Act Release No. 26748 (Aug. 1, 1997); *Cinergy Corp.*, Holding Co. Act Release No. 26474 (Feb. 20, 1996).

[6] It is contemplated that CCI will be merged with and into Conectiv Communications, Inc. *See supra* note 5.

[7] *See Central Power and Light Co.*, Holding Co. Act Release No. 26408 (Nov. 13, 1995).

[8] *See supra* note 15.

[9] Upon consummation of the proposed transactions, Solutions will become a wholly owned subsidiary of Conectiv.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23045; International Series Rel No. 1121; 812–10960]

Old Mutual South Africa Equity Trust, et al.; Notice of Application

February 26, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

Summary of Application

Order requested to permit a registered investment company to purchase certain shares of an affiliated issuer.

Applicants

Old Mutual South Africa Equity Trust (the ''Trust''), Old Mutual Asset Managers (Bermuda) Limited (the ''Adviser''), and Primedia Limited (''Primedia'').

Filing Dates

The application was filed on January 13, 1998. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

Hearing or Notification of Hearing

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 23, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 61 Front Street, Hamilton, Bermuda, Attention: Melanie Saunders.

FOR FURTHER INFORMATION CONTACT: Lawerence W. Pisto, Senior Counsel, at (202) 942–0527, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company organized as a trust under Massachusetts law and registered under the Act. The investment objective of the Trust is long-term total return in excess of that of the Johannesburg Stock Exchange (the ''JSE'') Actuaries All Share Index through investment in equity securities of South African issuers. Beneficial interests in the Trust are sold solely in private placement transactions to investment companies, common or commingled trust funds, or similar entities that are ''accredited investors'' within the meaning of Regulation D under the Securities Act of 1933, as well as to certain investment funds organized outside the United States. Old Mutual Fund Holdings (Bermuda) Limited, a wholly-owned subsidiary of the South African Mutual Life Assurance Society (''Old Mutual''), owns approximately 90.91% of the outstanding voting securities of the Trust.[1]

2. The Adviser is a wholly-owned subsidiary of Old Mutual and is registered under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Trust.

3. Primedia is a South African corporation. It is an integrated media and communications group. Primedia's ordinary shares are listed on the JSE. Applicants state that, for the period beginning the week of December 5, 1997 and ending the week of January 30, 1998, the unweighted average weekly volume of ordinary shares of Primedia traded on the JSE, as a percentage of the total number of ordinary shares of Primedia outstanding and calculated on an annualized basis, was 16.3%. Old Mutual, its wholly-owned subsidiaries and investment vehicles managed by Old Mutual and its wholly-owned subsidiaries, but excluding the Trust, (collectively, the ''Old Mutual Group'') indirectly own approximately 19.82% of the total outstanding ordinary shares of Primedia.[2] Applicants state that neither Old Mutual nor the Old Mutual Group control Primedia within the meaning of the Act.

4. Applicants state that it is common practice in the South African equity markets for placements to be offered to large institutional investors at a discount to the market price. Applicants also state that Old Mutual and its affiliates are major participants in the South African equity markets. In December 1997, Primedia offered to the Trust a private placing of 1,952,119 ordinary shares of Primedia (the ''Primedia Shares''), or approxiamtely 2.30% of Primedia's outstanding ordinary shares. On December 17, 1997 (the ''Subscription Date'') the Trust agreed to purchase the Primedia Shares on March 2, 1998. At the request or the Trust, Primedia agreed to defer the settlement date for the purchase of the Primedia Shares by the Trust to March 31, 1998 (such date or such other settlement date as to which the parties mutually agree, the ''Settlement Date''). The purchase price per Primedia Share is to be SA R21.82 (the ''Purchase Price''), which represents a 7.35% discount from the market price on the Subscription Date. The Trust's obligation to purchase the Primedia Shares is subject to the receipt of the requested order.

5. Applicants represent that while analysts employed by Old Mutual recommended the acquisition of the Primedia Shares, the decision to purchase the Primedia Shares was an independent decision made by the Adviser solely in the interests of the Trust and was not influenced by Old Mutual or its personnel. At a meeting held on February 13, 1998, the board of trustees of the Trust, including a majority of the independent trustees, approved the purchase of the Primedia Shares as in the best interests of the Trust and consistent with the requirements of Section 17(b) of the Act.

6. Applicants represent that the Primedia Shares have all the attributes of the Primedia ordinary shares listed on the JSE, and that the Primedia Shares are freely transferable under South African law. Applicants also state that the Trust has not entered into, and will not be subject to, any agreement or understanding, express or implied, that the Trust may not sell the Primedia Shares on the open market at any time after its purchase.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security to the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b)

[1] Based on holdings as of December 17, 1997.

[2] Based on holdings as of December 17, 1997.

any person directly or indirectly controlling, controlled by, or under common control with the other person, or (c) if the other person is an investment company, any investment adviser of that person.

2. Due to Old Mutual's ownership interest in Primedia, Primedia is an affiliated person of an affiliated person of the Trust. The sale of Primedia Shares to the Trust thus would be prohibited by section 17(a) of the Act.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the requested relief meets the standards set forth in section 17(b). Applicants state that the board of trustees of the Trust, including a majority of the trustees who are not interested persons of the Trust, approved the purchase of the Primedia Shares. Applicants also state that the transaction will comply with the requirements of rule 17a–7 under the Act, except that (i) the Purchase Price will be below the current market price, and (ii) the Trust and Primedia are affiliated persons by reason other than having a common investment adviser, common directors, and/or officers. Finally, applicants represent that the Trust will not purchase the Primedia Shares if on the Settlement Date the market price of the Primedia falls below the Purchase Price.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–5489 Filed 3–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release 34–39700; International Series Release No. 1122; File No. 600–20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

February 26, 1998.

Notice is hereby given that on January 7, 1998, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 (''Act'')[1] to extend ISCC's temporary registration as a clearing agency.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend ISCC's temporary registration as a clearing agency through February 28, 1999.

On May 12, 1989, the Commission granted, pursuant to Sections 17A and 19(a) of the Act[3] and Rule 17Ab2–1(c) thereunder,[4] the application of ISCC for registration as a clearing agency on a temporary basis for a period of eighteen months.[5] Since that time, the Commission has extended ISCC's temporary registration through February 28, 1998.[6]

One of the primary reasons for ISCC's registration as a clearing agency was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links between centralized, efficient processing systems in the United States and foreign financial institutions. ISCC serves this function through its Global Clearance Network service and through its settlement links with foreign clearing entities such as the Euroclear system, which is operated by the Brussels Office of Morgan Guaranty Trust Company of New York (''Euroclear'').[7]

As a part of ISCC's temporary registration, the Commission granted ISCC a temporary exemption from compliance with Section 17A(b)(3)(C) of the Act,[8] which requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors and administration of its affairs. The Commission granted this temporary exemption due to ISCC's limited participant base at that time. The Commission recently approved ISCC's new structure for matters relating to its corporate governance.[9] As a result of these changes, ISCC's board now consists of seven directors. Of the seven directors, NSCC selects two directors, both for one year terms. The other five directors (''participant directors'') are divided into three classes with staggered three year terms.

ISCC's nominating committee selects candidates for all vacancies on the nominating committee and for participant directors. Participants have the right to nominate candidates for the nominating committee and for participant directors through a petition signed by the lesser of 5% of all participants or fifteen participants. If a participant petition is filed or if the board nominates additional candidates to the nominating committee, the participants select the person to fill that vacancy.

In the order approving ISCC's governance changes, the Commission stated that ISCC's procedures for election of directors were consistent with its obligations to provide fair representation to its participants. Therefore, the Commission is eliminating ISCC's exemption from Section 17A(b)(3)(C) of the Act. The Commission believes that several issues need to be resolved prior to ISCC obtaining permanent registration. In particular, the Commission is reviewing the appropriate standard(s) of liability of a clearing agency to its members. Therefore, the Commission believes that ISCC's temporary registration should be extended for an additional twelve months.[10]

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application, including whether such application is consistent with the Act. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.[11] 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 application and all written comments will be available for inspection and copying at the Commission's Public Reference Room,

[1] 15 U.S.C. 78s(a).

[2] Letter from Julie Beyers, Associate Counsel, ISCC (January 6, 1998) (''Registration Letter'').

[3] 15 U.S.C. 78q–1 and 78s(a).

[4] 17 CFR 17Ab2–1(c).

[5] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

[6] Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; 30005 (November 27, 1991), 56 FR 63747; 33233 (November 22, 1993), 58 FR 63195; 36529 (November 29, 1995), 60 FR 62511; 37986 (November 25, 1996), 61 FR 64184; and 38703 (May 30, 1997), 62 FR 31183.

[7] Securities Exchange Act Release Nos. 29841 (October 18, 1991), 56 FR 55960 (order approving ISCC's Global Clearance Network service) and 32564 (June 30, 1993), 58 FR 36722 (order approving linkage with Euroclear).

[8] 15 U.S.C. 78q–1(b)(3)(C).

[9] Securities Exchange Act Release No. 38846 (July 17, 1997), 62 FR 39562.

[10] The Commission expects to continue to process ISCC's request for permanent registration during this temporary registration period.

[11] 15 U.S.C. 78s(a)(1).

450 Fifth Street, N.W., Washington, D.C. 20549. All submissions should refer to the File No. 600–20 and should be submitted by April 3, 1998.

It is Therefore ordered, pursuant to Section 19(a) of the Act, that ISCC's registration as a clearing agency (File No. 600–20) be and hereby is temporarily approved through February 28, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

[FR Doc. 98–5550 Filed 3–3–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3057]

State of California; Amendment 1

In accordance with a notice from the Federal Emergency Management Agency dated February 13, 1998, the above-numbered Declaration is hereby amended to include Amador, Fresno, Sacramento, and Solano Counties in the State of California as a disaster area due to damages caused by severe winter storms and flooding beginning on February 2, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of El Dorado, Inyo, Mono, and Tulare in the State of California may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is April 10, 1998 and for economic injury the termination date is November 9, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 20, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–5490 Filed 3–3–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3053; Amendment #3]

State of North Carolina

In accordance with notices from the Federal Emergency Management Agency dated February 10 and 13, 1998, the above-numbered Declaration is hereby amended to include Robeson County, North Carolina as a disaster area due to damages caused by severe storms and flooding, and to establish the incident period for this disaster as beginning on January 7, 1998 and continuing through February 12, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bladen, Columbus, Cumberland, Hoke, and Scotland in North Carolina and Dillon, Horry, and Marlboro Counties in South Carolina may be filed until the specified date at the above location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 16, 1998 and for economic injury the deadline is October 15, 1998.

The economic injury number for South Carolina is 975100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–5493 Filed 3–3–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3049]

State of Tennessee; Amendment #3

In accordance with a notice from the Federal Emergency Management Agency dated February 12, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 6, 1998 and continuing through February 12, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 13, 1998 and for economic injury the deadline is October 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 20, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–5491 Filed 3–3–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations. Notice is hereby given that Subchapter S2Q, the Office of Telephone Services, is being amended to reflect a revised mission statement, the abolishment of the Service Team, and the establishment of the Teleservice Planning and Operations Procedures Team. The new material and changes are as follows:

Section S2Q.00 *The Office of Telephone Services*—(Mission):

Amend to read as follows:

The Office of Telephone Services is responsible for planning, implementing, operating and evaluating SSA's telephone service to the public delivered by the National 800 Number and SSA Field Offices (FOs). The Office plans and conducts studies, pilots and analyses of 800 Number and FO telephone operations to assess and improve the service provided. The Office provides direct support to 36 TSCs and approximately 1,300 FOs, including developing and communicating uniform operating policies and procedures. The Office is responsible for providing the American public with world class 800 Number telephone service which provides: accurate, courteous, one-stop service with 95 percent access within 5 minutes; user-friendly automated services; and tools which empower employees to deliver total customer satisfaction. The Office maintains close, effective working relationships with SSA policy, program, regional and administrative components, with many other Federal agencies and with vendors which have important roles in the delivery and evaluation of SSA's telephone service to the public. This office manages SSA's National 800 Number network operation, designs and administers call routing plans, continuously monitors call handling and adjusts routing to handle emergency situations and to maximize call-answering effectiveness and efficiency.

Section S2Q.10 *The Office of Telephone Services*—(Organization):

Amend as follows:

A. The Associate Commissioner, Office of Telephone Services (S2Q).
B. The Deputy Associate Commissioner, Office of Telephone Services (S2Q).
C. The Immediate Office of the Associate Commissioner for Telephone Services (S2Q).

Delete:

D. The Service Team (S2QA).

Establish:

D. The Teleservice Planning and Operations Procedures Center

[12] 17 CFR 200.30–3(a)(16).

(S2QC).

Section S2Q.20 *The Office of Telephone Services*—(Functions):

Amend to read as follows:

A. The Associate Commissioner, Office of Telephone Services (S2Q).

B. The Deputy Associate Commissioner, Office of Telephone Services (S2Q).

C. The Immediate Office of the Associate Commissioner for Telephone Services (S2Q).

Delete in its entirety:

D. The Service Team (S2QA).

Establish:

D. The Teleservice Planning and Operations Procedures Center (S2QC).

1. Plans, designs, implements and evaluates studies of initiatives related to the effective management, operation and future direction of telephone services provided to the public by the national 800 number and FOs.

2. Provides leadership on SSA telephone service planning initiatives for the Office of Operations.

3. Researches and evaluates the application of innovative concepts and new technologies for SSA's public telephone service.

4. Designs, implements and maintains management information systems for SSA telephone service delivery. Analyzes data, evaluates trends and long-range needs and prepares executive-level reports.

5. Evaluates and plans for implementation of legislative issues that impact SSA's telephone service. Works with other SSA components, other Federal agencies and vendors to ensure quality public telephone services.

6. Plans, develops, implements and evaluates systematic measurement processes to assess the operational effectiveness and efficiency of SSA public telephone service operations.

7. Develops and maintains procedural guides, operational instructions and training materials for TSC and FO employees providing public telephone service.

8. Develops and evaluates plans for the effective utilization of TSC and FO resources and equipment relating to delivery of telephone services to the public.

9. Develops and evaluates operational telephone service quality review policies. Evaluates telephone service delivery training needs to ensure quality public service is provided.

Dated: February 4, 1998.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 98–5482 Filed 3–3–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2752]

Office of Defense Trade Controls; Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has rescinded its policy of denial and suspended its statutory debarment against the Armaments Corporation of South Africa, Ltd. (Armscor); the Denel Group (Pty) Ltd. (Denel) and its divisions; and any divisions, subsidiaries, associated companies, affiliated persons, and successor entities pursuant to Section 38(g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778) and § 127.11(b) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130).

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA and Section 127.7 of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes enumerated at Section 38(g)(1)(A) of the AECA and Section 120.27 of the ITAR. The term ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term ''party to the export'' means the president, the chief executive officer, and any other senior officers of the license applicant; and any consignee or end-user of any item to be exported.

Effective June 8, 1994, the Department of State implemented a policy of denial pursuant to Sections 38 and 42 of the AECA and Sections 126.7(a)(1) and (a)(2) of the ITAR for Armscor, Denel and its divisions (including Kentron (Pty) Ltd.), and any divisions, subsidiaries, associated companies, affiliated persons, and successor entities in response to an indictment returned in the U.S. District Court for the Eastern District of Pennsylvania charging Armscor and Kentron with violating and conspiring to violate the AECA (see 59 FR 33811, June 30, 1994).

Denel was not named in the indictment. Denel came into being when the South African Government restructured Armscor to separate the acquisition function from the manufacturing function. Armscor was assigned responsibility for procurement and acquisition, while Denel was assigned responsibility for production and manufacturing. Denel was therefore included in the Agreement Between the Government of the United States and the Government of the Republic of South Africa Concerning Cooperation on Defense Trade Controls. The company Kentron (Pty) Ltd., which had a separate legal status as a subsidiary of Armscor at the time of the indictment, has since become a division of Denel.

Subsequently, after the companies accepted plea agreements in connection with the criminal charges, the Department of State imposed statutory debarment against Armscor and Denel and its divisions effective February 27, 1997 (see 62 FR 13932, March 24, 1997).

Section 38(g)(4) of the AECA permits reinstatement of eligibility to apply for export/retransfer authorizations on a case-by-case basis after consultation with the Secretary of the Treasury and after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding that appropriate steps have been taken to mitigate any law enforcement concerns.

In accordance with these authorities, effective February 27, 1998, the policy of denial for all export license applications and other requests for approval involving Armscor and Denel and its divisions (including Kentron (Pty) Ltd.) has been rescinded and debarment has been suspended. The effect of this notice is that Armscor, Denel and its divisions, and any divisions, subsidiaries, associated companies, affiliated persons, and successor entities may participate in the export or transfer of defense articles, related technical data, and defense services subject to Section 38 of the AECA and the ITAR.

Dated: February 27, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 98–5715 Filed 3–3–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2753]

Office of Defense Trade Controls; Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has suspended its statutory debarment against Fuchs Electronics (Pty) Ltd. (Fuchs), the Fuchs Electronics Division of Reunert Limited, and, any divisions, subsidiaries, associated companies, affiliated persons, and successor entities pursuant to Section 38(g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778) and § 127.11(b) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130).

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA and Section 127.7 of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes enumerated at Section 38(g)(1)(A) of the AECA and Section 120.27 of the ITAR. The term ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term ''party to the export'' means the president, the chief executive officer, and any other senior officers of the license applicant; and any consignee or end-user of any item to be exported.

Fuchs pleaded guilty on February 27, 1997, to violating the AECA. Pursuant to a Consent Agreement between Fuchs and the Department of State, and an Order signed by the Assistant Secretary for Political-Military Affairs, the Department of State imposed statutory debarment against Fuchs, including the Fuchs Electronics Division of Reunert Limited effective February 27, 1997 (see 62 Federal Register 13933, March 24, 1997).

Section 38(g)(4) of the AECA permits reinstatement of eligibility to apply for export/retransfer authorizations on a case-by-case basis after consultation with the Secretary of the Treasury and after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding that appropriate steps have been taken to mitigate any law enforcement concerns.

In accordance with these authorities, effective February 27, 1998, the debarment against Fuchs, including the Fuchs Electronics Division of Reunert Limited, has been suspended. The effect of this notice is that Fuchs, the Fuchs Electronic Division of Reunert Limited, and, any divisions, subsidiaries, associated companies, affiliated persons, and successor entities may participate in the export or transfer of defense articles, related technical data, and defense services subject to Section 38 of the AECA and the ITAR.

Dated: February 27, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 98–5716 Filed 3–3–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PS–142; Notice 11]

Pipeline Risk Management Demonstration Program Electronic Teleconference

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation's Office of Pipeline Safety (OPS) will sponsor its fourth satellite-based video presentation on the Pipeline Risk Management Demonstration Program on Thursday, March 26, 1998, beginning at 2:00 p.m. The program will be aired over the Federal Emergency Management (FEMA) Agency's Emergency Education Network (EENET).

DATES: The electronic teleconference will be aired on March 26, 1998, from 2:00 p.m. to 4:30 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov), regarding the subject matter of this Notice. Contact the Dockets Unit (202) 366–5046, for other material in the docket.

SUPPLEMENTARY INFORMATION: The Demonstration Program tests an innovative regulatory approach to achieving superior safety performance by allowing pipeline operators to customize safety activities. OPS is currently consulting with several pipeline operators about participating in the Demonstration Program. The companies whose projects are under most active discussion at this time are Shell Pipe Line Company, Phillips Pipe Line Company, Chevron Pipe Line Company, Mobil Pipe Line Company, and the Natural Gas Pipe Line Company. Their pipelines go through the States of Colorado, Louisiana, Washington, Utah, Oregon, Arkansas, Nebraska, Kansas, Missouri, Iowa, Illinois, Indiana, New Mexico, Texas, Idaho, Oklahoma, Wisconsin, and Wyoming. As consultations near completion, more information will be distributed via company and project-specific prospectuses.

OPS seeks comments from individuals or groups who can provide information about local conditions, land use, geological factors, damage prevention efforts or the practices of these companies.

The broadcast will have three main program segments. First, OPS representatives will give an update on the status of the Demonstration Program. The next two segments will present videotaped highlights of panel discussions from a public meeting which was held in Houston, Texas, on November 19, 1997.

The first panel was made up of other Federal and State government representatives who discussed their perspectives on the Demonstration Program and its effect on their agency's efforts. The second panel was made up of interested representatives from the public sector. Both panels discussed issues relative to the Demonstration Program and made suggestions to both OPS and the candidate pipeline companies during their presentations.

Several live call-in periods are scheduled during this broadcast. Callers can ask questions of the panelists, raise issues from their presentations, or discuss the program with OPS officials. Several speakers from both panels will be available to provide further input on these topics. Representatives from the governmental panel will be State pipeline safety program managers: Joe Finan, Pennsylvania; Dennis Lloyd, Washington; Tony Karahalios, Colorado; and John Gawronski, New York. Representing the Community Perspective panel will be Dr. Martha Rozelle from the International Association for Public Participation, Ruth Ellen Schelhaus, publisher of the Local Emergency Planning Committee Newsletter, and Larry Miller, Channel Development Manager from the Houston Port Authority. If you have questions

you would like to have addressed on this or future broadcasts, please send them via e-mail to John Hess at: pipeline.safety@rspa.dot.gov.

The electronic teleconference will be broadcast via EENET, which has been broadcasting for more than ten years and has an extensive audience in the fire and emergency management communities. By using EENET, OPS has the opportunity to involve thousands of public safety and emergency management officials who routinely receive these programs. EENET sites use the widely available Ku and C band satellite dish technology.

The following are ways to view this broadcast:

- Set up a Television Receive-Only dish at your viewing facility.
- Ask your local television cable company to carry this EENET video broadcast.
- Contact your local government cable access office to carry the program. Many cable systems have dedicated internal cable channels to local governments to carry programs such as these to their offices and other facilities.
- Use a local facility which has a Television Receive-Only dish. Many schools (elementary, secondary, and community colleges), hospitals, or local hotels and motels have these facilities.
- Rent a portable Television Receive-Only dish and have it set up at your viewing place.

The technical information necessary to align the receiver dish with the satellite is as follows:

C-Band

Galaxy 4
Transponder: 22
Downlink Freq: 4140 MHZ
Audio Freq: 6.2/6.8 MHZ
Location: 99 degrees West
Polarity: Vertical

Ku-Band

GE–3
Transponder: 21
Downlink Freq: 12120 MHZ
Audio Freq: 6.2/6.8 MHZ
Location: 87 degrees West
Polarity: horizontal

- View the broadcast via Internet. Information, links to the show, and the necessary software to view it are found on the Town Meeting Homepage. The Internet address is http://ops.dot.gov/tmvid.htm.

If you need assistance in locating a satellite receive site, please call John Hess at (202)366–4576; E-mail John.Hess@rspa.dot.gov or, call EENET at 1–800–527–4893.

This broadcast and previous broadcasts are available on videotape. Individuals may contact their State pipeline safety office to borrow copies of the videotapes or may contact OPS. To request to borrow copies of the videotapes via the OPS Home page follow the instructions at http://ops.dot.gov, or contact OPS by E-mail at pipeline.safety@rspa.dot.gov.

Issued in Washington, D.C. on February 26, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–5494 Filed 3–3–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 24, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 3, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0199.

Form Number: IRS Form 5306–SEP.

Type of Review: Revision.

Title: Application of Approval of Prototype Simplified Employee Pension-SEP.

Description: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a Simplified Employee Pension Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 650.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hours, 8 minutes.

Learning about the law or the form—1 hour, 10 minutes.

Preparing the form—2 hours, 17 minutes.

Copying, assembling, and sending the form to the IRS—16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 7,696 hours.

OMB Number: 1545–0367.

Form Number: IRS Forms 4804 and 4802.

Type of Review: Extension.

Title: Transmittal of Information Returns Reports Magnetically/Electronically (4804); and Transmittal of Information Returns Reports Magnetically/Electronically (Continuation of Form 4804) (4802).

Description: 26 U.S.C. 6041 and 6042 require all persons engaged in a trade or business and making payments of taxable income must file reports of this income with the IRS. In certain cases, this information must be filed on magnetic media. Forms 4804 and 4802 are used to provide a signature and balancing totals for magnetic media filers of information returns.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government.

Estimated Number of Respondents/Recordkeepers: 37,640.

Estimated Burden Hours Per Respondent/Recordkeeper:

Preparing Form 4804—18 minutes.

Preparing Form 4802—20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 45,406 hours.

OMB Number: 1545–1036.

Form Number: IRS Form 8716.

Type of Review: Revision.

Title: Election to Have a Tax Year Other Than a Required Tax Year.

Description: Filed by partnerships, S Corporations, and personal service corporations, under section 444(a), to retain or to adopt a tax year that is not a required tax year. Service Centers accept Form 8716 and use the form information to assign master-file codes that allow the Center to accept the filer's tax return filed for a tax year (fiscal year) that would not otherwise be acceptable.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 40,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hours, 38 minutes.

Learning about the law or the form—1 hour, 12 minutes.

Preparing and sending the form to the IRS—1 hour, 17 minutes.

Frequency of Response: Other (one-time).

Estimated Total Reporting/Recordkeeping Burden: 204,400 hours.

OMB Number: 1545–1577.

Regulation Project Number: REG–109704–97 NPRM.

Type of Review: Extension.

Title: HIPAA Mental Health Parity Act; (Temporary) Interim Rules for Mental Health Parity.

Description: The regulations provide guidance for group health plans with mental health benefits about requirements relating to parity in the dollar limits imposed on mental health benefits and medical/surgical benefits.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 7,053.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 minute.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 3,289 hours.

Clearance Officer: Garrick Shear (202) 622–3869.

Internal Revenue Service, Room 5571 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860. Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–5539 Filed 3–3–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 25, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 3, 1998 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0006.

Form Number: TD F 90–22.49.

Type of Review: Extension.

Title: Suspicious Activity Report by Casinos.

Description: Nevada casinos will file Form TD F 90–22.49 after a customer or individual conducts a potentially suspicious transaction or activity, pursuant to Nevada Gaming Commission Regulation 6A, Section 100, which took effect on 10/1/1997. This form will be used by Criminal Investigators and regulatory enforcement authorities, during the course of investigations involving financial crimes.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 94.

Estimated Burden Hours Per Respondent/Recordkeeper:

Reporting—30 minutes.

Recordkeeping—5 minutes.

Frequency of Response: Other (as required).

Estimated Total Reporting/Recordkeeping Burden: 1,020 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–5540 Filed 3–3–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 26, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 3, 1998 to be assured of consideration.

Special Note: This PRA information collection was submitted to OMB on February 20, 1998.

U.S. Customs Service (CUS)

OMB Number: 1515–0213.

Form Number: Customs Forms 7551, 7552 and 7553.

Type of Review: Revision.

Title: Drawback Process Regulations and Entry Collection Documents.

Description: The information is to be used by Customs officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 8,150.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 27,500 hours.

Clearance Officer: J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–5541 Filed 3–3–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 26, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 3, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1564.

Regulation Project Number: REG–103330–97 Final, Temporary and NPRM.

Type of Review: Extension.

Title: IRS Adoption Taxpayer Identification Numbers.

Description: The regulations authorize the IRS to assign a new form of taxpayer identification number, the IRS Adoption Taxpayer Identification Number (ATIN), to children who are being adopted. The regulations are issued under section 6109 and are effective for tax returns due on or after April 15, 1998.

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–5542 Filed 3–3–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–17

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 Notice 98–17, Contributions to Foreign Partnerships Under Section 6038B.

DATES: Written comments should be received on or before May 4, 1998 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 notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Contributions to Foreign Partnerships Under Section 6038B.

OMB Number: 1545–1586.

Notice Number: Notice 98–17.

Abstract: This notice provides simplified reporting for transfers by U.S. persons to foreign partnerships under Internal Revenue Code section 6038B, as amended by the Taxpayer Relief Act of 1997. These reporting requirements can be relied on by transferors not subject to Code section 6038B to avoid a penalty under Code section 1494(c).

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 250.

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: February 24, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–5468 Filed 3–3–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–23

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 Revenue Procedure 98–23, Qualified Subchapter S Trust Conversions to Electing Small Business Trusts.

DATES: Written comments should be received on or before May 4, 1998 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 revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Subchapter S Trust Conversions to Electing Small Business Trusts.

OMB Number: 1545–1591.

Revenue Procedure Number: Revenue Procedure 98–23.

Abstract: This revenue procedure provides a method for taxpayers to obtain automatic consent to convert a Qualified Subchapter S Trust (QSST) to an Electing Small Business Trust (ESBT) as well as to convert an ESBT to a QSST.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,500.

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: February 24, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–5469 Filed 3–3–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Addendum

On November 1, 1996, notice was published at page 56606 of the **Federal Register** (61 FR 56606) by the United States Information Agency pursuant to Public Law 89–259 relating to the exhibit ''Jewels of the Romanovs: Treasures of the Russian Imperial Court.'' In addition to the first four venues listed therein, this exhibit will also be on temporary display at the Brooklyn Museum of Art from on or about March 16, 1998 to on or about July 5, 1998.

Dated: February 27, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–5667 Filed 3–3–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Love Forever: Yayoi Kusama, 1958 to 1968'' (See list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about March 8, 1998, to on or about June 8, 1998; the Museum of Modern Art, New York, NY, from on or about July 15, 1998, to on or about September 22, 1998 and the Walker Art Center, Baltimore, MD, from on or about December 12, 1998, to on or about March 7, 1999 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: February 27, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–5651 Filed 3–3–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning, Assistant General Counsel, at 202/619–5997; the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (70 Stat. 985, 22 U.S.C. 2549), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Recognizing Van Eyck'' (See list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Philadelphia Museum of Art, Philadelphia, Pennsylvania, from approximately April 4, 1998 through May 31, 1998, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: February 23, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–5507 Filed 3–3–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Carol Epstein, Attorney Advisor, at 202-619-6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547–0001.

Corrections

Federal Register

Vol. 63, No. 42

Wednesday, March 4, 1998

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 Parts 600 and 660

[Docket No. 971229312-7312-01; I.D. 121697C]

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

Correction

In rule document 97–34234 beginning on page 419, in the issue of Tuesday, January 6, 1998, make the following corrections:

1. On page 419, the ''Docket No.'' should read as set forth above.

2. On page 431, in the third column, in the shortspine thornyheads section, in the second line,. ''DTC'' should read ''DTS''.

3. On page 439, in the third column, in paragraph (c) introductory text, in the seventh line, ''backcod'' should read ''blackcod''.

4. On the same page, in the same column, in paragraph (c)(i), in the 10th line, ''thronyheads'' should read ''thornyheads''.

5. On the same page, in the same column, in paragraph (c)(ii):

a. In the first line ''*1988*'' should read ''*1998*''.

b. In the third line, ''37,999 lb'' should read ''37,000 lb''.

BILLING CODE 1505–01–D

federal register

Wednesday
March 4, 1998

Part II

Office of Personnel Management

Science and Technology Reinvention Laboratory Demonstration Project at the U.S. Army Research Laboratory (ARL); Notice

OFFICE OF PERSONNEL MANAGEMENT

Science and Technology Reinvention Laboratory Demonstration Project at the U. S. Army Research Laboratory (ARL)

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of demonstration project final plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995 authorizes the Secretary of Defense, with Office of Personnel Management (OPM) approval, to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology (S&T) Reinvention Laboratories. 5 U.S.C. 4703 authorizes OPM to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

DATES: This demonstration project may be implemented at the Army Research Laboratory on June 3, 1998.

FOR FURTHER INFORMATION CONTACT: ARL: Mr. Jack R. Wilson, II, U.S. Army Research Laboratory Building 202, 2800 Powder Mill Road, Adelphi, MD 20783–1197, 301–394–1105; OPM: Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, 202–606–1138.

SUPPLEMENTARY INFORMATION:

1. Overview

On March 12, 1997, [62 FR 11646] OPM published this proposed demonstration plan and received comments from nineteen employees, both oral and written, including four speakers at the two public hearings. In addition, questions were received from approximately 45 Army Research Laboratory (ARL) employees who asked for clarifying information. This information was provided to the ARL workforce via mail posted to an electronic bulletin board. The following is a summary of written and oral comments by topical area and a response to each:

A. Management Concerns

Comments: A number of employees who commented were greatly concerned that the demonstration project gives more authority and responsibility to laboratory supervisors and managers. It appears that many believe supervisors do not properly execute supervisory responsibilities under the current personnel management system and are not held accountable for their actions. These employees question the ability of ARL supervisors to competently and fairly implement their new authorities, and fear a new system that gives supervisors additional authority over their career and pay. Some also expressed concern over the absence of language in the proposal regarding diversity in the selection of representatives for various panels. For instance, one commenter indicated the demonstration project and specifically, the performance management system, would be used to discriminate against African American employees.

Response: The text of the project proposal has been modified in several places to clearly state the laboratory's commitment to implement supervisory and managerial accountability processes and emphasize that sensitivity to diversity issues is an important goal in all phases of personnel management. The laboratory acknowledges concerns expressed by employees and has attempted to build a number of checks and balances in the new personnel system to ensure a fair and equitably-administered program. These features include a Personnel Management Board which will provide oversight for the project, including specific responsibility for developing internal controls and accountability processes. Other balances in the plan include a pay for performance system which features a reconciliation process designed to balance high and low rating profiles; expanded use of panels to provide input and advice to supervisors in making personnel decisions regarding training and promotion; enhanced use of Alternative Dispute Resolution procedures and Last Chance Agreements in resolving conflict situations; and a commitment to develop a mechanism for employees to provide feedback to supervisors in an effort to further develop and improve supervisory skills and abilities. The laboratory also plans a thorough training program for all supervisors in the added responsibilities and accountabilities associated with the personnel demonstration interventions.

B. Broadbanding

Comments: The three comments received covered three distinct concerns. First, one comment stated that capping pay at the top of the highest grade in the pay band was discriminatory against older workers. Another reviewer recommended that GS–1102 Contract Specialists be deleted from the Administrative Occupational Family and be placed instead in either a ''professional'' family or in a separate family. Finally, one comment recommended that Installation Support Engineers and Scientists be moved into the Administrative Occupational Family and that the Engineer and Scientist Occupational Family be renamed ''Research Engineers and Scientists.''

Response: Salary caps outlined in the plan are essentially identical to the current pay caps inherent in Step 10 of each GS grade. Since traditional GS grades are combined into fewer pay bands under the plan, the effects of pay capping in the current system are somewhat diminished by the demonstration project. The Administrative Occupational Family in which GS–1102 positions have been placed already contains other professional occupational series such as Accountants and Attorneys. Placement of occupations within job families was based on similarity of qualification requirements, and the traditional OPM method of grouping work into professional, administrative, technical, clerical, and other (PATCO) categories, and with the understanding that under the demonstration competitive areas for reduction in force purposes have been defined in terms of occupational families. As a result we did not change the plan to place Research Engineers and Scientists in an occupational family apart from other engineering positions.

C. Engineer and Scientist Pay Band V

Comments: Two comments objected to wording which stated that employees in this band required primarily technical knowledges and skills and that managerial skills were secondary. Another observed that because of the current make-up of the workforce, women and minorities would not be represented on selection panels for Band V positions. And finally, a question was raised as to how Band V employees convert out of the Demo plan.

Response: Based on the comments received, the text concerning scientific and managerial skills and knowledges has been reworded to clearly state that Band V positions require expert scientific technical knowledges as well as strong managerial abilities. With regard to women and minority representation on the Band V panels, the commenter has raised an excellent point, and wording has been added to reflect the laboratory's commitment to constructing panel membership so that diversity of membership is ensured. The comment regarding how Band V employees convert out of the plan identified a serious oversight and wording has been added to describe

how this conversion will be handled. Revisions to this section also included technical changes to better describe how Pay Band V will function.

D. Pay for Performance

Comments: A total of twenty-three different points were made under this general heading. These included the opinion that objectives should not change during the rating period, particularly in the last 120 days; that the new system did not appear to link organizational goals to individual performance objectives; that objectives are not quantitative; and that there was not enough space on the evaluation form for the employee to adequately address yearly achievements. One comment pointed out an error in a sentence dealing with Performance Improvement Plans (PIPs) and Last Chance Agreements (LCAs), another pointed out an inconsistency in the designation of Elements 7 and 8 as mandatory/critical elements, and another suggested adding EEO to Element 7. In addition, there were three suggested changes on how employees could rate their supervisors (delink it from the appraisal, create standardized criteria, and make it mandatory) and one reviewer suggested the use of forced distribution to ensure an incentivized pay pool. One reviewer commented that this new system is too subjective and that the Total Army Performance Evaluation System (TAPES) should be improved instead of creating a new system; that Civilian Intelligence Personnel Management System (CIPMS) employees should be excluded from the plan; and that the benchmark point fixing was such that meaningful distinction could not be justified. This was accompanied by the suggestion that benchmark points be in 5 point increments rather than in the one point increment outlined in the plan. One reviewer stated that the new Pay for Performance (PFP) system conflicted with teaming and that all Labs should use the same wording to describe their performance elements. ARL also received one comment which suggested that career interns will lose money under the new plan when compared to what would have been received under the current system. One commenter suggested clarifying language changes to the Performance Conference Form. Finally one commenter was concerned that Installation Support Engineers and Scientists would be treated unfairly if competing in the same pay pool as Research Engineers and Scientists.

Response: Objectives and Performance Elements: Rather than having performance objectives remain fixed during the rating cycle, the ability to change objectives as work assignments change is considered an important flexibility in any performance management system. This flexibility prevents an employee from being rated against objectives that are no longer applicable or have changed due to fluctuations in the work. This ensures employees are properly recognized for the tasks they are actually performing. The proposed demonstration plan stated that the plan was designed to tie individual performance to organizational goals, and the description of the objective setting process clearly stated that objectives were ''to be based on the work unit's mission and goals.'' Regarding the comment that the objectives were not quantitative, there is nothing in the demonstration project that would prohibit wording objectives in quantitative terms. Training on the performance evaluation system will suggest that quantitative measures of objectives be incorporated wherever possible. As each of the five Army demonstration projects will operate in discrete environments, standardizing element titles serves no useful purpose. The only changes made to this section of the plan relate to the designation of Elements 7 & 8 as mandatory and/or critical and to the expansion of Element 7 to reflect sensitivity to diversity and to assure equity and fairness.

Appraisal Form: The appraisal forms were included in the proposed plan as examples of the tools available for raters during the performance evaluation process. As with all forms, they can be improved upon and the commenter has several good suggestions that will be adopted before implementation.

Employees Rating Supervisors: ARL has decided to delete the entire paragraph dealing with employees rating supervisors. More benefit would be derived by both the employee and the laboratory if employee feedback were given in a more informal setting and if the feedback were delinked from the performance appraisal process. A new provision has been included under Section F. ''Employee Development'' which calls for informal feedback to the supervisor which in turn will be used for developmental purposes.

Forced Distribution of Ratings: During the development of the project, many town hall meetings with employees were held and the question of forced distribution arose. It was clear that the majority of the work force was against such a policy. Therefore, the plan, in conformance with existing DoD policy, specifically prohibits such a practice; to alter that position would break faith with what was promised to laboratory employees.

Subjective System: The laboratory believes the proposed system improves on the current process. The use of benchmark standards in conjunction with the ability to weight performance elements to the exact requirements of each position provides the rater with a more quantitative way to rate performance than exists today. On the suggestion that benchmark point-fixing be in 5 point increments, there is nothing in the plan that would prohibit the rater from operating in 5 point increments if he/she so desired. However, it was decided to maintain the flexibility of the 1 point increment so that close shading and distinctions can be made during the evaluation process.

Intern Pay: With regard to the comments on intern pay, the twice annual appraisal process should provide ample opportunity for intern pay to be reviewed and adjusted as appropriate. The plan has been revised to reflect that procedures will be developed which will ensure comparability of the pay and promotion practices for interns.

LCAs and PIPs: Finally, the laboratory appreciates being informed of an error in wording in the section dealing with Last Chance Agreements and Performance Improvement Plans. The original wording indicated that two conditions had to be met before the supervisor could take appropriate follow-on action after instituting a PIP. This situation has been corrected.

Other: Language has been added to the Performance Conference Form for clarification. Since pay pools are based on organizational units, it is unlikely that Installation Support Engineers and Scientists would be in the same pay pool as Researchers. However, even if they were, the system is designed so that each is rated according to benchmark standards and objectives for his or her own job. As a result, no changes were made to the plan regarding the last two suggestions.

E. Pay Pools

Comments: There were nine comments/suggestions on this topic. One suggested that pay pool size be specifically limited, i.e., between 10 and 50; one suggested that specific penalties be levied on supervisors when appraisals were late; one suggested that the annual pay increase be added to the pay pool and that the Director have the ability to reward high performing pay pools. One reviewer wanted team leaders to be added to supervisory pay pools; another comment suggested that when team awards were granted that distribution be based on a unanimous

vote. One reviewer wanted the pay pool reconciliation process deleted. Finally, one reviewer wanted clarification of awards program language and wanted all pay pools to work under a single ARL-wide policy.

Response: One of the philosophical underpinnings of the plan is to ensure pay pools are created along organizational lines. Constructing pay pools in this manner allows the use of existing managerial authorities and relationships to facilitate various aspects of the plan. It is also believed that organizationally focused pay pools will facilitate teaming. The Personnel Management Board will make recommendations to the ARL Director about the size of pay pools, but conventional thinking is that a size of approximately 50 is necessary to have a properly funded pool.

The Personnel Management Board will develop methods to ensure performance appraisals are done on time. The Director's policy decisions will be published in the laboratory's implementing instructions for the demonstration.

From the beginning of the plan's development the laboratory has promised that all employees would receive annual pay increases and locality pay (as applicable) as provided by law and Presidential authority. To alter the plan on this point would break faith with the ARL workforce.

Team leaders within ARL function primarily as non-supervisory employees and are technically oriented, focused primarily on non-managerial issues. Therefore, team leaders are more appropriately placed in non-supervisory pay pools rather than in supervisory pay pools where the duties and responsibilities of the work are materially different.

The reviewer's suggestion that the distribution of team awards be based on a unanimous vote was considered, but the laboratory decided to maximize team autonomy and leave such decisions up to the individual teams.

A cornerstone of the pay for performance system is that raters in a pay pool meet to reconcile preliminary ratings. This reconciliation process is considered vital to achieving equity and fairness within the pool. Reconciling scoring between raters is one of several checks and balances built into the demonstration project to ensure that supervisors execute their new authorities in a responsible manner. Based on these analyses, no changes were made to the plan.

The project plan has been modified to permit the laboratory director to adjust the amount of funds in each pay pool as necessary to recognize exemplary performance of individuals or teams/groups. The plan also includes the provision that the Director may divert funds from other pay pools for this purpose.

The confusing language regarding the awards program has been deleted. The issue is clearly stated elsewhere in the plan. Language was also added to the plan to indicate that pay pools would operate within the guidelines of the Personnel Management Board.

F. Employee Development and Training

Comments: ARL received four comments generally related to employee development or training. One employee wanted to know whether managers would be tested for proficiency after demonstration program training was accomplished. One reviewer observed that encouraging rapid turnover of employees argued against the Laboratory's ability to develop its workforce and perform new mission work. One observed that the amount of money set aside for training employees on the plan's provisions was too small and finally, one suggested that some Cooperative Education Program (COOP) students be paid living expenses as an incentive to work at ARL.

Response: There are no plans to test supervisor proficiency as part of the implementation process; however, wording has been added on enhanced supervisory accountability which should strengthen this concept throughout the plan.

The Army Research Laboratory does not currently, or in any of the goals in this demonstration project, encourage rapid turnover in any form. In fact, it is believed that the demonstration project's provisions for correcting critical skills imbalances will indeed permit valued employees to be retrained to accomplish new mission work.

The amount of money projected for training the workforce and supervisors on the new personnel system was too small. A revised estimate has been developed and the language describing demonstration project costs has been clarified.

Regarding paying living expenses for COOPs, initiatives in this area do not fall within the purview of this demonstration authority which is limited to the rules and regulations contained in Title 5.

G. Reduction in Force

Comments: ARL received two suggestions that years of extra credit for RIF be averaged as in the current system and not added as is provided for in the plan. A third reviewer observed that the reliance on weighting performance in RIF was inconsistent with Congressional intent. Finally, one commenter stated the number of years allowed was too high (should be divided by a factor of 2) and suggested that all employees enter the demonstration with no additional years of credit for RIF and begin the new system on a level playing field.

Response: One of the basic foundations of the plan is to place increased emphasis on performance. One method of achieving this goal is to add and not average RIF retention years. In other words, one of the experimental ideas is that performance is more important than seniority by itself. Another goal of the demonstration project is to design a RIF system that will improve the retention of high performers.

The legislative proposal referred to by the commenter (the Omnibus Civil Service Reform Bill of 1996) was never adopted, and no evidence has been presented to indicate that the majority of Congress preferred to alter current rules which permit performance to be a factor in reduction in force. In fact, the legislation which permits this personnel demonstration project charges DoD to implement plans which are similar in nature to China Lake. One of the foundations in the Navy China Lake demonstration is a performance-based reduction in force system. Since the emphasis in this plan is on pay-for-performance it was decided to maintain the technique of adding, rather than averaging the years of RIF service credit.

H. Miscellaneous Comments

Comments: There were fifteen miscellaneous comments, suggestions and recommendations dealing with various aspects of the plan. One reviewer wanted all changes, not just major ones, to be published in the **Federal Register**, and suggested that requests for salary increases in excess of $5,000 be sent to higher headquarters. One reviewer observed that the current system should not be changed and did not want to participate. There were several suggestions that changes be made to the composition and operation of the Personnel Management Board. One employee wanted to know whether under the plan movement into the ''high grade'' category (old GS–14 and GS–15) was going to be as difficult as under the current system and another suggested that supervisors be placed under a three-year probationary period. One commenter suggested the Distinguished Scholar Program be considered as an addition to the project. Still another indicated that the plan was without

evaluation or internal controls and that an alternative way to convert employees out of the plan should be considered: Under this alternative arrangement, the comment suggests that the duties actually being performed be evaluated before pay is set prior to converting employees out of the plan. One reviewer suggested adding the recent laboratory initiatives in Alternative Dispute Resolution. Finally, one commenter questioned whether a conflict of interest would exist for industry employed people eligible for the Voluntary Emeritus Corps; suggested that conversion out of the demonstration should use step 2 rather than step 4 salary; and recommended that the pro-rated within grade increase buy-ins should be rounded up to the next pay period rather than the nearest week as described.

One commenter asked for an explanation of ''culturally relevant criteria'' used in Section II.B. ''Problems with the Current System''.

Response: Several of the suggestions would result in increasing administrative burdens on the laboratory. This is in conflict with one of the basic goals of the demonstration project. Therefore, it was decided not to publish all changes since that would be both costly and a significant administrative workload. Similarly, forwarding proposed promotions exceeding $5,000 to higher headquarters imposes an additional review level in the process and reduces rather than increases laboratory flexibility. Finally, to conduct classification reviews for each employee leaving the laboratory places an unacceptable workload burden on the personnel offices administering the plan.

Promotions from Pay Band 3 to Band 4 under this plan are expected to remain as difficult as promotions from GS–13 to GS–14 are under the current system for as long as controls on the number of high grade positions remain in place. The laboratory decided against changing the supervisory probationary period to three years because supervisory performance, unlike certain engineers and scientists can be adequately evaluated in a one-year period. Wording on Distinguished Scholar is not added as the current plan provides the full range of flexibilities necessary to recruit college graduates to the laboratory.

Enhanced accountability is a central concept of this proposal and the Personnel Management Board will be one of several groups that will be involved in the oversight of the demonstration. Other oversight will come from the Office of Personnel Management as well as elements with DoD and DA.

It was decided not to include the recent laboratory initiatives in the area of Alternate Dispute Resolution because they do not involve any waivers to law. Language was added to clarify that the demonstration project will enhance the use of Alternative Dispute Resolution for all conflict resolution to include grievances, disciplinary actions and EEO matters.

The question regarding potential conflicts of interest for industry-employed personnel eligible for the laboratory's new Voluntary Emeritus Corps is a good one and has been discussed by the Personnel Management Board. The suggestion will be considered for inclusion in the operating instructions to be developed prior to implementation of the project. The conversion out method was carefully crafted by experts in the field of compensation and represents a joint agreement among the five Army laboratories who published proposed demonstration projects in March 1997; therefore, the suggestion was not adopted. Finally, the method of pro-rating the amount of within-grade increases using weeks of the waiting period completed is consistent with the definition of waiting periods in the existing law and offers the employee the full amount earned. To round up as suggested would add unnecessary costs.

The statement regarding culturally relevant criteria is only part of the introductory material which attempts to explain why the cumbersome government-wide system is counterproductive to management in a changing environment. In particular, the culture of a research laboratory is considerably different from a typical bureau or agency, and the demonstration project attempts to tailor the personnel system to the laboratory environment.

2. Demonstration Project Changes

The following is a summary of substantive changes and clarifications which have been made to the project proposal. While not specifically listed, the laboratory also made a number of technical changes to correct errors or omissions or to meet other regulatory requirements.

(1) II. Introduction A. Purpose—Added wording to enhance supervisory accountability under the improved personnel management system.

(2) II. Introduction E. Participating Employees and Union Representation—Added wording to clarify that CIPMS employees will not be covered by the plan, but will follow the same performance appraisal and employee development provisions of the plan except where found to be in conflict with CIPMS.

(3) III. Personnel System Changes A. Broadbanding, Figure 1—An asterisk was added to the plan to more directly tie it to the text which follows.

(4) III. Personnel System Changes A. Broadbanding—Changed wording from January pay increase to periodic pay increases to reflect that pay increases may not always occur in January.

(5) III. Personnel System Changes A. Broadbanding—Clarified the requirement for significant managerial and supervisory expertise, and made several technical changes to reflect how Pay Band V will function.

(6) III. Personnel System Changes A. Broadbanding—Revised the description of the Pay Band V selection panel to ensure diversity of membership.

(7) III. Personnel System Changes B. Classification 8. Classification Appeals—Revised classification appeal rights to reflect that all appeals must go to the DoD appellate level before going to OPM.

(8) III. Personnel System Changes C. Pay for Performance 1. Overview—Revised language to read ''a performance payout'' rather than ''pay increases.''

(9) III. Personnel System Changes, C. Pay for Performance, 1. Overview—Deleted paragraph 2, line 8, column 3 (under the chart) as it was redundant, because issue was already explained clearer in another section of the plan.

(10) III. Personnel System Changes C. Pay for Performance 1. Overview—Changed the words ''base pay adjustment'' to ''performance payout.''

(11) III. Personnel System Changes C. Pay for Performance 1. Overview—Revised the description of the Director's authority to adjust the amount of funds assigned to pay pools. The authority has been expanded to include adjustments needed to recognize exemplary performance of individuals or teams/groups and contains the provision that the director may divert funds from other pay pools for this purpose.

(12) III. Personnel System Changes C. Pay for Performance 1. Overview—Added a sentence providing for the development of procedures which will ensure that intern salaries under the project will be comparable with current pay and promotion practices.

(13) III. Personnel System Changes C. Pay for Performance 2. The PFP Assessment Process—Clarified language concerning employees current grievance rights.

(14) III. Personnel System Changes C. Pay for Performance 2. The PFP

Assessment Process—Revised language to read ''performance payout'' rather than ''salary increases.''

(15) III. Personnel System Changes C. Pay for Performance 2. The PFP Assessment Process—Clarified definition of a critical element.

(16) III. Personnel System Changes C. Pay for Performance 2. The PFP Assessment Process—Revised the definition of performance element 7 ''Management/Leadership'' to specifically include sensitivity to diversity and to ensure equity and fairness.

(17) III. Personnel System Changes C. Pay for Performance 2. The PFP Assessment Process—Clarified internal inconsistency dealing with elements 7 & 8 being critical and/or mandatory for supervisors.

(18) III. Personnel System Changes C. Pay for Performance 2. The PFP Assessment Process—Deleted provision for employees to provide input to supervisors appraisals.

(19) III. Personnel System Changes C. Pay for Performance 3. Performance Which Fails to Meet Expectations C. Improving Performance—Reworded the sentence describing a PIP and LCA to remove unnecessary restriction.

(20) III. Personnel System Changes C. Pay for Performance 4. Pay Pools—Revised the wording describing the size of pay pools which will permit pay pool size to be greater than or less than 50.

(21) III. Personnel System Changes C. Pay for Performance 4. Pay Pools—Added the provision that reconciliation panels will work within operating procedures established by the Personnel Management Board.

(22) III. Personnel System Changes D. Hiring and Appointment Authorities 4. Voluntary Emeritus Corps—Removed the restriction which limited Voluntary Emeritus Corps to Engineers, Scientists and Technicians.

(23) III. Personnel System Changes E. Internal Placement and Pay Setting 1. Promotions—Revised the amount of money to be reviewed by the PMB for promotions, permitting the PMB to adjust the amounts of money they review.

(24) III. Personnel System Changes E. Internal Placement and Pay Setting 4. Staffing Supplements—Revised the wording concerning adjusting special rate schedules and the need to recompute the staffing supplement.

(25) III. Personnel System Changes F. Employee Development 2. Employee Development Panels—Revised the provision that a Continued Service Agreement will be a commitment to ARL rather than the government for ARL Sponsored Training.

(26) III. Personnel System Changes F. Employee Development—Added a new paragraph 4. Employee Feedback to Supervisors, which permits employees to provide feedback to their supervisors on their supervisory and managerial skills.

(27) III. Personnel System Changes H. Grievances, Disciplinary Actions and EEO—Revised the section on grievances and disciplinary actions to include reference to EEO issues and specifically encourage the use of ADR for grievance, disciplinary and EEO matters.

(28) V. Conversion B. Conversion or Movement From a Project Position to a General Schedule Position 2. Pay-Setting Provisions—Added a new paragraph to provide for converting an employee out of the demo from Pay Band V.

(29) V. Conversion B. Conversion or Movement From a Project Position to a General Schedule Position 2. Pay-Setting Provisions—Added new paragraph d. to describe certain pay retention events and renumbered the remaining paragraphs.

(30) VIII. Demonstration Project Costs C. Personnel Management Board—Revised overall responsibility of the Personnel Management Board to include: fair and equitable implementation; responsibility to establish internal controls and accountability; clarify description of membership; allow the Director to adjust membership on the board, and to clarify that the board's listed duties are examples. Made consistency changes to item VIII C. Personnel Management Board (f.).

(31) VIII. Demonstration Project Costs D. Developmental Costs—Revised wording to show that money reflected in Figure 4 is additional incremental projected annual expense.

(32) VIII. Demonstration Project Costs D. Developmental Costs Figure 4—Changed to reflect additional incremental training costs for FY98 of $30K and revised FY98 total.

(33) IX. Required Waivers to Law and Regulation—Changed waiver language to make it consistent with the plan.

(34) Appendix D Performance Management Forms—Revised the personnel management forms to reflect changes made in the text of the plan and to provide clarifying instructions.

Dated: February 26, 1998.

Office of Personnel Management.

Janice R. Lachance,

Director.

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I. Executive Summary

The project was designed by the Army Research Laboratory (ARL) with participation and review by the Department of Defense (DoD) and the Office of Personnel Management (OPM). The purpose of the project is to achieve the best workforce for the laboratory mission, adjust the workforce for change, and improve workforce quality. The project framework addresses all aspects of the human resources life cycle model. There are six major areas of change: (a) enhanced hiring flexibilities; (b) broadbanding; (c) automated classification; (d) a pay for performance system; (e) modified reduction in force procedures; and (f) expanded developmental opportunities.

ARL managers will exercise cost discipline in the development and execution of this project, which will be tied to in-house costs and consistent with the Department of the Army (DA) plan to downsize laboratories. ARL will manage and control its personnel costs to remain within established in-house budgets. An in-house budget is a compilation of costs of the many diverse components required to fund the day-to-day operations of a laboratory. These components generally include pay of people (labor, benefits, overtime, awards), training, travel, supplies, non-capital equipment, and other costs depending on the specific function of the activity.

Extensive evaluation of the project will be performed by OPM, OSD, and Department of the Army. The Army has

programmed a decision point 5 years into the project for continuance, modification, or rejection of the demonstration initiatives.

This plan represents a general description of the major interventions of the demonstration project. Specific procedures and regulations will provide details on how the personnel demonstration project will be implemented.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of Department of Defense (DoD) laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. The quality of DoD laboratories, their people, and products have been under intense scrutiny in recent years. The perceived deterioration of quality is believed to be due, in substantial part, to the erosion of control which line managers have over their human resources. This demonstration project, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

B. Problems With the Present System

The ARL mission is to execute fundamental and applied research to provide the Army the key technologies and analytical support necessary to assure supremacy in future land warfare. The ARL vision is a laboratory preeminent in key areas of science, engineering, and analysis relevant to land warfare; a staff widely recognized as outstanding; a laboratory seen by Army users as essential to their missions; and an intellectual crossroads for the technical community. ARL products contribute to the readiness of U.S. forces. To achieve this vision, ARL must hire and retain enthusiastic, innovative, highly-educated scientists and engineers to meet mission needs; also required is the ability to hire and retain dynamic, committed technical, clerical and administrative support personnel.

ARL finds the current Federal personnel system to be cumbersome, confusing, and unable to provide the flexibility necessary to respond to the current mandates of downsizing, restructuring, and possible closure while trying to maintain a high level of mission excellence. The present system—a patchwork of laws, regulations, and policies—often inhibits rather than supports the goals of developing, recognizing, and retaining the employees needed to realign the organization with its changing fiscal and production requirements.

The current Civil Service General Schedule (GS) system has 15 grades with 10 levels each and involves lengthy, narrative, individual position descriptions, which have to be classified by complex title 5 classification standards. Because these standards have to meet the needs of the entire federal government, they are frequently obsolete and often not relevant to the needs of ARL. Distinctions between levels are often not meaningful. Currently, standards do not provide for a clear progression beyond the full performance level, especially for scientific/engineering occupations where career progression through technical as well as managerial occupational families is important.

Performance management systems require additional emphasis on continuous, career-long development in a work environment characterized by an ever-increasing rate of change. Since past performance and/or longevity are the factors on which pay raises are currently assessed, there is often no positive correlation between compensation and performance contributions nor value to the organization. These limited criteria do not take into account the future needs of the organization nor other culturally relevant criteria which an organization may wish to use as incentives.

Finally, current rules on training, retraining and otherwise developing employee competencies make it difficult to correct skills imbalances and to prepare current employees for new lines of work to meet changing mission needs.

C. Changes Required/Expected Benefits

The demonstration project responds to problems in the classification system with a broadbanding classification system for GS employees; to problems in the current performance management system with a pay for performance system; to problems associated with downsizing with slightly modified reduction in force processes; and to problems of skills imbalances and rapidly changing missions with an enhanced developmental opportunities program.

D. Participating Organizations

The Army Research Laboratory (ARL) Director is located in Adelphi, Maryland. ARL employees assigned to the various laboratory directorates work at the locations shown in Appendix A.

E. Participating Employees and Union Representation

In determining the scope of the demonstration project, primary considerations were given to the number and diversity of occupations within the laboratory and the need for adequate development and testing of the Pay for Performance (PFP) System. Additionally, current DoD human resource management design goals and priorities for the entire civilian workforce were considered. While the intent of this project is to provide the Laboratory Director with increased control and accountability for the total workforce, the decision was made to initially restrict development efforts to General Schedule (GS/GM) positions.

To this end, the project will cover all ARL civilian employees under Title 5, United States Code except members of the Senior Executive Service (SES), employees classified in the Scientific and Professional (ST) pay plan, and Federal Wage System (FWS) employees. A decision point has been programmed for the end of two and one half years of the demonstration project to expand coverage to include FWS. In the event of expansion to FWS employees, full approval of the expansion plan will be obtained from the Department of the Army, DoD, and OPM. Civilian Intelligence Personnel Management System (CIPMS) employees covered by Title 10 are not covered but will follow the same performance appraisal and employee development provisions of this plan except where they are found to be in conflict with CIPMS. They will not be eligible for performance payouts because they are not contributing funds to the pay pools.

Performance awards for CIPMS employees will follow the procedures currently in place. Department of the Army and Major Subordinate Command centrally-funded interns are covered by the plan except for reduction in force (RIF) purposes. They will compete in a separate competitive area in the event of RIF. The series to be included in the project are identified in Appendix B.

The American Federation of Government Employees (AFGE), the National Federation of Federal Employees (NFFE), the International Association of Machinists and Aerospace Workers (IAM/AW), and the Fraternal Order of Police (FOP)

represent many ARL employees. The laboratory continues to fulfill its obligation to consult or negotiate with the unions who represent both professional and nonprofessional employees in accordance with 5 U.S.C. 4703(f) and 7117. Union representatives have been separately notified about the project. Of the more than 2600 employees assigned to the laboratory, approximately 600 are represented by labor unions.

F. Project Design

In December 1993, the ARL Director decided the laboratory needed a personnel system more like the personnel demonstration project then in effect at the National Institute for Science and Technology (NIST). A preliminary plan patterned after the NIST Personnel Demonstration Plan was developed and shared with the Commanding General, Army Materiel Command and the Deputy Assistant Secretary of the Army for Research and Technology where it received conceptual approval. The ARL Personnel Demonstration Project Office was then created and became the focal point for subsequent development efforts. In October 1994, the concept was briefed to representatives of DoD and other federal agencies. In November 1994 an Army Personnel Demonstration Team was formed with ARL designated as the lead. The team's charter was to develop the Army's Personnel Demonstration Concept Plan. In December 1994, this plan was approved by the Secretary of the Army.

In January 1995, ARL established a management structure designed to oversee the development of the demonstration proposal and to incorporate the workforce in the design efforts. This was accomplished by appointing an Executive Steering Committee, establishing a Staff Members Committee and discussing the project with unions. For most of 1995 various revisions were made to the ARL plan, many of which resulted from further DA and OSD staffing and coordination. In the Spring of 1996, the plan was ready for joint DoD and OPM review, which resulted in additional refinements. During this time, feedback was provided to ARL employees, through town hall meetings, electronic mail messages and memoranda, union briefings, and peer group review of draft implementing documents. The opinions and comments of the workforce have had a significant impact in the overall design of the demonstration project.

G. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. ARL will make minor modifications without further notice; major changes will be published in the **Federal Register** pursuant to OPM approval.

III. Personnel System Changes

A. Broadbanding

The ARL demonstration project will use a broadbanding approach to compensation and classification. Such an approach overcomes some of the problems experienced with the current system. A broadbanding system will simplify the classification system by reducing the number of distinctions between levels of work which will facilitate delegating classification authority and responsibility to line managers.

The project's broadbanding scheme will replace the current General Schedule (GS) grading structure. The broadband levels are designed to enhance pay progression and to allow for more competitive recruitment of quality candidates at differing rates within the appropriate pay band level(s). Competitive promotions will be less frequent and movement through the pay bands will be a more seamless process than today's procedure. Like the broadbanding systems used at China Lake and NIST, advancement within each pay band is based upon performance.

Occupational Families

Occupations at ARL have been grouped into four occupational families according to similarities in type of work and customary requirements for formal training or credentials. The common patterns of advancement within the occupations as practiced at ARL and in the private sector were also considered. The current occupations and grades have been examined, and their characteristics and distribution were used to develop the four occupational families described below:

1. *Engineers and Scientists.* This path includes all technical professional positions, such as engineers, physicists, chemists, psychologists, metallurgists, mathematicians, and computer scientists. Ordinarily, specific course work or educational degrees are required for these occupations. (Pay Plan DB)

2. *E&S Technicians.* This path consists of positions that directly support the various scientific and engineering activities of the laboratory. Employees in these positions are not required to have college course work. However, practical, quasi-professional training and skills in the various aspects of electronic, electrical, mechanical, chemical or computer engineering are generally required. (Pay Plan DE)

3. *Administrative.* This occupational family contains specialized functions in such fields as finance, procurement, personnel, public information, computing, supply, library science, and management analysis. Special skills in specific administrative fields or special degrees are normally required. (Pay Plan DJ)

4. *General Support.* This occupational family is composed of positions for which minimal formal education is needed, but for which special skills, such as office automation, typing, or shorthand may be required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries, guards, and mail clerks. (Pay Plan DK)

Each occupational family will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all occupational families. Each occupational family will be divided into three to five pay bands, each pay band covering the same pay range now covered by one or more GS grades. A salary overlap, similar to the current overlap between GS grades, will be maintained. The salary range of each band begins with step 1 of the lowest grade in that band and ends with step 10 of the highest grade in the band.

The specific grouping of GS grades into a particular pay band was based on a careful examination of grade levels that have proven difficult for managers, employees and classifiers to distinguish; current performance levels within occupations; and traditional laboratory training and career development practices.

FIGURE 1.—BROADBANDING

Occupational families	Corresponding GS grades															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
	Bands															
Engineers and Scientists	I				II							III		IV		V
E&S Technicians	I								II			III				
Administrative	I				II						III (*)			IV		
General Support	I				II			III								

*Administrative Pay Band III includes two full performance levels because not all work.

The pay bands for the occupational families and how they relate to the current GS framework are shown in Figure 1. assignments in band III will support movement to the top of the band. Positions that typically support the higher salaries perform non-supervisory work associated with formulating programs and policies with laboratory-wide scope and impact. Other positions perform supervision of operating level programs in one or more administrative fields. In order to move beyond the equivalent of the GS–12 Step 10 salary, duty and work assignments must satisfy the highest level of the criteria in the classification standard for this pay band.

Employees will be converted into the occupational family and pay band which correspond to their GS/GM series and grade. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule are increased due to general pay increases, the minimum and maximum salaries of the pay band levels will also move up. All employees will receive the general pay increases as the increases are approved, except for some employees in pay band V. Since the maximum rate for payband V is linked to ES–4, employees at or near the top of the band may not receive the full general increase if it is not authorized for SES employees. In addition, all employees will be eligible for future locality pay increases of their geographic area. (See Section III.E.4. for special provisions for employees in special rate categories.) Employees can receive additional pay increases based on their evaluations under the Pay for Performance Management System. Since pay progression through the pay bands is based on performance, there will be no scheduled Within-Grade Increases (WGIs) or Quality Step Increases (QSIs) for employees once the broadbanding system is in place.

There are several advantages to broadbanding. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized occupational families, and complements the other personnel management aspects of the demonstration project.

The ARL broadbanding plan expands the broadbanding concept used at China Lake and NIST by creating Pay Band V of the Engineers and Scientists occupational family. This pay band is designed for Senior Scientific Technical Managers.

Current legal definitions of Senior Executive Service (SES) and Scientific and Professional (ST) positions do not fully meet the needs of ARL. The SES designation is appropriate for executive level managerial positions whose classification exceeds the GS–15 grade level. The primary knowledges and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are reserved for bench research scientists and engineers; these positions require a very high level of technical expertise and they have little or no supervisory responsibility.

ARL currently has several positions, typically division chiefs, that have characteristics of both SES and ST classifications. Most division chiefs in ARL are responsible for supervising other GS–15 positions, including branch chiefs, non-supervisory research engineers and scientists and, in some cases ST positions. Most division chief positions are classified at the GS–15 level, although their technical expertise warrants classification beyond GS–15. Because of their management responsibilities, these individuals are excluded from the ST system. Because of management considerations, they cannot be placed in the SES. ARL management considers the primary requirement for division chiefs to be knowledge of and expertise in the specific scientific and technology areas related to the mission of their divisions. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders, who possess primarily scientific/engineering credentials, and are considered experts in their field. However, they must also possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as STs is not an option, because the managerial and supervisory responsibilities inherent in the positions cannot be ignored.

The purpose of Pay Band V (which will reinforce the equal pay for equal work principle) is to solve a critical classification problem. It will also contribute to an SES ''corporate culture'' by excluding from the SES positions for which technical expertise is paramount. Pay Band V attempts to overcome the difficulties identified above by creating a new category of positions, the Senior Scientific Technical Manager, which has both scientific/technical expertise and full managerial and supervisory authority.

Current GS–15 division chiefs will convert into the demonstration project at Pay Band IV. After conversion they will be reviewed against established criteria to determine if they should be reclassified to Pay Band V. Other positions possibly meeting criteria for classification to Pay Band V will be reviewed on a case by case basis. The salary range is a minimum of 120% of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (ES–4). Vacant positions in Pay Band V will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory

abilities. ARL will capitalize on the efficiencies that can accrue from central recruiting by continuing to use the expertise of the Army Materiel Command SES Office as the recruitment agent. Panels will be created to assist in filling Pay Band V positions. Panel members will be selected from a pool of current ARL SES members, ST employees and, later, those in Pay Band V, and an equal number of individuals of equivalent stature from outside the laboratory to ensure impartiality, diversity, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level.

DoD will test the establishment of Pay Band V for a five-year period. Positions established in Pay Band V will be subject to limitations imposed by OPM and DoD. Pay Band V positions will be established only in an S&T Reinvention Laboratory which employs scientists, engineers, or both. Incumbents of Pay Band V positions will work primarily in their professional capacity on basic or applied research and secondarily perform managerial or supervisory duties. The number of Pay Band V positions within the Department of Defense will not exceed 40. These 40 positions will be allocated by ASD (FMP), DoD, and administered by the respective Services. The number of Pay Band V positions will be reviewed periodically to determine appropriate position requirements. Pay Band V position allocations will be managed separately from SES, ST, and SL positions. An evaluation of the Pay Band V concept will be performed during the fifth year of the demonstration project.

The final component of Pay Band V is the management of all Pay Band V assets. Specifically, this authority will be exercised within DA and includes the following: authority to classify, create, or abolish positions within the limitations imposed by OPM and DoD; recruit and reassign employees in this pay band; set pay and appraise performance under this project's Pay for Performance System. The laboratory wants to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

B. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series which are divided into 22 occupational families. ARL currently has positions in 119 series which fall into 20 families. The occupational series, which frequently provide well-recognized disciplines with which employees wish to be identified, will be maintained. This will facilitate movement of personnel into and out of the demonstration project. New series, established by OPM, may be added as needed to reflect new occupations in the workforce.

2. Classification Standards

The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM Position Classification Standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of occupational family and pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the knowledges, skills, and abilities required. ARL will continue its current practice of using peer reviews to facilitate the classification process and in some cases will expand its use to meet the needs of the laboratory.

3. Classification Authority

The ARL Director will have delegated classification authority and may, in turn, re-delegate this authority to subordinate management levels, and ultimately to the lowest level of full supervision in each organizational segment. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process.

4. Position Descriptions

Under the project's classification system, a new position description will replace the current DA Form 374, Department of the Army Job Description. The classification standard for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide data element information pertinent to the job. Laboratory supervisors will follow a computer-assisted process to produce position descriptions. The objectives in developing the new descriptions are to: (1) simplify the descriptions and the preparation process through automation; (2) minimize the amount of writing and time required to create new position descriptions; and (3) make the position descriptions more useful and accurate tools for other functions of personnel management, such as recruitment, reduction in force, performance assessment, and employee development. Because there is little writing required in the automated system, supervisory writing style and ability as a hidden consideration in position classification are eliminated.

5. Specialty Work Codes

Specialty work codes will be used to further differentiate types of work and the skills and knowledges required for particular positions within an occupational family and pay band. Each code represents a specialization or type of work within the occupation. Supervisors will select appropriate specialty work codes to describe the work of each employee through the automated classification process.

6. Automated Classification Process

Writing the position description is accomplished by completion of the following steps using an automated system.

(a) The supervisor enters, by typing free-form, the organizational location and the employees name. From the menu, the supervisor selects the appropriate occupational series and title, occupational family, and pay band corresponding to the level of duties and responsibilities desired. The user will then select whether the position is a non-supervisor, team leader or supervisor.

(b) The supervisor enters a brief description of the primary purpose of the position by typing free-form at the appropriate point. From a menu, the supervisor will choose statements pertaining to operation of a motor vehicle; any unusual physical and travel requirements; required financial disclosure statements; and the position's sensitivity. The system will produce standardized statements of supervisory or team leader duties and responsibilities. The system will also produce a statement pertaining to positive education requirements, or their equivalencies, based on the occupational series selected.

(c) From a menu, the supervisor selects up to three specialty work codes which are appropriate to the job. The specialty work codes are subsets of the disciplines and describe particular skills and knowledges related to the kinds of work performed at ARL.

(d) The supervisor has the option of providing additional position information by typing free-form at an appropriate point at the end of the document. This area is to be used when the information addressed by the purpose of the position, specialty work codes, and functional classification codes are not completely adequate. The information will be used primarily to supplement skill and knowledge requirements and to refine competitive level decisions.

7. Fair Labor Standards Act (FLSA)

Fair Labor Standards Act exemption and nonexemption determinations will be made consistent with criteria found in 5 CFR (Code of Federal Regulations) part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria and the tentative conclusions programmed into the automated classification system so that the system will be able to generate the FLSA coverage based upon the user's selection of occupational family, pay band, and supervisory responsibility.

As a general rule, the FLSA status can be matched to occupational family and pay band. For example, positions classified in Pay Band I of any occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers who meet the definitions outlined in the OPM General Schedule Supervisory Guide and who spend 80% or more of the work week on supervisory duties. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA.

The generic position descriptions will not be the sole basis for the FLSA determination. Each position will be evaluated on a case-by-case basis by comparing the duties and responsibilities assigned, the classification standards for each pay band, and the 5 CFR part 551 FLSA criteria. The final review of the FLSA status will be made by the Civilian Personnel Operations Center (CPOC) based upon the above-mentioned material and any supplemental information such as that contained in established performance objectives.

The automated classification system will annotate the position description with a preliminary FLSA determination in accordance with Figure 2 below.

FIGURE 2.—FLSA

Occupational family	I	II	III	IV	V
E&S	N	N	E	E	E
E&S Technicians	N	N	E		
Administrative	N	N	E	E	
General Support	N	N	N		

8. Classification Appeals

An employee may appeal the occupational series, position title, and pay band of his or her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If the employee is not satisfied with the DoD response, he or she may then appeal to the Office of Personnel Management only after DoD has rendered a decision under the provisions of this demonstration project. Since OPM does not accept classification appeals on positions which exceed the equivalent of a GS–15 level, appeal decisions involving Pay Band V will be rendered by DoD and will be final. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under Title 5 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPOC providing personnel service and will include copies of appropriate demonstration project criteria.

C. Pay for Performance

1. Overview

The purpose of the Pay For Performance (PFP) System is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the laboratory workforce. It is essential for the development of a highly productive workforce and to provide management, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products. PFP allows for more employee involvement in the assessment process, increases communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable basis for salary changes.

PFP also creates a method to more directly link pay and performance. The system combines goal setting, tied to corporate objectives, with a letter grading system. The performance evaluations made under the demonstration project will ensure that top performers receive a performance payout commensurate with their achievements. The PFP System uses a four level summary pattern (Pattern E) under 5 CFR 430.208 (d) where a rating of C is equivalent to fully successful.

Employees within the laboratory will be placed into pay pools. Decisions regarding the amount of the performance payout are based on the relationship between performance ratings and present salaries. The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15/Step 10, except for employees in Pay Band V of the E&S Occupational Family. In this case, the salary range is a minimum of 120% of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for ES–4.

Cost discipline is assured within each pay pool by limiting the total base pay increases to the funds available in the base pay fund in the pay pool, based on what would have been available in the General Schedule system from within-grade increases, quality step increases and within-band promotions. The ARL

Director may adjust the amount of funds assigned to each pay pool as necessary to recognize exemplary performance of individuals or teams/groups, to ensure equity and to meet unusual circumstances. The ARL Director may divert funds from other pay pools for this purpose. No changes will be made to locality pay under the demonstration project and all employees continue to receive general pay increases.

The PFP system differs from the current system in that all the supervisors in a pay pool will meet to reconcile the scores given to each employee in the pay pool, with the purpose being to reach consensus on the type of achievements that warrant particular scores. After this reconciliation process is completed, final letter grades are assigned and payout proceeds according to each employee's final letter rating, score, and current salary.

The PFP System eliminates within-grade increases, quality step increases, in band promotions and performance awards, and replaces them with pay for performance payouts described above. Other awards such as special acts will continue to be awarded. The new system also provides the ability to give bonuses to employees who are at the top of the range in their pay band. Bonuses differ from pay increases in that they are not added to base salary but rather are given as a lump sum payment.

Interns in recognized DA career programs will be appraised semi-annually until they complete their internships. The second appraisal in each annual cycle will be considered the rating of record.

Procedures will be developed which will provide intern salary increases so as to ensure comparability with current pay promotion practices.

2. The PFP Assessment Process

At the beginning of the assessment cycle, the employee and rater will collaborate on the development of the employee's performance objectives, designation of the performance elements and which of these elements are critical, and their associated weights. An objective is defined as a statement of specific job responsibilities expected of the employee during the rating period. These are to be based on the work unit's mission and goals and should be consistent with the employee's job description. Performance objectives may be modified and/or changed as appropriate during the rating cycle. As a general rule, performance objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload changes occur. Performance objectives will be tailored to each individual employee. Use of generic one size fits all objectives will be avoided.

The supervisor and employee will discuss the performance objectives, which elements are critical, and what weight each carries in an attempt to reach agreement whenever possible. Disagreements will be handled through the normal chain of command. Management retains the right to establish objectives, identify which elements are critical, and their relative weights. Employees retain their current grievance rights. Use of Alternative Dispute Resolution is recommended. It is encouraged that disagreements be resolved at the beginning of the appraisal period.

How well work objectives are performed will be measured by a series of weighted performance elements, at least one of which must be identified as critical. A critical performance element is defined as a generic attribute of job performance that is of sufficient importance that performance below the minimum standard requires remedial action and may be the basis for removing the employee from the position. Specific information on the interrelationships between objectives and elements will be included in the implementing procedures for this plan.

Eight elements have been developed for evaluating the yearly performance of all laboratory personnel covered by this initiative: Technical Competence, Cooperation, Communication, Management of Time and Resources, Customer Relations, Technology Transition, Management/Leadership, and Supervision/EEO.

All employees will be rated against the first five performance elements. Element 6 is optional and is intended for those positions involving technology transition. Element 7 is optional and is intended for non-supervisory team leaders or program managers. Elements 7 and 8 are required for all supervisory positions. These eight elements are described below.

(1) Technical Competence. Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate occupational families, seeks and accepts developmental and/or special assignments. Adaptive to technological/organizational change. (Weight range: 15 to 50)

(2) Cooperation. Accepts personal responsibility for assigned tasks. Considerate of others views and open to compromise on areas of difference. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Readily/willingly gives assistance. Shows appropriate respect and courtesy. (Weight Range: 5 to 25)

(3) Communication. Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and easily understood. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight Range: 5 to 25)

(4) Management of Time and Resources. Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organization's resource development and conservation goals. (Weight Range: 15 to 50)

(5) Customer Relations. Demonstrates care for customers through respectful, courteous, reliable and conscientious actions. Seeks out, develops and/or maintains solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed. Within the scope of job responsibility, seeks out and develops new programs and/or reimbursable customer work. (Weight Range: 10 to 50)

(6) Technology Transition. Seeks out and incorporates outside technology within internal projects. Implements partnerships for transition or transfer of technology to other internal working groups, other government agencies, and/or commercial activities. (Weight Range: 5 to 50)

(7) Management/Leadership. Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Exercises leadership skills within the environment to include sensitivity to diversity and to assure equity and fairness. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises appropriate responsibility for positions assigned. (Weight Range: 5 to 50)

(8) Supervision/EEO. Works toward recruiting, developing, motivating, and

retaining quality employees; initiates timely/appropriate personnel actions, applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers employees. (Weight Range: 25 to 50)

The performance element titled Technical Competence is a mandatory critical element for all employees. In addition, all supervisors must be evaluated against both Management/Leadership and Supervision/EEO elements, Elements 7 and 8 respectively. Element 8, Supervision/EEO, will be identified as critical.

Other elements may be identified as critical as agreed upon between the rater and the employee. Generally any performance element that has been given a weight of 25 or higher should be identified as critical. Some elements weighted less than 25 (e.g., Communication or Cooperation) may also be critical; for instance, those that are considered so important to a particular job that failure to perform at an acceptable level would result in an overall performance evaluation of unsatisfactory. Weights on elements must add up to 100.

Appendix D contains the Performance Objective Worksheet and the Performance Appraisal form accompanied by a guidance form entitled, Point Ranges and Performance Element Benchmarks.

Pay pool managers will review objectives, critical element designations and weights prior to their implementation to ensure these are reasonable and fair and in keeping with expectations for each employee. As a general rule, essentially identical positions will have the same critical elements and the same weights.

The rater will provide periodic feedback to the employee on how well he/she is performing. If the rater judges that the employee is not performing at an acceptable level on one or more elements, the rater must alert the employee and document the problem. This feedback will be provided any time during the rating cycle especially if there is a problem. A mid-point counseling session is required. Deficiencies identified will be accompanied by a plan to correct them.

Employees will provide information on their accomplishments to the rater at both the mid-point and end of the rating period, similar to the current Army process. Employees may self-rate their performance elements and/or they may solicit input from team members, customers, peers, supervisors in other units, subordinates and other sources which will permit the rater to fully evaluate the contributions during the rating period. As a minimum, employees will provide the rater with an itemized list of their accomplishments during the rating period.

At the end of the rating period, the rater will score each of the performance elements by assigning a value between 0 and 100 percent of the weighted value assigned to each of the elements. The rater arrives at this score by referring to the performance element benchmarks found on the reverse of the performance appraisal form. The benchmark performance standards are written so they describe performance at 100 percent of the element; 70 percent; 50 percent and the Unsatisfactory level of performance. Using these benchmarks, the rater decides where on a continuum the performance of the employee fits and assigns a point value according to that determination. The chart to the right of the performance element benchmarks will be used to assign the specific point value. Scores will be summed and a letter rating assigned; i.e., 85–100=A, 70–84=B, 50–69=C. This rating will become the rating of record. A total score of 49 or below will result in an unsatisfactory rating. Failure to achieve at least the 50% level of any critical element will also result in an overall unsatisfactory rating.

The letter ratings will be used to determine pay or bonus values and to award additional RIF retention years as shown in Figure 3 below.

FIGURE 3.—RIF RETENTION AND COMPENSATION

Rating	Compensation	RIF Retention years added
A	3 or 4 shares	10
B	2 or 3 shares	7
C	0 or 1 share	3
U	0 shares	0

After a rating has been assigned, the rater recommends the number of shares that should be granted. This decision is based on an evaluation of the employee's current salary and level of performance (e.g., high B or low A) in comparison to similarly situated employees within the pay pool and overall funding availability. For example, an employee who receives a score of 84 and a final rating of B, but whose current salary is at the lower end of his/her pay band might receive the maximum number of shares (3) permitted for a B rating. In contrast, an employee who received a score of 85 which warrants a final rating of A, but whose salary is comparable to or above similar positions in the pay pool might receive 3 rather than 4 shares. A third example is that an employee who receives a score of 84 might receive the maximum number of shares based on the fact that it is a very high B or one point away from an A. The methods available for determining shares will allow ARL managers to adjust basic pay by considering differences in performance levels among employees in terms of comparability within ARL and the pay pool for similarly situated employees.

Upon approval of this plan, implementing procedures and regulations will provide details on this process to employees and supervisors.

3. Performance Which Fails to Meet Expectations

a. Continuing Performance Evaluation

Informal employee performance reviews will be a continuous process so that corrective action, to include a Performance Improvement Plan (PIP), may be taken at any time during the rating cycle. At least one review will be documented as a formal progress review. Whenever a supervisor recognizes that an employee's performance is at a level that could put him/her in danger of receiving an unsatisfactory rating, the supervisor will discuss the situation with the employee in an effort to identify the possible reasons for the poor performance, and may consider initiating the process for performance improvement in c. below if circumstances warrant.

b. End of Rating Cycle Performance Evaluation

Employee performance will be formally reviewed at the end of the rating cycle. If an employee's summary rating score is below 50 points, or if the employee fails a critical element, the employee will receive an unsatisfactory rating. Immediately upon assigning an unsatisfactory rating, the supervisor will take steps to correct the problem.

c. Improving Performance

In recognition that personality conflicts sometimes occur between a supervisor and an employee, or that an employee might be better suited to another type of work, the supervisor and employee may explore a temporary assignment to another unit in the organization. The supervisor is under no obligation to explore this option prior to taking more formal action.

If the temporary assignment is not possible or has not worked out, and the employee continues to perform at an unsatisfactory level or has received an unsatisfactory rating, written notification will be provided of the unsatisfactory performance in the element(s) at issue, and an opportunity to improve will be structured in a Performance Improvement Plan (PIP). The supervisor will identify the items/actions which need to be corrected or improved; will outline required time frames for such improvement; and will provide the employee with any available assistance, references, training and the like which might facilitate needed improvements. Progress will be intensively monitored during this PIP period; all counseling sessions will be documented.

If the PIP results in a score of 50 or above and/or the critical element which was failed is now acceptable, no further action is necessary. If the PIP does not improve performance to an acceptable level, the supervisor may propose to institute a Last Chance Agreement (LCA) with the employee. A Last Chance Agreement stipulates that if performance does not rise to the required level within a specified time frame the employee will be changed to a lower pay band, reduced in salary, or released from Federal service. The employee agrees to this last chance arrangement with the understanding that there are no grievance or appeal rights if the adverse action eventually has to be taken. The decision to enter into a last chance agreement is entirely voluntary on the part of the employee.

If the PIP does not improve performance to the acceptable level (and the employee elects not to enter into the LCA, if offered), the supervisor will take the appropriate follow-on action, such as change to lower pay band/occupational family, reduction in pay within the same pay band, or removal, as indicated by the circumstances of the situation. For the most part, employees with an unsatisfactory rating will not be permitted to remain at their current pay band or salary. Reductions in salary within the same pay band or changes to a lower pay band will be accomplished with a minimum of a 5% decrease in employee base pay. If the employee is reduced to a lower pay band, the salary will not exceed the highest level in that pay band.

4. Pay Pools

Pay pool structure is under the authority of the laboratory director. A pay pool must be large enough to allow for a range of ratings to encompass a reasonable distribution of ratings, typically 50. A pay pool manager's final yearly pay adjustment decisions may still be subject to higher management review. Supervisors will be placed in a pay pool separate from their employees.

The pay pool manager makes final decisions on pay increases and/or bonuses to individuals based on rater recommendation, the final score and letter rating, the value of the pay pool resources available, and the individual's current salary within a given pay band. Pay pool managers will not prescribe a distribution of rating levels. A pay pool manager may request approval from the Personnel Management Board (PMB) (described in VIII.C.) or its designee to grant a pay increase to an employee that is higher than the one generated by the compensation formula for that employee. Examples of employees who might warrant such consideration are those making extraordinary achievements or those serving as interns.

The amount of money available for performance payouts is divided into two components, base pay increases and bonuses. The amount of money which can be used for base pay increases within a pool is based upon the money that would have been available for within-grade increases, quality step increases, and grade level promotions that are now within the band. In the first year of the project, this amount will be set at 2.4% of the total of base salaries in the pay pool. The amount of money to be used for bonus payments is separately funded within the constraints of the overall awards budget. In the first year of the project, this amount will be set at 1.1% of the total of base salaries in the pay pool which reflects the funds previously available for performance awards. The sum of these two factors is referred to as the pay pool percentage factor. The Personnel Management Board will annually review the pay pool funding formula and recommend adjustments to the Director, to ensure cost discipline over the life of the demonstration project.

Performance pay increases (i.e., base pay increases) will not be granted to employees at the top of their pay band or in a pay retention status. In these cases, payouts earned as a function of performance will be paid as a bonus. In addition, a portion of the projected pay increase may be paid as bonus instead of base pay if required to keep the base pay portion of the pay pool from exceeding its maximum value (initially 2.4%).

In making the annual performance payouts under the PFP system, it will be necessary to determine the amount of that year's pay pool and share value. As explained above, the amount of the pay pool is the pay pool percentage (initially 3.5 percent) multiplied by the sum of the combined base salaries of covered employees. The share value will be calculated so that a pay pool manager will not exceed the resources that are available in the pay pool. The value of a share cannot be exactly determined until the rating and reconciliation process described below is complete. The estimated share value is about 1% of salary, but inflated ratings (if they occur) will reduce the value of the share. (Conversely, lower average ratings will increase the value of a share.) The share value is expressed as a percentage of base salary. It is computed by dividing the amount of the pay pool by the sum of each pay pool member's salary multiplied by his/her earned shares, or

Share value = (pay pool value)/(sum of (salary * shares) for each member).

Each individual's performance payout is calculated by multiplying the individual's base salary by the total value of his/her earned shares expressed as a percentage of base salary, or

Individual performance payout=salary * (earned shares * share value).

In summary, an individual's performance payout is computed as follows:

Individual performance payout = SALi * Ni * SV,

Where: SV = share value = (pay pool value) / SUM (SALk * Nk); k = 1 to n

Pay pool value = (pay pool percentage factor) * SUM (SALk), k = 1 to n

n = number of employees in pay pool

i = an individual employee

N = Number of shares earned by an employee based on his/her performance rating (0 to 4)

SAL = An individual's base salary and

SUM = The summation of the entities in parentheses over the range indicated.

This formula ensures that a share represents a fixed percentage salary increase for all employees in a pay pool.

After the payout and share value calculations have been completed, the pay pool manager must calculate the proportion of payouts to be paid as base pay vs bonus. If base pay increases would exceed the authorized percentage, shares must be paid out as base pay increases only up to the limit, and the remainder paid as a bonus. This base/bonus proportion will be constant for all uncapped employees. This process will preserve the principle that all shares maintain equal (percentage) value, and will ensure that all of the

allocated funds are disbursed as intended.

Pay pool managers will establish and chair a panel to review supervisors preliminary ratings and make any necessary adjustments. The panel will comprise all rating supervisors below the pay pool manager. The reconciliation process gives raters the opportunity to verify that their preliminary evaluations and approach to scoring conform with that of other raters within the pay pool and assures that performance assessments of employees are comparable and equitable across organizational lines. In this step, each employee's preliminary performance element scores are compared and through discussion and consensus building, final ratings are determined. The reconciliation process is aimed at determining the relative worth of employee accomplishments.

The rationale behind reconciliation is that supervisors within a pay pool will reach a consensus on the types of achievements that warrant particular scores. Each panel will develop operating procedures that will provide for fair and equitable conclusions within the guidance provided by the Personnel Management Board. If the panel cannot reach consensus, the pay pool manager makes final decisions.

A midpoint principle will be used to determine performance pay increases. This principle is that employees must receive a B rating or higher in order to cross the midpoint of the pay band range and, once the midpoint is crossed, the employee must receive a B or better rating in order to receive a base pay increase. This applies to all employees in every occupational family and pay band. Any amount of an employee's performance payout not paid in the form of a base pay increase because of the midpoint principle will be paid as a bonus.

5. Awards

While not linked to the pay for performance system, awards will continue to be given for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off.

In an effort to foster and encourage team work among its employees, ARL often gives group awards for special acts or significant achievement. Under the demonstration project, if such an award is given a team may elect to distribute the award among themselves. Thus, a team leader or supervisor may allocate a sum of money to a team for outstanding completion of a special task, and the team may decide the individual distribution of the total dollars among themselves.

D. Hiring and Appointment Authorities

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family will be determined using the OPM Qualification Standards Handbook for General Schedule Positions. Since the pay bands are anchored to the General Schedule grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest General Schedule grade incorporated into that pay band. For example, the minimum eligibility requirements for a position in Pay Band II in the Engineers and Scientist Occupational Family will be the GS–5 qualification requirements for the series.

Selective factors may be established for a position in accordance with the OPM Qualification Standards Handbook when determined to be critical to successful job performance. These factors become part of the minimum requirements for the position and applicants must meet them in order to be eligible. If used, selective factors will be clearly stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Competitive Examining

Current OPM regulations state that appointment registers will list the names of eligibles in accordance with their numerical ratings. However, preference eligibles with a compensable service-connected disability of 10 percent or more shall be entered at the top of the register ahead of all others unless the register is for professional and scientific positions GS–9 and above.

ARL professional and scientific positions in the demonstration project have been placed into two occupational families, the Engineers and Scientists Occupational Family and the Administrative Occupational Family. The broadbanding concept adopted by ARL groups scientific positions in grades GS–5 through GS–11 into one pay band (DB–II). Similarly, GS–5 through GS–10 positions in the Administrative Occupational Family (DJ–II) have been grouped into one pay band.

Because the ARL broadbanding plan places GS–9 and GS–11 scientific and professional positions in a band with lower-graded positions, the procedures for applying veterans' preference to Scientific and Professional positions in grades GS–9 or higher (5 U.S.C. 3313) shall only apply to Scientific and Professional positions in bands that exclusively include grades GS–12 and above.

3. Revisions to Term Appointments

The laboratory conducts many research and development projects that range from three to six years. The current four-year limitation on term appointments imposes a burden on the laboratory by forcing the termination of some term employees prior to completion of projects they were hired to support. This disrupts the research and development process and reduces the laboratory's ability to serve its customers.

Under the demonstration project, ARL will have the authority to hire individuals under modified term appointments. These appointments will be used to fill positions for a period of more than one year but not more than five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed five, rather than four years. The ARL Director is authorized to extend a term appointment one additional year.

Employees hired under the modified term appointment authority may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date; (2) served two years of continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position; and (4) have a current rating of B or better.

Employees serving under regular term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointment if they have a current rating of B or better and are selected under merit promotion procedures for the permanent position after having completed two years of continuous service. Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous. Employees serving under modified term appointments under this plan will be

covered by the plan's pay for performance system.

4. Voluntary Emeritus Corps

Under the demonstration project, the laboratory director will have the authority to offer retired or separated employees voluntary positions in the laboratory. Voluntary Emeritus Program assignments are not considered employment by the Federal Government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on an earlier separation from Federal Service. The Voluntary Emeritus Corps will ensure continued quality research while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the scientific and technical communities. The program will be beneficial during manpower reductions as employees accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less-experienced employees.

To be accepted into the emeritus corps, a volunteer must be recommended by laboratory managers to the directorate director. Everyone who applies is not entitled to an emeritus position. The directorate director must clearly document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the government. The volunteers may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the directorate director, and the Civilian Personnel Operations Center. The agreement must be finalized before the assumption of duties and shall include:

(a) A statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and any and all claims against the Government because of the voluntary assignment are waived by the volunteer;

(b) A statement that the volunteer will be considered a federal employee for the purpose of injury compensation;

(c) Volunteer's work schedule;

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) Support provided by the laboratory (travel, administrative, office space, supplies);

(f) A one page statement of duties and experience;

(g) A statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the voluntary emeritus corps;

(h) A provision allowing either party to void the agreement with ten working days written notice; and

(i) The level of security access required (any security clearance required by the position will be managed by the laboratory while the volunteer is a member of the emeritus corps).

5. Extended Probationary Period

A new employee appointed to a nonsupervisory/non-managerial position in the Engineers and Scientists occupational family must demonstrate adequate contribution during all cycles of a research effort for a laboratory manager to render a thorough evaluation. The current one year probationary period will be extended to three years for all newly hired permanent career-conditional employees appointed to positions in that occupational family. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's contributions and conduct. The three year probationary period will apply only to new hires subject to a probationary period.

If a probationary employee's performance is determined to be satisfactory at a point prior to the end of the three year probationary period, a supervisor has the option of ending the probationary period at an earlier date, but not before the employee has completed one year of continuous service. If the probationary period for an employee is terminated before the end of the three year period, the supervisor will develop written rationale for his/her decision and will elevate it at least one level for review prior to implementing the action.

All other existing provisions pertaining to probationary periods are retained, including limited notice and appeal rights and crediting prior service. Prior Federal civilian service (including NAF service and service in temporary or term positions) counts toward completion of probation when the service is in the Department of Army, is in the same line of work, and contains or is followed by no more than a single break in service that does not exceed 30 calendar days.

In the case of modified-term employees who are converted to permanent status, the time served under the term appointment counts toward the required probationary period as long as it is in the same line of work. If the permanent position is in a different line of work, the full three-year probationary requirement applies.

6. Supervisory Probationary Period

Supervisory probationary periods will be made consistent with 5 CFR 315.901 except references to grade will be indicated as pay band. New supervisors will be required to complete a one year probationary period for the initial appointment to a supervisory position. If, during the probationary period, the decision is made to return the employee to a nonsupervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower pay band and pay than the position from which promoted. Pay will not exceed the maximum rate of the lower pay band.

New supervisors who are hired into the E&S occupational family will only serve under a single one-year probationary period and are not subject to the three-year probationary period described above. The reason for this is that the position for which they were hired is primarily supervisory in nature and performance can adequately be measured in the one year probationary period.

E. Internal Placement and Pay Setting

1. Promotions

A promotion is the movement of an employee to a higher pay band within the same occupational family or to a pay band in a different occupational family which results in an increase in the employee's salary. Supervisors may consider promoting employees at any time since promotions are not tied to the pay for performance system. Progression within a pay band is based upon performance pay increases; as such,

these actions are not considered promotions and are not subject to the provisions of this section.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements and the local merit promotion plan. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction in force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion or detail to a position in a higher pay band of 180 days or less.

(f) Reclassification to include impact of person in the job promotions.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate not given proper consideration in a competitive promotion action.

Upon promotion to a higher pay band, an employee will be entitled to a 6% increase in base pay or the lowest level in the pay band to which promoted, whichever is greater. The maximum amount of pay increase upon promotion will not exceed 10 percent or other such amount established by the Personnel Management Board. However, on a case-by-case basis, the Personnel Management Board may recommend approval of requests for promotion beyond 10 percent. Highest previous rate also may be considered in fixing pay in accordance with the laboratory's pay fixing policies.

2. Demotions

A demotion is a placement into a lower pay band within the same occupational family, or placement into a pay band in a different occupational family with a lower salary. Demotions may be for cause (performance or conduct) or for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from reduction in force procedures). Employees demoted for cause are not entitled to pay retention. Employees demoted for reasons other than cause may be entitled to pay retention in accordance with the laboratory's pay fixing policies.

3. Pay Fixing Policies and Procedures

The ARL Director will establish pay administration policies which conform with basic governmental pay fixing policy; however, the ARL policies will be exempt from Army Regulations or local pay fixing policies, except where negotiated agreements prevail.

Highest previous rate (HPR) will be considered in placement actions for which authorized under rules similar to the HPR rules in 5 CFR 531.203(c) and (d). Use of HPR will be at the supervisor's discretion. The pay retention provisions of 5 U.S.C. 5363 and 5 CFR 536.101 will apply to this plan except where waived or modified as specified in the waiver section. Pay retention may also be granted by the ARL Director to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided not specifically excluded.

An employee's total monetary compensation paid in a calendar year may not exceed the basic pay of level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B.

As a general rule, pay will be set at the lowest level in a pay band. Appointments made above the minimum level will be based upon superior qualifications of the candidate. A candidate appointed toward the higher end of a pay band should have qualifications approaching the lowest General Schedule grade incorporated into the next higher pay band. For example, a person appointed at the higher end of Pay Band II in the Engineers and Scientist occupational family would have education, experience, or a combination of the two approaching the qualifications of the GS–12 level, which is the lowest General Schedule grade incorporated into Pay Band III. Appointments above the minimum of the pay band will be approved at the directorate level.

Directorates may make full use of recruitment, retention, and relocation payments as currently provided for by OPM.

When a temporary promotion is terminated, the employee's pay entitlements will be redetermined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by ARL. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate.

4. Staffing Supplements

Employees assigned to occupational series and geographic areas covered by special rates will be eligible for a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. The employee's total pay immediately after implementation of the demonstration project will be the same as immediately before the demonstration project, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the employee's old GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. So the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

$$\text{Staffing factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS rate corresponding to that special rate}}$$

$$\text{Demonstration base rate} = \frac{\text{Old GS adjusted rate (special or locality rate)}}{\text{Staffing factor}}$$

Staffing Supplement = demonstration base rate x (staffing factor—1)
Salary upon conversion = demonstration base rate + staffing supplement (sum will equal existing rate)

Example: In the case of a GS–801–11/03 employee who is receiving a special salary rate, the salary before the demonstration project is $42,944. The maximum special rate for a GS–801–11 Step 10 is $51,295 and the corresponding regular rate is $46,523. The staffing factor is computed as follows:

$$\text{Staffing factor} = \frac{\$51{,}295}{\$46{,}523} = 1.1026$$

$$\text{Demonstration base rate} = \frac{\$42{,}944}{1.1026} = \$38{,}948$$

Then to determine the staffing supplement, multiply the demonstration base by the staffing factor minus 1.

$$\text{Staffing supplement} = \begin{array}{r} \$38{,}948 \\ \times\ .1026 \\ \hline \$\ \ 3{,}996 \end{array}$$

The Staffing Supplement of $3,996 is added to the Demonstration Base Rate of $38,948 and the total salary is $42,944, which is the salary of the employee before conversion to the demonstration project.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee is converted into the demonstration project, the demonstration base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality rate or special rate) by the applicable locality pay factor (for example, in the Washington-Baltimore area, it is currently 1.0711). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

Any General Schedule or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, affected employees will be entitled to pay retention. Upon geographic movement, an employee who receives the special staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

Established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), i.e., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

5. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that ARL have increased flexibility to assign individuals. Broadbanding can be used to address this need. As a result of the assignment to a more general position description, the organization will have increased flexibility to assign an employee without a basic pay change consistent with the needs of the organization, and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level and area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description.

Such assignments within the coverage of the generic descriptions can be accomplished without the need to process a personnel action. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. This flexibility allows a broader latitude in assignments and further streamlines the administrative process and system.

6. Details

Under this plan employees may be detailed to a position in the same band (requiring a different level of expertise and qualifications) or lower pay band (or its equivalent in a different occupational family) for up to one year. Details may be implemented by submitting one SF 52–B to cover the one year period. As in the current system, details to duties in a higher pay band for more than 180 days will be implemented using competitive procedures.

F. Employee Development

1. Expanded Development Opportunities

The ARL Expanded Developmental Opportunities Program, to include sabbaticals, will cover all demonstration project employees. The developmental opportunity period will not result in loss of (or reduction in) basic pay, leave to which the employee is otherwise entitled, or credit for time of service. The positions of employees on

expanded developmental opportunities may be backfilled (i.e., with temporarily promoted employees or with term employees). However, that position or its equivalent must be made available to the employee returning from the expanded development opportunity.

a. Sabbaticals

ARL will have the authority to grant paid sabbaticals to career employees to permit them to engage in study or uncompensated work experience that will contribute to their development and effectiveness. One developmental opportunity for a sabbatical 3–12 months in duration may be granted to an employee in any 10-year period. Employees will be eligible after completion of seven years of Federal service. Each opportunity must result in a product, service, report, or study that will benefit the ARL mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; study; research; self-directed or guided study; and on-the-job work experience with a public, private commercial, or private nonprofit organization.

b. Critical Skills Training

Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of laboratories is also a critical tool for recruiting and retaining employees with or requiring critical skills. Constraints under current law and regulation limit degree payment to shortage occupations. In addition, current government-wide regulations authorize payment for degrees based only on recruitment or retention needs. Degree payment is not permitted for non-shortage occupations involving critical skills.

ARL is expanding the authority to provide degree or certificate payment for purposes of meeting critical skill requirements, to ensure continuous acquisition of advanced specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. In addition, this proposal will be implemented consistent with 5 U.S.C. 4107(b)(2) and 4108.

2. Employee Development Panels

Each directorate (or equivalent organizational unit) will create an Employee Development Panel which will be chaired by the directorate director. The purpose of the panel is to review, evaluate, and make decisions on applications for any expanded developmental opportunities described in this plan or in related Human Resources Development Plans. Because opportunities for training and development will be limited by budgetary considerations, the panel must determine which training is most important to the successful accomplishment of the mission, both present and future.

The directorate director will oversee panel meetings, ensuring that all panel member comments and recommendations receive equal consideration in the selection process and that decisions are made based on majority vote. The directorate director will provide written feedback to each person who has applied, including reasons for nonselection when that is the panel's decision. Panels will elicit feedback from mentors and mentees and will put these before the panel for consideration. Applicants must show a direct relationship of their training request to the ARL mission and will outline what return on investment will be realized if the training is approved. Supervisors will be asked to provide their recommendations to the panel and will include a statement concerning the applicant's potential and his/her ability to apply the knowledges gained. Once selected, the employee must sign a service obligation agreement which provides for serving in the Army Research Laboratory three times the length of the training period. If he/she voluntarily leaves the ARL before the service obligation is completed the employee is liable for repayment. The ARL Director has the authority to waive this agreement.

3. Appraisals for Employees on Expanded Development Opportunities Training

Expanded development opportunities generally fall into two general categories: classroom and developmental (on-the-job training). Developmental assignments should be treated as any other temporary assignment that continues for 120 days or more. A performance plan is established and the incumbent receives a performance rating upon completion. Assignments that involve classroom work are covered by one of two options. The first is to render a rating as soon as the employee returns to the position and completes 120 days under a performance plan. The second is to render a rating for the classroom performance. Procedures for this option will follow those currently in place for Department of Army's Long Term Training (LTT) Program. Employees availing themselves of expanded development opportunities are eligible to be considered for pay for performance increases as appropriate.

4. Employee Feedback to Supervisors

Procedures will be developed by which employees can provide feedback to supervisors on supervisory/managerial skill. This feedback is designed to assist supervisors in determining their developmental needs with regard to their supervisory skills.

G. Reduction In Force (RIF)

When an employee in the ARL Demonstration Project is faced with separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of reemployment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days, RIF procedures will be used.

The procedures in 5 CFR part 351 will be followed with slight modifications pertaining to competitive areas, broadbanding, assignment rights, and calculation of adjusted service computation date.

A separate competitive area will be established for each occupational family; within each occupational family, separate competitive areas will be established by duty location. Within each competitive area, competitive levels will be established consisting of all positions in the same occupational series and pay band which are similar enough in duties, qualifications, and working conditions that the incumbent of one position can perform successfully the duties of any other position in the competitive level without unduly interrupting the work program.

An employee may displace another employee by bump or retreat to one band below the employee's existing band. A preference eligible with a compensable service-connected disability of 30% or more may retreat to positions two bands (or equivalent to five grades) below his/her current band.

Reductions in force are accomplished using the existing procedures, the retention factors of tenure, veterans preference, and length of service as adjusted by performance ratings, in that order. However, the additional RIF service credit for performance based on

the last three ratings of record during the preceding four years will be applied as follows: Rating A adds 10 years, Rating B adds 7 years, Rating C adds 3 years, and Rating U (or an overall rating of unsatisfactory) adds no credit for retention. The additional years of service credit are added, not averaged. Ratings given under non-demonstration systems will be converted to the demonstration rating scheme and provided the equivalent rating credit.

In some cases, an employee may not have three ratings of record. In these situations, service credit to provide three values will be given on the basis of modal ratings or averaged years of credit associated with actual performance ratings under the provisions of 5 CFR 351.504, with years credited as above. If, however, an employee has ratings from another system but not three demonstration project ratings, the last three actual ratings will be translated into demonstration project ratings. Ratings older than four years will not be used.

An employee who has received a written decision to demote him/her to a lower pay band competes in RIF from the position to which he/she will be/has been demoted. Employees who have been demoted for unacceptable performance or conduct, and as of the date of the issuance of the RIF notice have not received a performance rating in the position to which demoted, will receive the same additional retention service credit granted for a level 3 rating of record.

An employee who has received an improved rating following a PIP will have the improved rating considered as the current rating of record, provided that notification of such improvement is approved and received prior to the cutoff for receipt of personnel actions associated with implementation of RIF mechanics.

An employee with a current rating of record of U has assignment rights only to a position held by another employee who has a U rating. An employee who has been given a written decision of removal will be placed at the bottom of the retention register for their competitive level.

Modified term appointment employees are in Tenure Group III for reduction in force purposes. Reduction in force procedures are not required when separating these employees when their appointments expire.

H. Grievances, Disciplinary Actions and EEO Matters

Except where specifically waived or modified in this plan, adverse actions procedures under 5 CFR 752 remain unchanged. The demonstration project will enhance the use of Alternative Dispute Resolution (ADR) for all conflict resolution to include grievances, disciplinary actions and EEO matters.

IV. Implementation Training

An extensive training program is planned for every employee in the demonstration project and associated support personnel. Training will be tailored to fit the requirements of every employee included and will fully address employee concerns to ensure everyone has a comprehensive understanding of the program. In addition, leadership training will be provided to all managers and supervisors as the new system places more responsibility and decision-making authority on their shoulders.

Training requirements will vary from an overview of the new system to a more detailed package for laboratory managers on the new classification system; to very specific instructions for both civilian and military supervisors, managers, and others who provide personnel and payroll support; to an employee handbook to be provided to each covered ARL employee. Training will begin within the 90 days just prior to implementation.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate pay band without loss of pay. Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the modified term appointment if all requirements in III.D.3., Revisions to Term Appointments, have been satisfied. Position announcements, etc. will not be required for these term appointments. An automatic conversion from current GS/GM grade and pay into the new broadband system will be accomplished. Each employee's initial total salary under the demonstration project will equal the total salary received immediately before conversion. Special conversion rules apply to special rate employees as described in III.E.4., Staffing Supplements. Employees who enter the demonstration project later by lateral reassignment or transfer will be subject to parallel pay conversion rules. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the pay band which corresponds to the grade of record. When a temporary promotion is terminated, pay will be determined as described in III.E.3., Pay Fixing Policies and Procedures. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases actions to make the temporary promotion permanent will be considered and, if implemented, will be subject to all existing priority placement programs.

B. Conversion or Movement From a Project Position to a General Schedule Position

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedure will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rates of pay to GS-equivalent rates of pay. The converted GS grade and GS rates of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rates will become the employee's actual GS grade and rates after leaving the demonstration project (before any other action). For transfers, promotions, and other actions the converted GS grade and rates will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules) as if the GS converted grade and rates were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of these grades according to the following rules:

a. The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

b. If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

c. If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

d. This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

e. Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described step 4 rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

f. Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

a. The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

b. An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement) is converted to a GS-adjusted rate on the highest applicable rate range for the converted GS grade. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

c. If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

d. If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

e. E&S Pay Band V Employees: An employee in Pay Band V of the E&S Occupational Family will convert out of the demonstration project at the GS–15 level. ARL will develop a procedure to ensure that employees entering Pay Band V understand that if they leave the demonstration project and their adjusted project pay exceeds the GS–15, Step 10 rate, there is no entitlement to retained pay. Their GS equivalent rate will be deemed to be the rate for GS–15, Step 10. For those Pay Band V employees paid below the adjusted GS–15, Step 10 rate, the converted rates will be set in accordance with paragraph b.

f. Employees with Pay Retention: If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. ARL will coordinate with OPM to prescribe a procedure for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration project. The project evaluation plan adequately addresses how each intervention will be comprehensively evaluated for at least the first 5 years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the **Federal Register** and would be made if formative evaluation data warranted. At the 5 year point, the entire demonstration project will be reexamined for either: (a) permanent implementation, (b) change and another 3–5 year test period, or (c) expiration.

VII. Evaluation Plan

Chapter 47 (Title 5 U.S.C.) requires that an evaluation system be implemented to measure the effectiveness of the proposed personnel management interventions. An evaluation plan for the entire laboratory demonstration program covering 24 DoD laboratories was developed by a joint OPM/DoD Evaluation Committee. A comprehensive evaluation plan was submitted to the Office of Defense Research & Engineering in 1995 and subsequently approved (Proposed Plan for Evaluation of the Department of Defense S&T Laboratory Demonstration Program, Office of Merit Systems Oversight & Effectiveness, June 1995). The overall evaluation effort will be coordinated and conducted by OPM's Personnel Resources and Development Center (PRDC). The primary focus of the evaluation is to determine whether the waivers granted result in a more effective personnel system than the current as well as an assessment of the costs associated with the new system.

The present personnel system with its many rigid rules and regulations is generally perceived as an impediment to mission accomplishment. The demonstration project is intended to remove some of those barriers and therefore, is expected to contribute to improved organizational performance. While it is not possible to prove a direct

causal link between intermediate and ultimate outcomes (improved personnel system performance and improved organizational effectiveness), such a linkage is hypothesized and data will be collected and tracked for both types of outcome variables.

An intervention impact model will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique. Appendix E represents an overview of the Evaluation Model. More detailed information about the evaluation model is available upon request.

The evaluation model for the demonstration project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration of context variables that are likely to have an impact on project outcomes; e.g., Human Resources Management regionalization, downsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another.

Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: (1) workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and (5) core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

A. Step Buy-Ins

Under the current pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of implementation. As under the current system, supervisors will be able to withhold these partial step increases if the employee's performance falls below fully successful.

Rules governing Within-Grade Increases (WGI) under the current Army performance plan will continue in effect until the implementation date. Adjustments to the employees base salary for WGI equity will be computed effective the date of implementation to coincide with the beginning of the first formal PFP assessment cycle. WGI equity will be acknowledged by increasing base salaries by a prorated share based upon the number of weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. Employees at step 10 or receiving retained rates on the date of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. Employees serving on retained grade, will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

B. Cost Discipline

An objective of the demonstration project is to ensure in-house budget discipline. A baseline will be established at the start of the project and salary expenditures will be tracked yearly. Implementation costs, including the step buy-in costs detailed above, will not be included in the cost discipline evaluations.

The Personnel Management Board will annually track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

C. Personnel Management Board

ARL will create a Personnel Management Board to oversee and monitor the fair and equitable implementation of the demonstration project to include establishment of internal controls and accountability.

The board will consist of senior leadership of ARL appointed by the Director who will be voting members. Non-voting members will include the Program Manager for the ARL Personnel Demonstration Project, Equal Opportunity Officer, Chief Counsel, a representative of the human resources community, union representative, and others as appointed by the Director for proper management and oversight of the project. The board will be responsible for duties such as:

(a) Determining the composition of the PFP pay pools in accordance with the established guidelines;

(b) Providing guidance to pay pool managers;

(c) Overseeing disputes in pay pool issues;

(d) Overseeing the civilian pay budget;

(e) Monitoring award pool distribution by organization;

(f) Reviewing hiring and promotion salaries, to include approving promotions with a pay increase greater than 10%;

(g) Conducting classification review and oversight; monitoring and adjusting classification practices and deciding broad classification issues;

(h) Approving major changes in position structure;

(i) Addressing issues associated with multiple pay systems during the demonstration project;

(j) Assessing the need for changes to demonstration project procedures and policies; and

(k) Ensuring in-house budget discipline.

D. Developmental Costs

Costs associated with the development of the demonstration project system include software automation, training, and project evaluation. All funding will be provided through the Army Science and Technology budget. The additional incremental projected annual expenses for each area is summarized in Figure 4 below. Project evaluation costs will continue for at least the first 5 years and may continue beyond.

FIGURE 4.—PROJECTED DEVELOPMENTAL COSTS

[Then Year Dollars]

	FY96	FY97	FY98	FY99	FY00	FY01
Training	10K	20K	30K			
Project Evaluation	17K	32.5K	32.5K	32.5K	32.5K	32.5K
Automation		100K				
Data Systems	69K					
Totals	96K	152.5K	62.5K	32.5K	32.5K	32.5K

IX. Required Waivers to Law and Regulation

A. Waivers to Title 5 United States Code

Chapter 31, section 3111: Amended to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Chapter 31, section 3132: The Senior Executive Service: Definitions and Exclusions.

Chapter 33, section 3324: Appointments to Positions Classified Above GS–15.

Chapter 33, section 3341: Details. This waiver applies to the extent necessary to waive the time limits for details.

Chapter 41, section 4107 (a) (1), (2), (b) (1), (3): Restriction on Degree Training.

Chapter 43, section 4301 (3): Definition of unacceptable performance.

Chapter 43, section 4302–4303: This waiver applies to the extent that the term ''grade level'' is replaced with ''pay band.''

Chapter 51, sections 5101–5112, Classification.

Chapter 53, sections 5301; 5302 (1), (8) and (9); 5303, and 5304: Pay comparability system. (This waiver applies only to the extent necessary to allow (1) demonstration project employees, except employees in band V of the engineers and scientists occupational family, to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay, and (3) employees in band V of the engineers and scientists occupational family to be treated as ST employees for the purposes of these provisions.)

Chapter 53, section 5305: Special rates.

Chapter 53, sections 5331–5336: General Schedule pay rates.

Chapter 53, sections 5361, 5363–5366: Pay Retention to the extent necessary to (1) replace ''grade'' with ''band''; (2) allow demonstration project employees to be treated as General Schedule employees; (3) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and (4) ensure that for employees of Pay Band V of the E&S Occupational Family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate).

Chapter 53, section 5362: Grade Retention.

Chapter 55, section 5542 (a)(1)–(2): Overtime rates; computation. This waiver applies only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545: Night, standby, irregular, and hazardous duty differential. (This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in band V of the engineers and scientists occupational family.)

Chapter 55, section 5547 (a)–(b): Limitation on premium pay. This waiver applies only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, sections 5753, 5754, and 5755: Recruitment and relocation bonuses, retention allowances, and supervisory differentials (This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in band V of the engineers and scientists occupational family to be treated as ST employees).

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental United States or Alaska. (This waiver applies only to the extent necessary to provide that COLA's paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).)

Chapter 75, section 7512(3): Adverse actions (This provision is waived only to the extent necessary to replace ''grade'' with ''pay band.'')

Chapter 75, section 7512 (4): Adverse actions (This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.)

B. Waivers to Title 5. Code of Federal Regulations

Part 300, sections 300.601 through 300.605: Time in grade restrictions. Time in grade restrictions are eliminated in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer Service. Amended to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, sections 315.801 and 315.802: Probationary period. (This waiver applies only to the extent necessary to extend probationary periods from one year to a maximum of three years for newly-hired permanent career-conditional employees in the Engineer and Scientist Occupational Family).

Part 315, section 315.901: Statutory requirements (this waiver applies only to the extent necessary to replace ''grade'' with ''pay band.''

Part 316, section 316.301: (Term Appointments for more than 4 years)

Part 316, section 316.303: (Converting Terms to Status)

Part 316, section 316.305: Eligibility for within grade increases.

Part 335, section 335.103: Covering the length of details and temporary promotions.

Part 351, section 351.402(b): Competitive area.

Part 351, section 351.403: Competitive Level. (This waiver applies only to the extent necessary to replace ''grade'' with ''pay band.'')

Part 351, section 351.504: as it relates to years of credit and to the extent that an employee's additional retention

service credit shall (a) be based on a presumed fully successful (level 3) when the employee has been demoted or reassigned because of unacceptable performance or conduct, and as of the date of issuance of reduction-in-force notices has not received a rating for performance in the position to which demoted or reassigned; and (b) be the improved rating when acceptable performance is demonstrated following an opportunity to improve as provided in part 432 of this chapter; 351.701 to the extent that employee bump and retreat rights will be limited to one pay band except in the case of 30% preference eligible, and to include employees with an unsatisfactory current performance rating of record.

Part 410, section 410.308 (a), (b) (1–2), (b) (4–5), (c)–(g): Training to obtain an academic degree.

Part 410, section 410.309: Agreements to Continue in Service—that portion that pertains to the authority of the head of the agency to determine continued service requirements, to waive repayment of such requirements, and to the extent that the service obligation is to ARL.

Part 430, section 430.203: Rating of Record—to the extent that the definition shall also include ratings for interns that are based on less than the whole appraisal period and improved ratings following an opportunity to demonstrate acceptable performance as provided for in the waiver of 351.504.

Part 430, section 430.208 (b) (1) and (2): Rating Performance.

Part 432, section 432.102: to the extent that the term ''grade level'' is replaced with ''pay band.''

Part 511, subpart A: General Provisions, and subpart B: Coverage of the General Schedule.

Part 511, section 511.601: Classification Appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from Title 5, are covered by the classification appeal process outlined in this section, as amended below.

Part 511, section 511.603(a): Right to appeal—substitute band for grade.

Part 511, section 511.607(b): Non-Appealable Issues—add to the list of issues which are neither appealable nor reviewable, the assignment of series under the project plan to appropriate career paths.

Part 530, subpart C: Special salary rates.

Part 531, subparts B, D, and E: Determining The Rate of Basic Pay, Within-Grade Increases, and Quality Step Increases.

Part 531, subpart F: Locality-Based Comparability Payments. (This waiver applies only to the extent necessary to allow (1) demonstration project employees, except employees in band V of the engineers and scientists occupational family, to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay, and (3) employees in band V of the engineers and scientists occupational family to be treated as ST employees for the purposes of these provisions.)

Part 536, Grade and Pay Retention: to the extent necessary to (1) replace ''grade'' with ''pay band''; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (3) ensure that for employees of Pay Band V of the E&S Occupational Family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate).

Part 550, section 550.105–106: Biweekly and annual maximum earnings limitations. This waiver applies only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.113(a): Computation of overtime pay.This waiver applies only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Part 550, section 550.703: Severance Pay (This provision is waived only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grade or pay levels'' with ''one band level'' and ''grade or pay level'' with ''band level.'')

Part 550, section 550.902: Hazardous duty differential, definition of ''employee'' (This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in band V of the engineers and scientists occupational family.)

Part 575, subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances, and Supervisory Differentials. (This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in band V of the engineers and scientists occupational family to be treated as ST employees for the purposes of these provisions.)

Part 591, subpart B: Cost-of-Living Allowances and Post Differential-Nonforeign Areas (This waiver applies only to the extent necessary to allow (1) demonstration project employees to be treated as employees under the General Schedule and (2) employees in band V of the engineers and scientists occupational family to be treated as ST employees for the purposes of these provisions.)

Part 752, section 752.401 (a)(3): Adverse actions (This provision is waived only to the extent necessary to replace ''grade'' with ''pay band.'')

Part 752, section 752.401 (a)(4): Adverse actions (This provision applies only to the extent necessary to provide that adverse action provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced.)

APPENDIX A.—ARL EMPLOYEE DUTY LOCATIONS (AS OF 17 JUN 96)

[Totals include SES, ST and FWS Employees]

Duty location	ARL employees total
Seoul, Korea	1
Fort Rucker, AL	3
Redstone Arsenal, AL	4
Fort Huachuca, AZ	4
Newark, DE	1
Wilmington, DE	58
Hurlbert Field, FL	1
MacDill AFB, FL	1
Orlando, FL	4
Atlanta, GA	14
Fort Benning, GA	4
Fort Gordon, GA	2
Tripler Army Hospital, HI	1
Scott Air Force Base, IL	1
Fort Knox, KY	2
APG, MD	929
Adelphi, MD	873
Baltimore, MD (JHU)	9
	97
Gaithersburg, MD	3
LaPlata, MD (Blossom Point)	4
Watertown, MA	26
Warren, MI	5
St. Louis, MO	3
Fort Monmouth, NJ	190
Picatinny, NJ	6
White Sands Missile Range, NM	272
Fort Bragg, NC	1
Akron, OH	1

APPENDIX A.—ARL EMPLOYEE DUTY LOCATIONS (AS OF 17 JUN 96)—Continued

[Totals include SES, ST and FWS Employees]

Duty location	ARL employees total
Cleveland, OH	52
Fairview Park, OH	1
Fort Sill, OK	8
Austin, TX	1
Fort Bliss, TX	1
Fort Hood, TX	9
Alexandria, VA	1
Arlington, VA	1
Fort Belvoir, VA	81
Newport News, VA	50
Vint Hill Farms Station, VA	1
Woodbridge, VA	2
	98
Fort Lewis, WA	1
Total	2631

Appendix B—Occupational Series by Occupational Family

I. Engineers and Scientists

0180 Psychologist
0401 General Biological Science
0413 Physiology
0471 Agronomy
0690 Industrial Hygiene
0801 General Engineering
0803 Safety Engineering
0806 Materials Engineering
0810 Civil Engineering
0819 Environmental Engineering
0830 Mechanical Engineering
0840 Nuclear Engineering
0850 Electrical Engineering
0854 Computer Engineering
0855 Electronics Engineering
0861 Aerospace Engineering
0892 Ceramic Engineering
0893 Chemical Engineering
0894 Welding Engineering
0896 Industrial Engineering
0899 Engineering & Architecture Student Trainee
1301 General Physical Science
1306 Health Physics
1310 Physics
1320 Chemistry
1321 Metallurgy
1340 Meteorology
1386 Photographic Technology
1399 Physical Science Student Trainee
1515 Operations Research
1520 Mathematics
1529 Mathematical Statistician
1550 Computer Science
1599 Mathematics & Statistics Student Trainee

II. E&S Technician

0181 Psychology Aid & Technician
0802 Engineering Technician
0818 Engineering Drafting
0856 Electronics Technician
1152 Production Control
1311 Physical Science Technician
1341 Meteorological Technician
1601 General Facilities & Equipment
1670 Equipment Specialist

III. Administrative

0018 Safety & Occupational Health Management
0028 Environmental Protection Specialist
0080 Security Administration
0101 Social Science
0170 History
0201 Personnel Management
0205 Military Personnel Management
0212 Personnel Staffing
0221 Position Classification
0230 Employee Relations
0235 Employee Development
0260 Equal Employment Opportunity
0301 Miscellaneous Administration & Program
0334 Computer Specialist
0340 Program Management
0341 Administrative Officer
0343 Management & Program Analysis
0346 Logistics Management
0391 Telecommunications
0501 Financial Administration & Program
0505 Financial Management
0510 Accounting
0511 Auditing
0560 Budget Analysis
0905 General Attorney
0950 Paralegal Specialist
1001 General Arts & Information
1020 Illustrating
1035 Public Affairs
1060 Photography
1071 Audio Visual Production
1082 Writing & Editing
1083 Technical Writing & Editing
1084 Visual Information
1101 General Business & Industry
1102 Contracting
1170 Realty
1222 Patent Attorney
1410 Librarian
1412 Technical Information Services
1640 Facilities Management
1654 Printing Management
1811 Criminal Investigating
1910 Quality Assurance
2001 General Supply
2003 Supply Program Management
2010 Inventory Management
2101 Transportation Specialist
2130 Traffic Management

IV. General Support

0081 Fire Protection & Prevention
0083 Police
0085 Security Guard
0086 Security Clerical & Assistance
0303 Miscellaneous Clerk & Assistant
0304 Information Receptionist
0305 Mail & File
0318 Secretary
0322 Clerk Typist
0326 Office Automation Clerical & Assistant
0332 Computer Operation
0335 Computer Clerk & Assistant
0342 Support Services Administration
0344 Management Clerical & Assistant
0361 Equal Opportunity Assistant
0392 General Telecommunications
0503 Financial Clerical & Assistance
0525 Accounting Technician
0561 Budget Clerical & Assistant
0986 Legal Clerk & Technician
1087 Editorial Assistance
1105 Purchasing
1106 Procurement Clerical & Assistance
1411 Library Technician
1702 Education & Training Technician
2005 Supply Clerical & Technician
2102 Transportation Clerk & Assistant

APPENDIX C.—DEMOGRAPHICS AND UNION REPRESENTATION

[As of 17 June 1996]

Scientists & Engineers	56%
E&S Technicians	9%
Administrative	18%
General Support	12%
Excepted Service	5%
Occupational Series	119
Duty Locations	41
Veterans	23%

The following unions have been notified about the project:

Adelphi, Maryland—AFGE Local 2, Fraternal Order of Police

Aberdeen Proving Ground, Maryland—AFGE Local 3176, IAM/AW Local 2424

Fort Monmouth, New Jersey—NFFE Local 476

White Sands Missile Range, New Mexico—NFFE Local 2049

Cleveland, Ohio—AFGE Local 2182

BILLING CODE 6325–01–P

APPENDIX D -PERFORMANCE MANAGEMENT FORMS

PERFORMANCE APPRAISAL

PERIOD COVERED FROM TO

NAME (Last, First, MI)	SOCIAL SECURITY NUMBER	OCCUPATIONAL FAMILY/SERIES/BAND

	PRINTED	SIGNATURE	DATE
SENIOR RATER			
RATER			
RATEE			

CIRCLE ALL CRITICAL ELEMENTS; STRIKE THROUGH UNUSED ELEMENTS

	Technical Comp.	Cooperation	Communication	Mgmt of Time and Resources	Customer Relations	Tech Transition	Mgmt/Leadership	Supv. EEO	TOTAL
WEIGHT RANGE	15-50	5-25	5-25	15-50	10-50	5-50	5-50	25-50	
WEIGHT ASSIGNED									100
SCORE									

RATINGS

☐ **A** 85-100 ☐ **B** 70-84

☐ **C** 50-69 ☐ **U**nsatisfactory 0-49

☐ Comments attached for unsatisfactory rating

PAYOUT

Share(s) Recommended _____

Pay Increase Recommended $_____

Bonus Recommended $_____

☐ Pay Pool Manager Approval

Elements 1-5 are Mandatory for All; Elements 1-5, 7, and 8 are Mandatory for Supervisors

1. TECHNICAL COMPETENCE: Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate career path, seeks and accepts developmental and/or special assignments. Adaptive to technological change. (Weight range: 15-50)
2. COOPERATION: Accepts personal responsibility for assigned tasks. Considerate of others views and open to compromise on areas of difference. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Readily/willingly gives assistance. Shows appropriate respect and courtesy. (Weight range: 5-25)
3. COMMUNICATIONS: Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and easily understood. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight range: 5-25)
4. MANAGEMENT OF TIME AND RESOURCES: Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organization's resource development and conservation goals. (Weight range: 15-50)
5. CUSTOMER RELATIONS: Demonstrates care for customer through respectful, courteous, reliable and conscientious actions. Seeks out, develops and/or maintains solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed. Within the scope of job responsibility, seeks out and develops new programs and/or reimbursable customer work. (Weight range: 10-50)
6. TECHNOLOGY TRANSITION: Seeks out and incorporates outside technology within internal projects. Implements partnerships for the transition or transfer of technology to other internal working groups, other government agencies, and /or commercial activities. (Weight range: 5-50) (OPTIONAL)
7. MANAGEMENT/LEADERSHIP: Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Exercises leadership skills within the environment to include sensitivity to diversity and to assure equity and fairness. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises appropriate responsibility for positions assigned. (Weight range: 5-50) (Optional for Non-supervisory Positions)
8. SUPERVISION/EEO: Works toward recruiting, developing, motivating, and retaining quality team members; initiates timely/appropriate personnel action; applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members. (Weight Range 25-50) (For Supervisory Positions)

Performance Element Scoring Chart

Percentage of Performance	Performance Element Weight									
	50	**45**	**40**	**35**	**30**	**25**	**20**	**15**	**10**	**5**
100 %	**50**	**45**	**40**	**35**	**30**	**25**	**20**	**15**	**10**	**5**
98 %	49	44	39	34	29	25	20	15	10	5
96 %	48	43	38	34	29	24	19	14	10	5
94 %	47	42	38	33	28	24	19	14	9	5
92 %	46	41	37	32	28	23	18	14	9	5
90 %	**45**	**41**	**36**	**32**	**27**	**23**	**18**	**14**	**9**	**5**
88 %	44	40	35	31	26	22	18	13	9	4
86 %	43	39	34	30	26	22	17	13	9	4
84 %	42	38	34	29	25	21	17	13	8	4
82 %	41	37	33	29	25	21	16	12	8	4
80 %	**40**	**36**	**32**	**28**	**24**	**20**	**16**	**12**	**8**	**4**
78 %	39	35	31	27	23	20	16	12	8	4
76 %	38	34	30	27	23	19	15	11	8	4
74 %	37	33	30	26	22	19	15	11	7	4
72 %	36	32	29	25	22	18	14	11	7	4
70 %	**35**	**32**	**28**	**25**	**21**	**18**	**14**	**11**	**7**	**4**
68 %	34	31	27	24	20	17	14	10	7	3
66 %	33	30	26	23	20	17	13	10	7	3
64 %	32	29	26	22	19	16	13	10	6	3
62 %	31	28	25	22	19	16	12	9	6	3
60 %	**30**	**27**	**24**	**21**	**18**	**15**	**12**	**9**	**6**	**3**
58 %	29	26	23	20	17	15	12	9	6	3
56 %	28	25	22	20	17	14	11	8	6	3
54 %	27	24	22	19	16	14	11	8	5	3
52 %	26	23	21	18	16	13	10	8	5	3
50 %	**25**	**23**	**20**	**18**	**15**	**13**	**10**	**8**	**5**	**3**
< 50 % (Unsatisfactory)	24	22	19	17	14	12	9	7	4	2

Instructions

For each Performance Element on the employee's PERFORMANCE APPRAISAL worksheet:

1. Identify the Performance Element Weight listed on the WEIGHT ASSIGNED row of the PERFORMANCE APPRAISAL worksheet.

2. Find the column in the Performance Element Scoring Table that matches that Performance Element Weight.

3. Using the Benchmark Performance Standards as a guideline, determine the percentage of the performance element that the employee actually performed or accomplished. Find the row on the Performance Element Scoring Table that matches the Performance Element Performance Percentage.

4. Find the Performance Element Score at the intersection of the Performance Element Weight column (Step 2) and the Performance Element Performance Percentage (Step 3). The number at that intersection is the score for that performance element.

Benchmark Performance Standards

100%: Performance elements were attained demonstrating exceptional initiative, versatility, originality, and creativity. This individual demonstrates the ability to grasp, understand, organize and convey complex issues to others and carry the job assignment to successful completion with minimal supervision. Performance elements were effectively achieved utilizing cooperation, responsiveness, conflict avoidance, or conflict resolution. Written and oral communications were appropriately demonstrated effectively and efficiently. Performance elements were achieved with demonstrated leadership, integrity, competency, commitment, candor, and sense of duty.

70%: Performance elements were attained effectively and efficiently with consistently high quality and quantity of work. This individual has demonstrated the ability to complete the job assignments in an efficient, orderly sequence that culminated in results that were timely, correct, thorough, and cost effective. Performance elements were attained with consistently above average quality and reliability while effectively using accepted procedures and resolving problems with skill and resourcefulness. Performance elements were attained with consistently productive cooperative efforts and with clear, precise, and convincing written and oral communication.

50%: Performance elements were accomplished, were mostly reliable, and delivered without unacceptable delays. Procedures were minimally correct and problems were dealt with satisfactorily. Attained performance elements, using work methodology that demonstrated a reasonable degree of cooperation with others with clear and concise written and oral communications.

<50% (Unacceptable): Performance elements were not successfully completed because of failure in quality, quantity, completeness, responsiveness, or timeliness of work. Performance elements products were deficient, because they were contrary to directions or guidelines; did not meet specifications; were inconsistent with organizational procedures; were significantly flawed or substandard in quality; demonstrated insufficient technical knowledge or skill; were incomplete; were unacceptably late; lacked essential cooperative involvement or support; or problems that arose during performance of performance elements were not satisfactory resolved.

PERFORMANCE OBJECTIVE WORKSHEET

PERIOD COVERED		
FROM	TO	
NAME (Last, First, MI)	SOCIAL SECURITY NUMBER	OCCUPATIONAL FAMILY/SERIES/BAND

MUTUALLY DEVELOPED PERFORMANCE OBJECTIVES

VERIFICATION OF PERFORMANCE CONFERENCE

	DATES	RATEE'S INITIALS	RATER'S INITIALS
INITIAL			
MIDPOINT			

PERFORMANCE CONFERENCE

CIRCLE ALL CRITICAL ELEMENTS;
STRIKE THROUGH UNUSED ELEMENTS

	Technical Comp.	Cooperation	Communication	Mgmt of Time and Resources	Customer Relations	Tech Transition	Mgmt/Leadership	Supv. EEO	
WEIGHT RANGE	15-50	5-25	5-25	15-50	10-50	5-50	5-50	25-50	TOTAL
WEIGHT ASSIGNED									100

Elements 1-5 are mandatory for all. Element 1 is critical for all. Element 6 is optional for technology transfer positions. Elements 7 and 8 are mandatory for Supervisors. Element 8 is a critical element for Supervisors.

AGREEMENT ON ASSIGNED WEIGHTS, ELEMENTS, AND OBJECTIVES.

	INITIAL	DATE
PAY POOL MANAGER		
RATER		
RATEE		

VERIFICATION OF PERFORMANCE CONFERENCE

	DATES	RATEE'S INITIALS	RATER'S INITIALS
INITIAL			
MIDPOINT			

END OF YEAR PERFORMANCE CONFERENCE (HELD JUST BEFORE APPRAISAL) EMPLOYEE PREPARES A LIST OF ACCOMPLISHMENTS

RATEE: _____ _____
Signature Date

APPENDIX E: Project Evaluation
Intervention Impact Model - DoD Laboratory Demonstration Program

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
1. Compensation			
a. Broadbanding	-increased organizational flexibility	-perceived flexibility	-attitude survey
	-reduced administrative workload, paperwork reduction	-actual/perceived time savings	-personnel office data, PME results, attitude survey
	-advanced in-hire rates	-starting salaries of banded v. non-banded employees	-workforce data
	-slower pay progression at entry levels	-progression of new hires over time by band, occupational family	-workforce data
	-increased pay potential	-mean salaries by band, occupational family, demographics, total payroll costs	-workforce data
	-increased satisfaction with advancement	-employee perceptions of advancement	-attitude survey
	-increased pay satisfaction	-pay satisfaction, internal/external equity	-attitude survey
	-improved recruitment	-offer acceptance ratios -percent declinations	-personnel office data
	-no change in high grade (GS-14/15) distribution	-number/percentage of high grade salaries pre/post banding	
b. Conversion buy-in	-employee acceptance	-employee perceptions of equity, fairness	-attitude survey
		-cost as a percent of payroll	-workforce data
2. Performance Management			
a. Cash awards/bonuses	-reward/motivate performance	-perceived motivational power	-attitude survey
	-to support fair and appropriate distribution of awards	-amount and number of awards by occupational family, demographics	-workforce data
		-perceived fairness of awards	-attitude survey
		-satisfaction with monetary awards	-attitude survey

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
b. Performance based pay progression	-increased pay-performance link	-perceived pay-performance link	-attitude survey
	-improved performance feedback	-perceived fairness of ratings	-attitude survey
		-satisfaction with ratings	-attitude survey
		-employee trust in supervisors	-attitude survey
		-adequacy of performance feedback	-attitude survey
	-decreased turnover of high performers	-turnover by performance rating category	-workforce data
	-increased turnover of low performers	-turnover by performance rating category	-workforce data
	-differential pay progression of high/low performers	-pay progression by performance rating category, occupational family	-workforce data
	-alignment of organizational and individual performance expectations and results	-linkage of performance expectations to strategic plans/goals	-performance expectations, strategic plans
		-performance expectations	-attitude survey/focus groups
	-increased employee involvement in performance planning and assessment	-perceived involvement	-attitude survey/focus groups
		-performance management procedures	-personnel regulations
c. New appraisal process	-reduced administrative burden	-employee and supervisor perception of revised procedures	-attitude survey
	-improved communication	-perceived fairness of process	-focus groups
d. Performance development	-better communication of performance expectations	-feedback and coaching procedures used	-focus groups
		-time, funds spent on training by demographics	-personnel office data -training records
	-improved satisfaction and quality of workforce	-organizational commitment	-attitude survey
		-perceived workforce quality	-attitude survey

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
3. Classification			
a. Improved classification system with generic standards in an automated mode	-reduction in amount of time and paperwork spent on classification	-time spent on classification procedures -reduction of paper work/number of personnel actions (classification/ promotion)	-personnel office data
	-ease of use	-managers' perceptions of time savings, ease of use, improved ability to implement requests	-attitude survey
b. Classification authority delegated to managers	-increased supervisory authority/accountability	-perceived authority	-attitude survey
	-decreased conflict between management and personnel staff	-number of classification disputes/appeals pre/post	-personnel office records
		-management satisfaction with service provided by personnel office	-attitude survey
	-no negative impact on internal pay equity	-internal pay equity	-attitude survey
c. Dual career ladder	-increased flexibility to assign employees	-assignment flexibility	-focus groups, surveys
	-improved internal mobility	-perceived internal mobility	-attitude survey
	-increased pay equity	-perceived pay equity	-attitude survey
	-flatter organizational structure	-sup/non-sup ratios	-workforce data
	-improved quality of supervisory staff	-employee perceptions of quality of supervisors	-attitude survey
4. RIF			
Modified RIF	-minimize loss of high performing employees with needed skills	-separated employees by demographics, performance -satisfaction with RIF process	-workforce data -attitude survey/focus groups -attitude survey/focus groups
	-contain cost and disruption	-cost comparisons of traditional vs. modified RIF -time to conduct RIF -number of appeals/ reinstatements	-personnel/ budget office data

INTERVENTION	EXPECTED EFFECTS	MEASURES	DATA SOURCES
5. Expanded Development Opportunities			
a. Sabbaticals	-expanded range of professional growth and development -application of enhanced knowledge and skills to work product	-number and type of opportunities taken -employee and supervisor perceptions	-workforce data -attitude survey
b. Critical Skills Training	-improved organizational effectiveness	-number and type of training -placement of employees, skills imbalances corrected -employee and supervisor perceptions	-personnel office data -personnel office data -attitude survey
6. Combination of all interventions			
All	-improved organizational effectiveness -improved management of R&D workforce -improved planning -cross functional coordination -increased product success -cost of innovation	-combination of personnel measures -employee/management satisfaction -planning procedures -perceived effectiveness of planning procedures -actual/perceived coordination -customer satisfaction -project training/ development cost (staff salaries, contract cost, training hours per employee)	-all data sources -attitude survey -strategic planning documents -attitude survey -organizational charts -customer satisfaction surveys -demonstration project office records -contract documents
7. Context			
a. Regionalization	-reduced servicing ratios/cost -no negative impact on service quality	-HR servicing ratios -average cost per employee served -service quality, timeliness	-attitude survey -workforce data -attitude survey/focus groups
b. GPRA	-improved organizational performance	-other measures to be developed	-as established

[FR Doc. 98–5426 Filed 3–3–98; 8:45 am]
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federal register

Wednesday
March 4, 1998

Part III

Department of Housing and Urban Development

24 CFR Part 597

Office of the Assistant Secretary for Community Planning and Development; Empowerment Zones; Rules Modifications for First Round Designations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 597

[Docket No. FR–4281–F–02]

RIN 2506–AB97

Empowerment Zones: Rule Modifications for First Round Designations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule conforms HUD's regulations to statutory changes which were stated to take effect on August 5, 1997. Provisions of the existing regulations for the Empowerment Zones (EZs) and Enterprise Communities (ECs) that limit the number of EZs and ECs that can be designated under the regulations are removed, since section 951 of the Taxpayer Relief Act of 1997 authorized designation of two additional EZs.

DATES: *Effective date:* April 3, 1998.

Applicability date: The amendments in this final rule apply retroactively to August 5, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis Kane, Director, Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–2290. (This telephone number is not toll-free.) For hearing-and speech-impaired persons, these telephone numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION:

Background

In 1993, the Secretary of Housing and Urban Development (HUD) was authorized to designate not more than six urban Empowerment Zones and not more than 65 urban Enterprise Communities, which were then eligible for various tax benefits, as well as for grants from the Department of Health and Human Services. (See section 13301 of the Omnibus Budget Reconciliation Act of 1993, adding sections 1391–1397D to the Internal Revenue Code, 26 U.S.C. 1391–1397D.) The same statute also authorized the Secretary of Agriculture to designate not more than three Empowerment Zones. The two Departments issued separate but parallel interim rules, following a standard format, on January 18, 1994 (59 FR 2700). Notices Inviting Applications were published, and the agencies designated the maximum number of EZs and ECs authorized. HUD issued a final rule, making only technical changes to the interim rule, on January 12, 1995 (60 FR 3034).

The authority for the EZ designations (section 1391(b) of the Internal Revenue Code) was amended recently (section 951 of the Taxpayer Relief Act of 1997, Pub. L. No. 105–34, 111 Stat. 788, enacted on August 5, 1997) to provide for designation of two additional Empowerment Zones in urban areas. The same amendment increased the total population covered by all urban EZs from 750,000 to 1,000,000. The Act specifies that these amendments take effect on the date of its enactment, and that the new zones must be designated within 180 days of enactment (by February 1, 1998), although they will not take effect before January 1, 2000.

Although the first six empowerment zones to be designated received social services block grant funding from the Department of Health and Human Services, there is no such funding available this year for the two new empowerment zones to be designated under this revised rule. The benefits that will accrue to these new zones will be the empowerment zone employment credit and accelerated depreciation tax benefits in place under sections 1396–1397D, starting on January 1, 2000.

Changes Needed in This Rule

The increase in the total population included in EZs does not require a change in the regulation, because it is not stated in the current rule. However, the statutory authorization for two new designations of Empowerment Zones under the existing eligibility criteria would conflict with provisions of the current rule that state the number of EZs authorized, so those provisions of the rule are removed. Now that there is statutory authority for a second round of EZ designations, based on revised criteria, the heading of this rule is also revised to reflect that it is applicable only to the first round designations. (See sections 952–954 of the Taxpayer Relief Act of 1997, being implemented by a separate rule.)

Findings and Certifications

Environmental Impact

This rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). In view of the unavailability of social services block grant funding as a benefit to newly designated zones to be authorized in accordance with this amendment, the amendment falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this amendment is categorically excluded because it amends an existing document where the existing document as a whole would not fall within the excludion in 24 CFR 50.19(c)(1), but the amendment by itself would do so.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities as distinguished from large entities. The burdens placed on applicants derive from the statute, and primary among them is the requirement for a strategic plan. The entity responsible for preparing a strategic plan for HUD funds for a metropolitan area is the city or county that generally would be seeking the nomination of an area, not the small businesses that are located or could be located within the area.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that, although this rule may have a substantial direct effect on the States or their political subdivisions that are designated as Empowerment Zones, this effect is intended by the legislation authorizing the program. The purpose of the rule is to provide a cooperative atmosphere between the Federal government and States and local governments, and to reduce any regulatory burden imposed by the Federal government that impedes the ability of States and local governments to solve pressing economic, social, and physical problems in their communities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1501) established requirements for Federal agencies to assess the effects of their

regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995, because it does not mandate any particular action. The rule just authorizes states, localities, and tribes to apply for designation of areas within their jurisdiction as Empowerment Zones, which permits special tax treatment of business activities within the areas and may make the areas eligible for other government benefits.

Justification for Final Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

The change made by this final rule merely removes impediments to implementing recent statutory changes authorizing additional empowerment zones under current regulations on empowerment zones. Since the minor changes being made in this rule are ministerial in nature and not controversial, soliciting public comment is unnecessary and contrary to the public interest in orderly and expeditious implementation of the statute. Therefore, the Department has determined that good cause exists to omit prior public procedure for this final rule.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.243.

List of Subjects in 24 CFR Part 597

Community development, Empowerment zones, Enterprise communities, Economic development, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban areas.

Accordingly, part 597 of title 24 of the Code of Federal Regulations is amended as follows:

PART 597—URBAN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES: ROUND ONE DESIGNATIONS

1. The heading of part 597 is revised to read as set forth above.

2. The authority citation for part 597 continues to read as follows:

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

§ 597.3 [Amended]

3. Section 597.3 is amended by removing the last sentence from the definitions of both ''Empowerment Zone'' and ''Enterprise Community'', respectively.

§ 597.4 [Amended]

4. Section 597.4 is amended by removing the last sentence from paragraph (a).

§ 597.302 [Removed]

5. Section 597.302 is removed.

Dated: February 25, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–5419 Filed 2–3–98; 8:45 am]

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federal register

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March 4, 1998

Part IV

Environmental Protection Agency

40 CFR Part 180

Pesticides; FFDCA Jurisdiction Over Food Packaging Impregnated With an Insect Repellent Transferred to FDA; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[OPP–300605; FRL–5766–9]

RIN 2070–AD20

Pesticides; FFDCA Jurisdiction Over Food Packaging Impregnated With an Insect Repellent Transferred to FDA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The effect of this rule is to give the Food and Drug Administration (FDA) sole jurisdiction under the Federal Food, Drug, and Cosmetic Act (FFDCA) for food packaging (e.g., paper and paperboard, coatings, adhesives, and polymers) which is impregnated with an insect repellent. Currently, food packaging impregnated with an insect repellent is regulated under FFDCA by both Agencies. Under FFDCA section 409, FDA regulates the use of packaging material (e.g., paper and paperboard, coatings, adhesives, and polymers) when used in food packaging. Under FFDCA section 408, EPA would need to establish an exemption from the requirement for a tolerance for the food packaging material which is impregnated with an insect repellent, even though FDA may have already established the safety and permitted the use of these substances in food packaging pursuant to section 409. In essence, EPA's regulation of such material under FFDCA section 408, does not add any value or health benefits to the actions taken by FDA under section 409. Given FDA's expertise and experience in regulating the components of food packaging, both Agencies believe this rule will eliminate the duplicative FFDCA jurisdiction and economize Federal government resources while continuing to protect human health and the environment. To effectuate the transfer of EPA's FFDCA jurisdiction to FDA, EPA is issuing this rule to except certain inert ingredients from the definitions of ''pesticide chemical'' and ''pesticide chemical residue.'' Specifically, this exception applies to those inert ingredients that are the components of the food packaging (e.g., paper and paperboard, coatings, adhesives, and polymers) which is impregnated with an insect repellent. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA still regulates the food packaging material impregnated with an insect repellent as an inert ingredient of the pesticide product.

DATES: This action is effective May 4, 1998 unless relevant adverse comments are received by April 3, 1998.

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

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

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Torla, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor Crystal Station, 2800 Crystal Drive, Arlington, VA, (703) 308–8098; torla.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Entities potentially affected by this action are those which manufacture pesticides, sanitary paper food containers, miscellaneous plastic products; those who process food and kindred products; and wholesalers of sanitary food containers.

Category	Examples of Affected Entities
Chemical industry	Persons who manufacture, process, sell, or distribute pesticide products
Manufacturers	Manufacturers of sanitary paper food containers and miscellaneous plastic products used as food containers
Wholesalers	Wholesalers of sanitary food containers, food, and kindred products
Processors of food and kindred products	Persons who process food and feed products for wholesale or distribution to consumers

This table is not intended to be exhaustive, but rather provides examples of the types of entities that are likely to be affected by this action. To determine whether you or your business is affected by this action, you should carefully examine this document and the provisions in § 180.4 of the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' unit above.

I. Background

EPA has recently received an application for the registration of an insect repellent under FIFRA that, as proposed, will be impregnated in food packaging materials. The active ingredient in this product, methyl salicylate, is a synthetic version of naturally occurring wintergreen oil, and may function as an alternative to more costly and more toxic applications of pesticides in food storage facilities and retail establishments. EPA refers to natural and synthetic versions of naturally occurring active ingredients that have a non-toxic mode of action as ''biochemicals.''

The regulatory framework for this proposed use of biochemicals raises a number of complex jurisdictional issues for EPA and FDA. Because the impregnated packaging materials will be sold to food distributors for the purpose of repelling insects, as well as for packaging food, the food packaging materials themselves will be subject to the pesticide product registration requirements of section 3 of FIFRA. Under FIFRA, the components of pesticides are either active ingredients or inert ingredients. Active ingredients are those which, among other things, will ''prevent, destroy, repel, or mitigate any pest'' (FIFRA section 2(a)). Inert ingredients are ingredients ''which [are]

not active'' (FIFRA section 2(m)). Thus, the methyl salicylate in the packaging constitutes the active ingredient, and the components of the food packaging (paperboard, coatings, etc.) are the inert ingredients.

To the extent that the use of these packaging materials results in residues of the active and inert ingredients on food (which includes both human and animal food), these active and inert ingredients are also subject to regulation under section 408 of FFDCA. This is true even though FDA may have previously issued regulations under section 409 of FFDCA permitting the use of these substances in the food packaging material. As a result, food packaging impregnated with an insect repellent is regulated under FFDCA by both Agencies. Under FFDCA section 409, FDA regulates the use of packaging material (e.g., paper and paperboard, coatings, adhesives, and polymers) when used in food packaging. Under FFDCA section 408, EPA would need to establish an exemption from the requirement for a tolerance for the food packaging material which is impregnated with an insect repellent, even though FDA may have already established the safety and permitted the use of these substances in food packaging pursuant to section 409. In essence, EPA's regulation of such material under FFDCA section 408, does not add any value or health benefits to the actions taken by FDA under section 409. Given FDA's expertise and experience in regulating the components of food packaging, both Agencies believe this rule will eliminate the duplicative FFDCA jurisdiction and economize Federal government resources while continuing to protect human health and the environment without additional regulatory oversight by EPA. EPA is therefore taking today's action in order to give sole FFDCA jurisdiction over food packaging material impregnated with an insect repellent to FDA.

II. Issuance of This Action as a Direct Final Rule

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and will not result in any adverse comments. The Agency also believes that it is important to make this action effective as soon as possible, in order to address the current overlap in jurisdiction between EPA and FDA under FFDCA. Nevertheless, EPA is issuing a corresponding proposed rule elsewhere in today's **Federal Register** to provide an opportunity for the public to submit relevant adverse comment on this issue. If no relevant adverse comment is submitted within 30 days of publication, this action will become effective 60 days after publication without any further action by the Agency. If, however, a relevant adverse comment is received during the comment period, this direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule, or EPA may request additional public comments.

For the reasons set forth above, EPA believes that it is appropriate to issue this rule as a direct final rule. In addition, this rule also conforms with the ''good cause'' exemption under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), which allows agencies to issue an action without additional notice and comment if further notice and comment would be unnecessary.

III. Legal Authority

Section 201(q)(3) of FFDCA, as amended by FQPA, allows the Administrator, under specified conditions, to except certain substances from the definition of ''pesticide chemical'' or ''pesticide chemical residue.'' That provision reads as follows:

> (3) Notwithstanding paragraphs (1) and (2) [the definitions of ''pesticide chemical'' and ''pesticidal chemical residue''], the Administrator may by regulation except a substance from the definition of ''pesticide chemical'' or ''pesticide chemical residue'' if--
>
> (A) its occurrence as a residue on or in a raw agricultural commodity or processed food is attributable primarily to natural causes or human activities not involving the use of any substance for a pesticidal purpose in the production, storage, processing, or transportation of any raw agricultural commodity or processed food; and
>
> (B) the Administrator, after consultation with the Secretary, determines that the substance more appropriately should be regulated under one or more provisions of this Act other than sections 402(a)(2)(B) and 408.

IV. Findings and Agency Decision

After consultation with FDA, EPA is today excepting from the FFDCA definitions of ''pesticide chemical'' and ''pesticide chemical residue'' substances that are inert ingredients in food packaging impregnated with insect repellents, when such ingredients are the components of the food packaging (e.g., paper and paperboard, coatings, adhesives, and polymers). Upon the effective date of this rule, FDA alone will regulate such substances under FFDCA. Given FDA's expertise and experience in regulating the components of food packaging, both Agencies believe that this rule will eliminate duplication and economize Federal government resources without any risk to public health.

It is important to note that this rule does not affect EPA's regulation of such substances as inert ingredients under FIFRA. EPA will continue to exercise jurisdiction over these substances when they are used as inert ingredients in food packaging material that is intended to produce an insecticidal effect. With the development of this technology, an ingredient in food packaging may be used for two purposes: (1) to repel pests, and (2) to be one of the materials which make up the container for the food. As a result of this rule, under FFDCA, EPA will continue to regulate the materials which repel pests and FDA will regulate the materials which make up the food packaging material. Consistent with EPA's pesticide registration regulations, EPA will not issue a registration under FIFRA for pesticide products containing food packaging inert ingredients if the presence of these ingredients in or on food is not authorized or permitted by FFDCA and the implementing regulations.

EPA believes that section 201(q)(3) is applicable to inert ingredients in insect repellent-impregnated food packaging materials that are the components of the food packaging (e.g., paper and paperboard, coatings, adhesives, and polymers). When the inert substances are the components of the food packaging material itself, EPA believes the substance's occurrence as a residue in or on food is not attributable primarily to the use of a substance for a pesticidal purpose in the production, storage, processing, or transportation of food. For this reason, and because of FDA's considerable experience generally in regulating ingredients found in food packaging, both EPA and FDA believe it is appropriate for FDA to regulate these inert ingredients under section 409 of FFDCA.

While EPA has to date only received one application for the registration of an insect repellent in packaging material containing the active ingredient methyl salicylate, today's rule is not limited to inert ingredients in insect repellents containing only methyl salicylate. Rather, this regulation excepts from the definition of pesticide chemical and pesticide chemical residue any inert ingredient that is a component of the food packaging material of insect repellent-impregnated food packaging. Upon consultation, both EPA and FDA believe that the identity of the insect repellent in the packaging material is not relevant to a determination under

section 201(q)(3) regarding whether it is appropriate to except an inert ingredient from the definition of pesticide chemical or pesticide chemical residue. As noted above, that determination turns only on whether: (1) The occurrence of residues of the substance in or on food is attributable primarily to the use of substances for a pesticidal purpose in the production, storage, processing, or transportation of food; and (2) whether it is more appropriate to regulate such substances under another provision of FFDCA other than sections 402(a)(2)(B) and 408. Both EPA and FDA believe that inert ingredients that are the components of the food packaging material in insect repellent-impregnated food packaging are more appropriately regulated by FDA under FFDCA.

The exception authority under FFDCA section 201(q)(3) is new; no exceptions are currently established in 40 CFR part 180. The current structure of part 180 does not provide the space for EPA to create a new section devoted to these exceptions except at the end of subpart B, far removed from where it should be organizationally. This rule overcomes this difficulty by removing existing text under § 180.4, which currently contains provisions for certification of pesticide chemical usefulness and residue estimate opinions. These provisions were eliminated from FFDCA by FQPA and the corresponding regulations are no longer needed.

In its place, EPA is revising § 180.4 to contain exceptions granted under FFDCA section 201(q)(3). This would locate these exceptions close to the beginning of part 180 where they should logically reside.

V. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number ''300605'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–300605.'' Electronic comments on this rule may be filed online at many Federal Depository Libraries.

VI. Regulatory Assessment Requirements

As an exception, this action does not impose any regulatory obligations. Under Executive Order 12866 entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), it has been determined that this rule is not ''significant'' and is not subject to OMB review. This rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et. seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). In addition, this action does not involve any standards that would require Agency consideration pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (Pub. L. 104-113).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities, because this regulatory action is an exemption and imposes no regulatory obligations. EPA will provide this information to the Small Business Administration's office of Advocacy upon request.

VII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 23, 1998.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 180 is amended as follows:

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

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

2. The part heading for part 180 is revised to read as follows:

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN FOOD

3. Section 180.1 is amended by revising paragraph (k) and adding new paragraph (o) to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(k) The term *pesticide chemical* means any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide.

* * * * *

(o) The term *pesticide chemical residue* means a residue on or in a raw agricultural commodity or processed food of:

(1) A pesticide chemical; or

(2) Any other added substance that is present on or in the commodity or food primarily as a result of the metabolism or other degradation of a pesticide chemical.

4. By revising § 180.4 to read as follows:

§ 180.4 Exceptions.

The substances listed in this section are excepted from the definitions of ''pesticide chemical'' and ''pesticide chemical residue'' under FFDCA section 201(q)(3) and are therefore exempt from regulation under FFDCA section 402(a)(2)(B) and 408. These substances are subject to regulation by the Food and Drug Administration as food additives under FFDCA section 409.

(a) Inert ingredients in food packaging impregnated with an insect repellent

when such inert ingredients are the components of the food packaging material (e.g., paper and paperboard, coatings, adhesives, and polymers).

(b) [Reserved]

[FR Doc. 98–5415 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300605A; FRL–5776–2]

RIN 2070-AD20

Pesticides; FFDCA Jurisdiction over Food Packaging Impregnated with an Insect Repellent Transferred to FDA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Elsewhere in today's **Federal Register**, EPA is issuing a direct final rule which gives the Food and Drug Administration (FDA) sole jurisdiction under the Federal Food, Drug, and Cosmetic Act (FFDCA) for food packaging (e.g., paper and paperboard, coatings, adhesives, and polymers) which is impregnated with an insect repellent. To effectuate that transfer, the rule excepts certain inert ingredients from the definitions of ''pesticide chemical'' and ''pesticide chemical residue.'' Specifically, the exception applies to those inert ingredients that are the components of the food packaging (e.g., paper and paperboard, coatings, adhesives, and polymers) which is impregnated with an insect repellent. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA still regulates the food packaging material impregnated with an insect repellent as an inert ingredient of the pesticide product. EPA is issuing the action as a direct final rule without prior proposal because the Agency believes that the action is not controversial and will not result in any adverse comments. A detailed rationale for the promulgation of the rule is set forth in the direct final rule, along with the details of the rule. With this corresponding action, EPA is providing an opportunity for the public to submit adverse comment on this issue. If no relevant adverse comment is submitted in response to this proposed rule, the direct final rule will become effective without any further action by the Agency. If, however, a relevant adverse comment is received during the comment period, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule, or EPA may request additional public comments. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before April 3, 1998.

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

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

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Torla, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor Crystal Station, 2800 Crystal Drive, Arlington, VA, (703) 308–8098; torla.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

For detailed information about the action, see the direct final rule which is published elsewhere in today's **Federal Register**.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number ''300605'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–300605.'' Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

As an exception, this action does not impose any regulatory obligations. Under Executive Order 12866 entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is not ''significant'' and is not subject to OMB review. This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et. seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). In addition, this action does not involve any standards that would require Agency consideration pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (Pub. L. 104-113).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities, because this regulatory action is an exemption and imposes no regulatory obligations. EPA will provide this information to the Small Business Administration's office of Advocacy upon request.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: February 23, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–5416 Filed 3–3–98; 8:45 am]

BILLING CODE 6560–50–F

federal register

Wednesday
March 4, 1998

Part V

Department of Health and Human Services

Office of Public Health and Science; Announcement of Availability of Funds for Family Planning Services Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Funds for Family Planning Services Grants

AGENCY: Office of Population Affairs, OPHS, HHS.

ACTION: Notice:

SUMMARY: The Office of Population Affairs announces the availability of funds for FY 1998 family planning services grant projects under the authority of Title X of the Public Health Service Act (42 U.S.C. 300, *et seq.*) and solicits applications for competing grant awards to serve the areas and/or populations set out below. Only applications which propose to serve the populations and/or areas listed in Table I will be accepted for review and possible funding.

OMB Catalog of Federal Domestic Assistance 93.217

DATES: Application due dates vary. See Supplementary Information below.

ADDRESSES: Completed applications for DHHS Region II should be sent to: Office of Grants Management for Family Planning Services, 101 Marietta Tower, Suite 1106, Atlanta, GA 30323.

Completed applications for DHHS Regions V, VI, VII, VIII, IX and X should be sent to: Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 1124, Dallas, TX 75202.

Additional information may be obtained from the Regional Health Administrator at the addresses below:

Region II (New Jersey, New York, Puerto Rico, Virgin Islands):
DHHS/PHS Region II, 26 Federal Plaza, Room 3337, New York, NY 10278

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin):
DHHS/PHS Region V, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas):
DHHS/PHS Region VI, 1301 Young Street, Suite 1124, Dallas, TX 75202

Region VII (Iowa, Kansas, Missouri, Nebraska):
DHHS/PHS Region VII, 601 East 12th Street, Room 210, Kansas City, MO 64106

Region VIII (Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming):
DHHS/PHS Region VIII, 1961 Stout Street, Denver, CO 80294

Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands):
DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102

Region X (Alaska, Idaho, Oregon, Washington):
DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX–20, Seattle, WA 98121

FOR FURTHER INFORMATION ON PROGRAM REQUIREMENTS CONTACT: Regional Program Consultants for Family Planning: Region II, Barry Gordon—212/264–2535; Region V, Janice Ely—312/353–3864; Region VI, Paul Smith—214/767–3072; Region VII, William S. Royster, Jr.—816/426–2924; Region VIII, John J. McCarthy, Jr.—303/844–5955 Ext. 399; Region IX, James Hauser—415/437–8116; Region X, Sharon Schnare—206/615–2501.

FOR FURTHER INFORMATION ON ADMINISTRATIVE AND BUDGETARY REQUIREMENTS CONTACT: Region II: June Faizi (Office of Grants Management)—404/331–9584; Regions V, VI, VII, VIII, IX, X: Maudeen Picket (Office of Grants Management)—214/767–3401.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants to public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Also, Title X funds may not be used in programs where abortion is a method of family planning.

Implementing regulations appear at 42 CFR part 59, subpart A.

On February 5, 1993, HHS published at 58 FR 7462 an interim rule that suspends the 1988 Title X rules, pending the promulgation of new regulations. The principal effect of this action was to suspend the definitions of ''family planning,'' ''grantees,'' ''prenatal care,'' ''Title X,'' ''Title X Program,'' and ''Title X Project'' presently found at 42 CFR 59.2 and 42 CFR 59.7–59.10. Proposed rules were also published at 58 FR 7464 on the same date. During the pendency of rulemaking, the policies and interpretations relating to the provision of abortion related services by Title X grantees that were in effect prior to the issuance of the 1988 rule, including those set out in the 1981 Family Planning Guidelines, are being used by the program. Copies of the pre-1988 policies and interpretations are available from the Regional Program Consultants listed above.

Priorities that represent overarching goals for the Title X program include:

(1) Increasing outreach to individuals not likely to seek services, including males, homeless persons, disabled persons, substance abusers, and adolescents;

(2) Expanding the comprehensiveness of reproductive health services, including STD and cancer screening and prevention, increased involvement of male partners, HIV prevention, education and counseling, and substance abuse screening and referral;

(3) Serving adolescents, including more community education, emphasis on postponement of sexual activity, and more accessible provision of contraceptive counseling and contraception;

(4) Eliminating disincentives to providing long-acting, highly effective contraceptives, serving high risk (and high-unit cost) clients, and providing nonrevenue-generating services such as community education and prevention services; and

(5) Emphasizing training and retention of women's health nurse practitioners, particularly nurse practitioners from population groups that have been under-represented, and nurse practitioners serving disadvantaged and medically underserved communities.

These program priorities are being pursued to the extent that funding or increases in program efficiency allow. Some funding may be available to Title X grantees to improve and expand services.

The FY 1998 budget for the Title X Family Planning Program is $203.4 million. This amount represents a two percent increase over the FY 1997 budget of $198.4 million. Of this amount, approximately $185 million will be made available for the provision of Title X services. Approximately 28 percent of the funds appropriated for FY 1998 and made available for Title X services will be used for competing grants. The remaining funds will be used for non-competing continuation grants in all 10 DHHS regions.

For FY 1998, approximately $185 million will be allocated among the 10 DHHS regions for both competing and non-competing grants, and will in turn be awarded to public and private non-profit agencies located within the regions.

Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in 42 CFR 59.11.

This notice announces the availability of funds for competitive family planning service grants in 14 States, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands. Competing grant applications are invited for the following areas:

TABLE I

Populations or areas to be served	Number of competing grants to be awarded	FY 1998 funding	Application due date	Grant funding date
Region I: No grants available for competition in FY 1998				
Region II: New Jersey	2	$6,267,314	8/31/97	12/31/97
Region III: No grants available for competition in FY 1998				
Region IV: No grants available for competition in FY 1998				
Region V:				
Illinois	1	5,803,902	8/31/97	12/31/97
Indiana	1	3,934,048	9/30/97	1/31/98
Michigan	1	4,929,377	11/30/97	3/31/98
Minnesota	1	1,880,359	8/31/97	12/31/97
Wisconsin	1	2,791,651	10/31/97	2/28/98
Region VI:				
Louisiana	1	3,500,000	2/28/98	6/30/98
Texas	1	600,000	5/31/98	9/30/98
Region VII:				
Iowa	1	1,728,500	2/28/98	6/30/98
Iowa	1	618,000	5/31/98	9/29/98
Region VIII: Montana	1	1,046,454	2/28/98	6/30/98
Region IX:				
California	2	16,727,662	8/30/97	12/31/97
Arizona	1	2,478,353	8/30/97	12/31/97
Gila River, Arizona	1	146,532	2/28/98	6/30/98
Washoe County, Nevada	1	237,937	2/28/98	6/30/98
Federated States of Micronesia	1	141,353	2/28/98	6/30/98
Republic of Palau	1	45,480	2/28/98	6/30/98
Republic of the Marshall Islands	1	67,864	2/28/98	6/30/98
Region X: Columbia, Willamette Counties, OR	1	644,828	2/28/98	6/30/98
Total	21	53,589,614		

Applications must be postmarked or, if not sent by U.S. mail, received at the appropriate Grants Management Office no later than close of business on application due dates listed above. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or, if not sent by U.S. mail, delivered to the appropriate Grants Management Office later than the application due date will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark for the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements at 42 CFR part 59, subpart A will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Applications will be evaluated on the following criteria:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations.

Application Requirements

Application kits (including the application form, PHS 5161) may be obtained by contacting the appropriate Office of Grants Management in Atlanta or Dallas. Limited technical assistance regarding programmatic aspects of proposal preparation is available from the regional offices. For information on administrative and budgetary aspects of proposal preparation, contact the appropriate Office of Grants Management. An application must contain: (1) a narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations; (2) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested; (3) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and (4) such other pertinent information as may be required by the Secretary as specified in the application kit. In preparing an application, applicants should respond to all applicable regulatory requirements. (The information collections contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.)

The Office of Public Health and Science (OPHS) requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is

consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

Application Review and Evaluation

Each regional office is responsible for conducting its own competitive application reviews. Applications must be submitted to the appropriate Office of Grants Management at the address listed above. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

Grant Awards

Grant projects are generally approved for 3 to 5 years with an annual non-competitive review of a continuation application to obtain continued support. Non-competing continuation awards are subject to factors such as the project making satisfactory progress and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Programs and Activities, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made to the Governor's office of the pertinent states for information regarding the review process designed by their state or the State Single Point of Contact (SPOC) for the state in question. SPOC comments must be received by the appropriate Grants Management Office (Atlanta or Dallas) 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Thomas C. Kring,

Acting Deputy Assistant Secretary for Population Affairs.

[FR Doc. 98–5477 Filed 3–3–98; 8:45 am]

BILLING CODE 4160–17–M

federal register

Wednesday
March 4, 1998

Part VI

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 441, 489 and Ch. IV

Medicare and Medicaid Programs: Surety Bond Requirements for Home Health Agencies; Final Rule and Technical Revisions; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 441 and 489

[HCFA–1152–F]

RIN 0938–AI31

Medicare and Medicaid Programs; Surety Bond Requirements for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: The Balanced Budget Act of 1997 (BBA'97) requires each home health agency (HHA), in order to participate in either the Medicare or the Medicaid program, to secure a surety bond. On January 5, 1998, we published a final rule with comment period that requires that each Medicare-participating HHA obtain from an acceptable authorized Surety a surety bond that is the greater of $50,000 or 15 percent of the annual amount paid to the HHA by the Medicare program, as reflected in the HHA's most recently accepted cost report. The rule also requires that an HHA participating in Medicaid must furnish a surety bond in an amount that is the greater of $50,000 or 15 percent of its Medicaid revenues to the Medicaid State agency in each State in which it operates. The rule also requires submittal of the initial bond to HCFA or the State Medicaid agency, or both—as applicable—by February 27, 1998. Because some HHAs have not been able to obtain a surety bond in time to meet the February 27 date, we are removing the date by which HHAs are required to submit the bonds to HCFA and/or the State Medicaid Agency.

EFFECTIVE DATE: This final rule is effective on March 4, 1998.

FOR FURTHER INFORMATION CONTACT: Ralph Goldberg, (410)786–4870 (Medicare Provisions). Mary Linda Morgan, (410)786–2011 (Medicaid Provisions).

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997 (BBA'97) requires each home health agency (HHA) to secure a surety bond in an amount of at least $50,000 in order to participate in either the Medicare or the Medicaid program. This requirement applies to all participating Medicare and Medicaid HHAs, regardless of the date their participation began. We published in the **Federal Register** a final rule on January 5, 1998 (63 FR 292–355) to implement the surety bond requirements. The comment period on that final rule continues until March 6, 1998.

Generally, the rule requires each HHA participating in Medicare to obtain from an acceptable authorized Surety and then to furnish to the fiscal intermediary a surety bond in an amount that is the greater of $50,000 or 15 percent of the annual amount paid to the HHA by the Medicare program, as such annual amount appears in the HHA's most recently accepted cost report.

The rule also prohibits payment to a State for home health services furnished to Medicaid recipients unless the HHA has furnished the Medicaid State agency with a surety bond similar to one that meets Medicare requirements. The date for submittal of an initial surety bond to HCFA and/or the State Medicaid agency is February 27, 1998.

II. Provisions of this Final Rule

Concerns about Surety liability issues have been raised by representatives of the surety industry as well as by home health agency representatives. We address these concerns in a notice published elsewhere in this edition of the **Federal Register**. Those issues were not apparent during our previous discussions with the representatives prior to the publication of the final rule on January 5, 1998. Therefore, because of resultant delays in the ability of some HHAs to secure surety bonds in time to meet the February 27, 1998 date for submittal to HCFA and/or the state Medicaid agency, we believe it is now prudent to extend the February 27, 1998 effective date for HHAs to furnish a bond. This final rule deletes the February 27, 1998 effective date for all HHAs to furnish a surety bond. The new compliance date will be 60 days after the date of publication of the final rule that implements the technical changes discussed in the notice appearing elsewhere in this edition of the **Federal Register**.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and it incorporates a statement of the finding and its reasons in the rule issued.

We find good cause to waive the notice-and-comment procedure with respect to this rule because it is impracticable to employ notice and comment procedures and issue a rule on or before the current effective date for bond submission. We also find good cause to waive notice and comment procedures with respect to this rule because employing such procedures would, in this instance, be contrary to the public interest. We believe that some reputable HHAs are unable to secure the surety bond in time to meet the date currently specified in the regulations, which could result in HHAs being unable to participate in Medicare or Medicaid. Such a result could reduce significantly access to care by program beneficiaries and that outcome would be contrary to the public interest.

For these reasons, we find good cause to waive notice-and-comment and to issue this final rule.

IV. Waiver of 30-Day Interim Period Before Rule is Effective

We ordinarily make the effective date of a final rule at least 30 days after the publication of the rule in the **Federal Register**. However, the 30-day interim period can be waived if an agency finds good cause for making the effective date of the rule earlier than 30 days after the publication of the rule and the agency publishes a brief statement with the rule of its findings and the reason therefore.

We find good cause to make the provisions of this rule effective on publication in the **Federal Register**. For the reasons discussed above in section III. of this preamble, ''Waiver of Proposed Rulemaking,'' i.e., because we find it necessary to amend the requirement for the submission of a surety bond to delay the effective date beyond February 27, 1998, it would be both impracticable and contrary to the public interest to delay the effective date of this rule. Therefore, we find good cause to waive the 30-day interim period for this rule. Therefore, we have made the effective date the date of publication in the **Federal Register**.

In accordance with the provisions of E.O. 12866, this document was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 441

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

A. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.16(i)(1)(i) is revised to read as follows:

§ 441.16 Home health agency requirements for surety bonds; Prohibition on FFP.

* * * * *

(i) *Submission date and term of the bond.*

(1) * * *

(i) *Initial term:* The term of the initial bond is from January 1, 1998 through a date specified by the State Medicaid agency.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

B. Part 489 is amended as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 489.67(a)(1) is revised to read as follows:

§ 489.67 Submission date and term of the bond.

(a) * * *

(1) *Initial term:* The term of the initial bond is from January 1, 1998 through the end of the HHA's fiscal year.

* * * * *

(Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.778, Medical Assistance Program)

Dated: February 26, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: February 26, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–5655 Filed 2–27–98; 5:05 pm]

BILLING CODE 4120–01–P

federal register

Wednesday
March 4, 1998

Part VII

Department of Education

Office of Postsecondary Education; Federal Work-Study Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.033]

Office of Postsecondary Education; Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of closing date for filing the ''Institutional Application and Agreement for Participation in the Work-Colleges Program.''

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an eligible institution to apply for participation in the Work-Colleges Program and to apply for funding under that program for the 1998–99 award year (July 1, 1998 through June 30, 1999) by submitting to the Secretary an ''Institutional Application and Agreement for Participation in the Work-Colleges Program.''

The Work-Colleges Program along with the Federal Work-Study Program and the Job Location and Development Program are known collectively as the Federal Work-Study programs. The Work-Colleges Program is authorized by part C of title IV of the Higher Education Act of 1965, as amended (HEA).

CLOSING DATE: To participate in the Work-Colleges Program and to apply for funds for that program for the 1998–99 award year, an eligible institution must mail or hand-deliver its ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' to the Department on or before April 24, 1998. The Department will not accept the form by facsimile transmission. The form must be submitted to the Institutional Financial Management Division at one of the addresses indicated below.

ADDRESSES: *Applications and Agreements Delivered by Mail.* An institutional application and agreement delivered by mail must be addressed to Ms. Thomasine Riley, Work-Colleges Program, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington D.C. 20026–0781. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an institutional application and agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use certified or at least first class mail. Institutions that submit an institutional application and agreement after the closing date of April 24, 1998, will not be considered for participation or funding under the Work-Colleges Program for award year 1998–99.

Applications and Agreements Delivered by Hand. An institutional application and agreement delivered by hand must be taken to Ms. Thomasine Riley, Work-Colleges Program, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. Hand-delivered institutional applications and agreements will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An institutional application and agreement for the 1998–99 award year that is delivered by hand will not be accepted after 4:30 p.m. on April 24, 1998.

SUPPLEMENTARY INFORMATION: Under the Work-Colleges Program, the Secretary allocates funds when available for that program to eligible institutions. The Secretary will not allocate funds under the Work-Colleges Program for award year 1998–99 to any eligible institution unless the institution files its ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' by the closing date.

To apply for participation and funding under the Work-Colleges Program, an institution must satisfy the definition of ''work-college'' in section 448(e) of the HEA. The term ''work-college'' under the HEA means an eligible institution that (1) is a public or private nonprofit institution with a commitment to community service; (2) has operated a comprehensive work-learning program for at least two years; (3) requires all resident students who reside on campus to participate in a comprehensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and (4) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

Applicable Regulations

The following regulations apply to the Work-Colleges Program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 673.

(3) Federal Work-Study Programs, 34 CFR Part 675.

(4) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(5) New Restrictions on Lobbying, 34 CFR Part 82.

(6) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(7) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: Ms. Thomasine Riley, Work-Colleges Program, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington D.C. 20026–0781. Telephone (202) 708–9750. 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.

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Note: The official version of this document is the document published in the **Federal Register**.

(Authority: 42 U.S.C. 2756b)

Dated: February 24, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–5548 Filed 3–3–98; 8:45 am]

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federal register

Wednesday
March 4, 1998

Part VIII

The President

Proclamation 7071—Women's History Month, 1998

Federal Register
Vol. 63, No. 42
Wednesday, March 4, 1998

Presidential Documents

Title 3—

The President

Proclamation 7071 of March 2, 1998

Women's History Month, 1998

By the President of the United States of America

A Proclamation

The Preamble to the Constitution begins, ''We, the people.'' Yet that phrase, inspiring as it is, has not always included all Americans. Women's history in America has been the story of the struggle of women of all racial, ethnic, and cultural backgrounds to be included in that simple but powerful statement. It is the story as well of how, in striving to reach their own great potential, women have strengthened and enriched our Nation.

In every era of American history, women have braved enormous challenges to change our world for the better. Women of faith in the early 17th century dared a dangerous journey and the unknown wilderness to seek freedom of conscience in a new land. As our Nation struggled for independence and to establish a new, more enlightened form of government, women like Esther DeBerdt Reed and Sarah Franklin Bache supplied food, clothes, and funds for Washington's soldiers. Freedom fighters like Sojourner Truth and Harriet Tubman led hundreds of enslaved men and women to liberty through the Underground Railroad, and social reformers like Gertrude Bonnin advanced the human rights of American Indians. Suffragists like Susan B. Anthony, Elizabeth Cady Stanton, and Luisa Capetillo challenged the conventions of their times and sought to secure for women one of the most basic rights within our democracy.

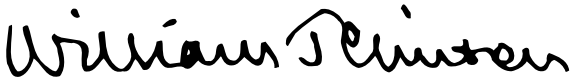
This year marks the 150th anniversary of the women's rights movement in America and its immeasurable contributions to our Nation's promise of justice and equality for all. The visionary women and men who gathered in Seneca Falls, New York, in July of 1848 for the first Women's Rights Convention in history gave voice so powerfully to women's aspirations for inclusion and empowerment that their vision continues to shape our world today.

Once disenfranchised, American women now serve at the highest levels of government, as Justices of the Supreme Court and in increasing numbers in the Cabinet and the United States Congress. Once denied the resources and opportunities to play organized sports, American women made sporting history this year by winning the first-ever Olympic Gold Medal in women's ice hockey. Women are cracking the glass ceilings of corporate management to lead some of our country's most prominent businesses. As parents and partners, entrepreneurs and artists, politicians and scientists, women are helping to build an America in which all citizens, regardless of gender, are free to live out their dreams.

Thanks to the efforts of women leaders, little girls across America today know far fewer limits than did their mothers and grandmothers. But there still remains work to be done to create a more just America, and we must rededicate ourselves to ending the discrimination that women still face. We must continue our efforts to help women succeed at work and at home, to be free from violent crime, and to enjoy quality health care. In doing so, we will confirm our conviction that ''We, the people'' includes us all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1998 as Women's History Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and to remember throughout the year the many voices and stories of courageous women who have made our Nation strong.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



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